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**Datasheet for the decision  
of 25 April 2024**

**Case Number:** T 1153/22 - 3.3.07

**Application Number:** 10817867.4

**Publication Number:** 2477645

**IPC:** A61K9/28, A61K9/48, A61K38/43,  
A61P1/18

**Language of the proceedings:** EN

**Title of invention:**

PANCREATIC ENZYME COMPOSITIONS AND METHODS FOR TREATING  
PANCREATITIS AND PANCREATIC INSUFFICIENCY

**Patent Proprietor:**

Aptalis Pharma Limited

**Opponent:**

Mathys & Squire LLP

**Headword:**

Pancreatic enzyme compositions / APTALIS PHARMA

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

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



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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European Patent Office  
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Case Number: T 1153/22 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 25 April 2024**

**Appellant:** Mathys & Squire LLP  
(Opponent) The Shard  
32 London Bridge Street  
London SE1 9SG (GB)

**Representative:** Mathys & Squire  
The Shard  
32 London Bridge Street  
London SE1 9SG (GB)

**Respondent:** Aptalis Pharma Limited  
(Patent Proprietor) The Yard House  
Killruddery Estate  
Southern Cross Road  
Bray, County Wicklow (IE)

**Representative:** Forresters IP LLP  
Skygarden  
Erika-Mann-Straße 11  
80636 München (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
28 February 2022 concerning maintenance of the  
European Patent No. 2477645 in amended form.**

**Composition of the Board:**

**Chairman** D. Boulois  
**Members:** J. Lécaillon  
Y. Podbielski

## **Summary of Facts and Submissions**

- I. An opposition was filed against the European patent 2 477 645 (hereinafter "the patent").
- II. The opposition division took the interlocutory decision that, on the basis of the auxiliary request 5 filed during oral proceedings on 30 November 2021, 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.
- V. The patent proprietor (respondent) did not file any arguments in reply to the statement of the grounds of appeal.
- VI. In the letter dated 15 March 2024 and received 11 April 2024, the respondent indicated that they withdrew their approval of the text in which the patent was granted and that the patent was to be revoked.

## **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 approved the text of the granted patent and that the patent was

therefore to be revoked, *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

D. Boulois

Decision electronically authenticated