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**Datasheet for the decision  
of 27 September 2022**

**Case Number:** T 1828/20 - 3.3.07

**Application Number:** 11776879.6

**Publication Number:** 2618819

**IPC:** A61K9/28, A61K31/437,  
A61K31/44, A61K9/20, A61K9/16,  
A61K9/00

**Language of the proceedings:** EN

**Title of invention:**  
PHARMACEUTICAL FORMULATIONS CONTAINING RIFAXIMIN, PROCESSES  
FOR THEIR OBTAINMENT AND METHOD OF TREATING INTESTINAL DISEASE

**Patent Proprietor:**  
Alfasigma S.p.A.

**Opponent:**  
Sandoz GmbH

**Headword:**  
Rifaximin formulation / ALPHASIGMA

**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Basis of decision - text or agreement to text withdrawn by  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  
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Case Number: T 1828/20 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 27 September 2022**

**Appellant:**

(Opponent)

Sandoz GmbH  
Biochemiestrasse 10  
6250 Kundl (AT)

**Representative:**

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**Respondent:**

(Patent Proprietor)

Alfasigma S.p.A.  
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**Representative:**

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80539 München (DE)

**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
14 July 2020 concerning maintenance of the  
European Patent No. 2618819 in amended form.**

**Composition of the Board:**

**Chairman**

A. Usuelli

**Members:**

E. Duval

A. Jimenez

## **Summary of Facts and Submissions**

- I. An opposition was filed against European patent 2 618 819 ("the patent").
- II. The opposition division took the interlocutory decision that, on the basis of auxiliary request 1 filed (as auxiliary request IV) on 10 October 2019, the patent met the requirements of the EPC.
- III. The opponent (appellant) filed an appeal against this decision, requesting that it be set aside and that the patent be revoked in its entirety.
- IV. The patent proprietor (respondent) requested that the appeal be dismissed and filed auxiliary requests I-XV with the reply to the appeal.
- V. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- VI. By letter dated 22 September 2022, the respondent stated that they no longer approved the text in which the patent was granted or of any amendment filed during the opposition/appeal proceedings, and that they would not be submitting any amended text. Furthermore, the respondent withdrew their request for oral proceedings.
- VII. The Board subsequently cancelled the oral proceedings.

## **Reasons for the Decision**

1. It is established case law that, if the patent proprietor states in opposition or appeal proceedings

that he no longer approves the text in which the patent was granted and will not be submitting an amended text, the patent is to be revoked. This is supported by Article 113(2) EPC, which provides that a patent may be maintained only in a version approved by the patent proprietor. If there is no such version, one of the requirements for maintaining the patent is lacking (see the Case Law of the Boards of Appeal, 10<sup>th</sup> edition 2022, IV.D.2).

2. In its letter of 22 September 2022, the respondent unambiguously stated that they no longer approved the text in which the patent was granted or amended in the opposition or appeal proceedings, and that they would not be submitting any amended text.
  
3. As a consequence, the appeal proceedings must be terminated by a decision ordering the revocation of the patent without examination of the substantive issues.

**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:



B. Atienza Vivancos

A. Uselli

Decision electronically authenticated