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**Datasheet for the decision  
of 18 March 2024**

**Case Number:** T 2211/21 - 3.3.07

**Application Number:** 16176832.0

**Publication Number:** 3103784

**IPC:** A61P31/00, C07C11/21, C07C7/04,  
A61K9/107, A61K31/01,  
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A61P31/16, A61K39/00,  
A61K39/145, B01D3/10, C12N7/00,  
B01D3/14

**Language of the proceedings:** EN

**Title of invention:**  
MANUFACTURE OF AN OIL-IN-WATER EMULSION COMPRISING SQUALENE

**Patent Proprietor:**  
Seqirus UK Limited

**Opponent:**  
GlaxoSmithKline Biologicals SA

**Headword:**  
Manufacture of an emulsion comprising squalene / SEQIRUS

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

**Keyword:**

Revocation - patent proprietor no longer approves the text of the patent



**Beschwerdekammern**  
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Case Number: T 2211/21 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 18 March 2024**

**Appellant:** GlaxoSmithKline Biologicals SA  
(Opponent) Rue de l'Institut 89  
1330 Rixensart (BE)

**Representative:** Furstoss, Olivia Aline  
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**Respondent:** Seqirus UK Limited  
(Patent Proprietor) Point  
29 Market Street  
Maidenhead  
Berkshire SL6 8AA (GB)

**Representative:** Carpmaels & Ransford LLP  
One Southampton Row  
London WC1B 5HA (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
27 October 2021 concerning maintenance of the  
European Patent No. 3103784 in amended form.**

**Composition of the Board:**

**Chairman** A. Uselli  
**Members:** J. Lécaillon  
Y. Podbielski

## **Summary of Facts and Submissions**

- I. An opposition was filed against the European patent 3 103 784 (hereinafter "the patent").
- II. The opposition division took the interlocutory decision that, on the basis of the main request (filed as auxiliary request 19 on 27 March 2020), the patent met the requirements of the EPC.
- III. The opponent (appellant) lodged an appeal against the above decision of the opposition division.
- IV. With the statement of the grounds of appeal the appellant requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- V. With its reply to the appellant's statement setting out the grounds of appeal the patent proprietor (respondent) defended its case on the basis of the set of claims maintained by the opposition division as a main request and filed 15 auxiliary requests.
- VI. The Board set out its preliminary opinion in a communication pursuant to Article 15(1) RPBA.
- VII. Oral proceedings were held before the Board on 18 March 2024. In the course of the oral proceedings the respondent declared that they no longer approved the text of the patent and confirmed that they would not be submitting an amended text.

### **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC, the EPO shall decide upon the European patent only in the text submitted to it, or agreed, by the patent proprietor.
2. By expressly stating that they no longer approve the text of the patent and will not be submitting an amended text, *i.e.* also implicitly withdrawing all pending requests, the respondent withdrew their approval of any text for maintenance of the patent.
3. Therefore, there is no approved text of the patent on the basis of which the Board can consider the appeal.
4. Under these circumstances, it is established case law that the patent is to be revoked without substantive examination as to the 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