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**Datasheet for the decision  
of 10 January 2023**

**Case Number:** T 0043/20 - 3.3.07

**Application Number:** 08848615.4

**Publication Number:** 2222285

**IPC:** A61K9/70, A61K33/26

**Language of the proceedings:** EN

**Title of invention:**  
PHARMACEUTICAL COMPOSITIONS

**Patent Proprietor:**  
Vifor Fresenius Medical Care Renal Pharma, Ltd.

**Opponents:**  
Interquim S.A.  
STADA Arzneimittel AG

**Headword:**  
Pharmaceutical compositions / VIFOR

**Relevant legal provisions:**  
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by  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



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

**Case Number:** T 0043/20 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 10 January 2023**

**Appellant:** Interquim S.A.  
(Opponent 1) Av. Ragull, 60, 3rd floor  
08173 Sant Cugat del Vallès (ES)

**Representative:** Ferrer Internacional S.A.  
Joan Buscallà 1-9  
08173 Sant Cugat del Vallès (ES)

**Respondent:** Vifor Fresenius Medical Care Renal Pharma, Ltd.  
(Patent Proprietor) Rechenstrasse 37  
9014 St. Gallen (CH)

**Representative:** Gille Hrabal Partnerschaftsgesellschaft mbB  
Patentanwälte  
Brucknerstraße 20  
40593 Düsseldorf (DE)

**Party as of right:** STADA Arzneimittel AG  
(Opponent 2) Stadastrasse 2-18  
61118 Bad Vilbel (DE)

**Representative:** Hamm&Wittkopp Patentanwälte PartmbB  
Jungfernstieg 38  
20354 Hamburg (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 29 November  
2019 rejecting the opposition filed against  
European patent No. 2222285 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

<b>Chairman</b>	A. Usuelli
<b>Members:</b>	E. Duval
	Y. Podbielski

## **Summary of Facts and Submissions**

- I. Two oppositions were filed against European patent 2 222 285 (hereinafter "the patent").
- II. The appeal was filed by opponent 1 (appellant) against the decision of the opposition division to reject the oppositions filed against the patent.
- III. With the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- IV. With the reply to the appeal, the patent proprietor (respondent) defended its case on the basis of the patent as granted and filed auxiliary requests.
- V. The Board set out its preliminary opinion in a communication pursuant to Article 15(1) RPBA.
- VI. Oral proceedings were held before the Board. In the course of the oral proceedings, the respondent declared that they no longer approved the text of the patent as granted, would not submit any new claim requests and withdrew all auxiliary requests.

## **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the patent proprietor of the patent.

2. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly states that it no longer approves the text of the patent, will not be submitting an amended text and withdraws all pending auxiliary requests.
3. There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, IV.D.2).

## **Order**

### **For these reasons it is decided that:**

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairman:



B. Atienza Vivancos

A. Uselli

Decision electronically authenticated