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**Datasheet for the decision
of 15 July 2025**

Case Number: T 0097/22 - 3.3.04

Application Number: 18188695.3

Publication Number: 3456342

IPC: A61K38/52, A61P1/00, A61K9/48

Language of the proceedings: EN

Title of invention:
Agent for use in the case of fructose intolerance

Patent Proprietor:
Vitacare GmbH & Co. KG

Opponent:
STADA Arzneimittel 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Basis of decision - text or agreement to text withdrawn by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

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0097/22 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 15 July 2025

Appellant: STADA Arzneimittel AG
(Opponent) Stadastrasse 2-18
61118 Bad Vilbel (DE)

Representative: Kraus & Lederer PartGmbB
Thomas-Wimmer-Ring 15
80539 München (DE)

Respondent: Vitacare GmbH & Co. KG
(Patent Proprietor) Konrad-Adenauer-Allee 8-10
61118 Bad Vilbel (DE)

Representative: Ruckerl, Florian
Dehmel & Bettenhausen
Patentanwälte PartmbB
Herzogspitalstraße 11
80331 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on
16 November 2021 rejecting the opposition filed
against European patent No. 3456342 pursuant to
Article 101(2) EPC.**

Composition of the Board:

Chair A. Chakravarty
Members: R. Hauss
L. Bühler

Summary of Facts and Submissions

- I. The decision under appeal is the opposition division's decision rejecting the opposition against European patent No. 3 456 342 (patent in suit).
- II. The opponent (appellant) filed an appeal against this decision, requesting that it be set aside and that the patent be revoked.
- III. The patent proprietor (respondent) requested, as its main request, that the appeal be dismissed or, in the alternative, that the patent be maintained in amended form on the basis of the claims of one of auxiliary requests 1 to 6 filed with its reply to the statement setting out the grounds of appeal.
- IV. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- V. Oral proceedings before the board were held on 15 July 2025. The board rejected the respondent's request that the case be transferred to board 3.3.7. During the oral proceedings, the respondent stated that it withdrew its approval of the text of the patent as granted and that it also withdrew all its requests on file and would not be filing a replacement text.

Reasons for the Decision

1. Article 113(2) EPC requires that the EPO decide upon a European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. As the patent proprietor (respondent) withdrew its approval of any text for the maintenance of the patent in suit, there is no valid text on the basis of which the board can consider the appeal.
3. In the circumstances described above, it is established case law that the appeal proceedings must be terminated by a decision ordering the revocation of the patent without going into the substantive issues (see, for instance, T 0073/84, OJ EPO 1985, 241; T 0758/01; T 0116/04; T 1123/03).
4. In view of the above considerations, the respondent's request that the case be transferred to board 3.3.7 (as stated in a written submission dated 2 January 2023 and at the oral proceedings before the board), is no longer relevant. In any case, the Board decided to reject this request as it did not have the power under Article 1(2) of the Business Distribution Scheme of the Technical Boards of Appeal to transfer the case to another board (see also R 21/22, points 5 to 8, relating to determination of the composition).

Order

For these reasons it is decided that:

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

The Registrar:

The Chair:



I. Aperribay

A. Chakravarty

Decision electronically authenticated