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

**Case Number:** T 1381/23 - 3.3.04

**Application Number:** 17191033.4

**Publication Number:** 3300729

**IPC:** A61K31/343, A61K31/4965,  
A61K31/506, A61K31/5575,  
A61K31/5578, A61K45/06,  
A61P9/00, A61P9/10

**Language of the proceedings:** EN

**Title of invention:**  
Therapeutic compositions containing macitentan

**Patent Proprietor:**  
Actelion Pharmaceuticals Ltd

**Opponents:**  
Generics (UK) Ltd  
Stada-Arzneimittel Aktiengesellschaft

**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Basis of decision - text or agreement to text withdrawn by  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**

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European Patent Office  
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**Case Number: T 1381/23 - 3.3.04**

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 18 September 2024**

**Appellant:**  
(Opponent 2)  
Generics (UK) Ltd  
Building 4  
Trident Place  
Mosquito Way  
Hatfield  
Hertfordshire AL10 9UL (GB)

**Representative:**  
HGF  
HGF BV  
Benoordenhoutseweg 46  
2596 BC The Hague (NL)

**Appellant:**  
(Opponent 3)  
Stada-Arzneimittel Aktiengesellschaft  
Stadastrasse 2-18  
61118 Bad Vilbel (DE)

**Representative:**  
Hamm&Wittkopp Patentanwälte PartmbB  
Jungfernstieg 38  
20354 Hamburg (DE)

**Respondent:**  
(Patent Proprietor)  
Actelion Pharmaceuticals Ltd  
Gewerbestrasse 16  
4123 Allschwil (CH)

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

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 12 July 2023**

rejecting the opposition filed against European patent No. 3300729 pursuant to Article 101(2) EPC.

**Composition of the Board:**

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

## **Summary of Facts and Submissions**

- I. The decision under appeal is the opposition division's decision rejecting the oppositions against European Patent No. 3 300 729, announced in oral proceedings on 15 June 2023 and posted on 12 July 2023.
- II. Each of the three opponents (appellants) filed an appeal against this decision. Subsequently, appellant-opponent 1 withdrew its appeal.
- III. With its reply to the appeals, the patent proprietor (respondent) filed 19 amended sets of claims as auxiliary requests 1 to 19.
- IV. The parties were summoned to oral proceedings and the board expressed its preliminary opinion on some matters concerning the appeals in a communication under Article 15(1) RPBA.
- V. Oral proceedings before the board were held on 18 September 2024.
  - (a) The appellants (opponents 2 and 3) requested that the decision under appeal be set aside and that the patent be revoked.
  - (b) During the oral proceedings, the respondent stated that it was withdrawing all its requests as well as its approval for the text of the patent as granted and that it would not be filing any replacement text. The respondent 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 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 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 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