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**Datasheet for the decision
of 7 September 2023**

Case Number: T 2044/19 - 3.3.04

Application Number: 14719977.2

Publication Number: 2968301

IPC: A61K31/454, A61K31/498,
A61P31/12, A61K31/4985

Language of the proceedings: EN

Title of invention:
Combination of two antivirals for treating hepatitis C

Patent Proprietor:
AbbVie Inc.

Opponent:
Generics (U.K.) Limited

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by
patent proprietor

Decisions cited:
T 0073/84



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 2044/19 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 7 September 2023

Appellant: Generics (U.K.) Limited
(Opponent) Building 4, Trident Place
Mosquito Way
Hatfield Herts AL 10 9UL (GB)

Representative: Ter Meer Steinmeister & Partner
Patentanwälte mbB
Nymphenburger Straße 4
80335 München (DE)

Respondent: AbbVie Inc.
(Patent Proprietor) 1 North Waukegan Road
North Chicago, IL 60064 (US)

Representative: Mewburn Ellis LLP
Aurora Building
Counterslip
Bristol BS1 6BX (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 24 April 2019
rejecting the opposition filed against European
patent No. 2968301 pursuant to
Article 101(2) EPC**

Composition of the Board:

Chairman A. Chakravarty
Members: R. Hauss
M. Blasi

Summary of Facts and Submissions

- I. The decision under appeal is the opposition division's decision rejecting the opposition against European patent No. 2 968 301 (patent in suit). The decision was announced in oral proceedings on 22 March 2019 and the written reasoned decision was handed over to the postal service provider on 24 April 2019.
- II. The opponent (appellant) filed an appeal against this decision, requesting that it be set aside and that the patent be revoked.
- III. The patent proprietor is respondent to the opponent's appeal. It requested, as its main request, that the appeal be dismissed or, in the alternative, that the patent be maintained in amended form on the basis of the claims of auxiliary request 1 filed with its reply to the appeal.
- IV. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- V. Oral proceedings before the board were held on 7 September 2023.

During the oral proceedings, the respondent stated that it withdrew the auxiliary request as well as its approval of the text of the patent in suit as granted. The respondent further stated that it understood that this would result in the revocation of the patent since no text for an amended version of the patent was approved or submitted.

The appellant confirmed that its final request was that the decision under appeal be set aside and the patent be revoked.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 EPC and Rule 99 EPC; it is admissible.
2. Under Article 113(2) EPC, the EPO can decide upon a European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
3. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly stated that it no longer approved the text of the patent as granted, and withdrew all claim requests on file. As a consequence, there is no text on the basis of which the board can consider compliance with the requirements of the EPC.
4. Furthermore, there were no other issues to be decided upon in the appeal.
5. In the circumstances described above, it is established case law that the appeal proceedings must be terminated by a decision ordering the revocation of the patent without going into the substantive issues (see, for instance, T 73/84, OJ EPO 1985, 241).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



I. Aperribay

A. Chakravarty

Decision electronically authenticated