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**Datasheet for the decision
of 19 September 2024**

Case Number: T 1159/21 - 3.3.04

Application Number: 09786912.7

Publication Number: 2315587

IPC: A61K31/343, A61K31/4965,
A61K31/506, A61K31/5575,
A61K31/5578, A61K45/06,
A61P9/00

Language of the proceedings: EN

Title of invention:

Therapeutic compositions containing macitentan

Patent Proprietor:

Actelion Pharmaceuticals Ltd.

Opponents:

Generics (UK) Ltd
Alfred E. Tiefenbacher (GmbH & Co. KG)
STADA Arzneimittel AG
Teva Pharmaceutical Industries Ltd
Hexal AG

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Basis of decision - text or agreement to text withdrawn by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
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Case Number: T 1159/21 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 19 September 2024

Appellant: Actelion Pharmaceuticals Ltd.
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Appellant: Generics (UK) Ltd
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Representative: HGF
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Appellant: STADA Arzneimittel AG
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Appellant: Teva Pharmaceutical Industries Ltd
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Party as of right: Alfred E. Tiefenbacher (GmbH & Co. KG)
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 May 2021 concerning maintenance of the
European Patent No. 2315587 in amended form.**

Composition of the Board:

Chairwoman M. Pregetter
Members: R. Hauss
A. Bacchin

Summary of Facts and Submissions

- I. European patent No. 2 315 587 (patent in suit) was opposed by five opponents.
- II. The decision under appeal is the opposition division's interlocutory decision, announced on 20 January 2021 and posted on 20 May 2021, rejecting the patent proprietor's main request and finding that the patent as amended in the form of the first auxiliary request met the requirements of the EPC.
- III. The patent proprietor and opponents 1, 3, 4 and 5 all filed appeals against this decision.
- IV. In the course of the appeal proceedings, the patent proprietor submitted sets of claims of an amended main request and seven auxiliary requests.
- V. In accordance with the appellants' requests, the board issued a summons to oral proceedings.
- VI. In reply, the non-appealing opponent 2 advised the board that it would not be attending.
- VII. Oral proceedings before the board were held on 19 September 2024.
 - (a) In accordance with Article 15(3) RPBA and Rule 115(2) EPC, the oral proceedings took place in the absence of opponent 2, which had not presented any requests or substantive submissions.
 - (b) Opponents 1, 3, 4 and 5 all requested that the decision under appeal be set aside and that the patent be revoked.

(c) During the oral proceedings, the patent proprietor stated that it was withdrawing its appeal, all its requests and its approval of the text of the patent as granted, and that it would not be filing any replacement text. The patent proprietor further stated that it understood that this would result in the revocation of the patent.

Reasons for the Decision

1. Article 113(2) EPC requires the European Patent Office to decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. As the patent proprietor withdrew its approval of the patent as granted and of any other text for the maintenance of the patent in suit, there is no valid text on the basis of which the board can consider the opponents' appeals.
3. In the circumstances described above, it is established case law that the appeal proceedings must be terminated by a decision ordering revocation of the patent, since in the absence of a valid text an essential requirement for maintaining the patent is lacking (see, for instance, T 0073/84, OJ EPO 1985, 241; T 0186/84, OJ EPO 1986, 79; T 0655/01 of 11 November 2005; T 1526/06 of 11 July 2008; T 1655/07 of 10 June 2009; T 0969/10 of 26 September 2011; T 2405/12 of 11 May 2016 and Case Law of the Boards of Appeal of the European Patent Office, 10th edition, 2022, sections III.B.3.3 and IV.D.2).

Order

For these reasons it is decided that:

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

The Registrar:

The Chairwoman:



C. Rodríguez Rodríguez

M. Pregetter

Decision electronically authenticated