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**Datasheet for the decision
of 13 August 2020**

Case Number: T 0292/20 - 3.3.01

Application Number: 14725812.3

Publication Number: 2968302

IPC: A61K31/454, A61K31/4985,
A61K31/7056, A61P31/22

Language of the proceedings: EN

Title of invention:

COMBINATION OF DIRECT ACTING ANTIVIRAL AGENTS AND RIBAVIRIN
FOR TREATING HCV PATIENTS

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Basis of decision - text or agreement to text withdrawn by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 - patent revoked

Decisions cited:

T 0073/84



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 0292/20 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 13 August 2020

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 31 October 2019
rejecting the opposition filed against European
patent No. 2968302 pursuant to
Article 101(2) EPC**

Composition of the Board:

Chairman A. Lindner
Members: S. Albrecht
M. Blasi

Summary of Facts and Submissions

- I. The appeal, duly lodged by the opponent, lies against the opposition division's decision rejecting the opposition against European patent EP 2 968 302.
- II. The opponent (appellant) requested that the decision under appeal be set aside and the patent be revoked. As an auxiliary request it requested oral proceedings to be held.
- III. In a letter dated 20 July 2020, the respondent stated:

"The proprietor no longer approves the text on which grant of the patent was based, nor maintains any of the auxiliary requests. No amended text will be submitted.

We therefore request that the appeal proceedings (T 0292/20) are terminated and the EPO issues a decision to revoke European Patent No: 2968302 (14725812.3)."

Reasons for the Decision

1. The appeal complies with the requirements of Article 108 EPC and the provisions referred to in Rule 101 EPC and is therefore admissible.
2. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

3. In the present case the patent proprietor withdrew its approval of the text of the patent as granted. Furthermore, it did not maintain any of the auxiliary requests and confirmed that it would not be submitting an amended text. Therefore, there is no longer any text of the patent in the proceedings on the basis of which the board can consider compliance with the requirements of the EPC.

4. It is established case law that in the present circumstances the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, section IV.D.2). The board has no reason to deviate from this consistent approach of the boards of appeal, with the consequence that the patent is to be revoked.

5. Revocation of the patent complies with the requests of both parties. There are also no other issues to be decided upon in the present appeal case. The present decision can therefore be taken without holding oral proceedings.

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:



M. Schalow

A. Lindner

Decision electronically authenticated