Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 30 October 2025

Case Number: T 1956/23 - 3.3.04

Application Number: 17206714.2

Publication Number: 3363433

IPC: A61K31/232, A61P9/00, A61P9/10, A61K45/06, A61K31/397

Language of the proceedings: EN

Title of invention:
Methods of reducing the risk of a cardiovascular event in a subject on statin therapy using eicosapentaenoic acid ethyl ester

Patent Proprietor:
Amarin Pharmaceuticals Ireland Limited

Opponents:
Elkington and Fife LLP
Cooke, Richard
Hoffmann Eitle

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked

This datasheet is not part of the Decision
It can be changed at any time and without notice

Decisions cited:

T 0073/84, T 0186/84, T 0646/08, T 2434/18

This datasheet is not part of the Decisior
It can be changed at any time and without notic

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1956/23 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 30 October 2025

Appellant: (Opponent 2)	Cooke, Richard Elkington and Fife LLP Patents Department 3-4 Holborn Circus London EC1N 2HA (GB)
Representative:	Elkington and Fife LLP Prospect House 8 Pembroke Road Sevenoaks, Kent TN13 1XR (GB)
Respondent: (Patent Proprietor)	Amarin Pharmaceuticals Ireland Limited 88 Harcourt Street Dublin 2, D02 DK18 (IE)
Representative:	Reddie & Grose LLP The White Chapel Building 10 Whitechapel High Street London E1 8QS (GB)
Party as of right: (Opponent 1)	ELKINGTON AND FIFE LLP Prospect House 8 Pembroke Road Sevenoaks Kent TN13 1XR (GB)
Representative:	Elkington and Fife LLP Prospect House 8 Pembroke Road Sevenoaks, Kent TN13 1XR (GB)
Party as of right: (Opponent 3)	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastrasse 30 81925 München (DE)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted on 17 November 2023 concerning maintenance of the European Patent No. 3363433 in amended form**

Composition of the Board:

Chair L. Bühler
Members: S. Albrecht
A. Chakravarty

Summary of Facts and Submissions

I. Three oppositions were filed against European patent 3 363 433 ("patent") under Article 100(a) EPC for lack of novelty and lack of inventive step, and under Article 100(b) and (c) EPC.

II. The opposition division decided that the patent as amended according to the main request, the claims of which had been filed on 25 August 2023, and the invention to which it relates, met the requirements of the EPC.

III. Opponent 2 ("appellant") filed an appeal against this decision. The appellant requested that the decision under appeal be set aside and the patent be revoked.

IV. The patent proprietor ("respondent") requested as its main request that the appeal be dismissed, alternatively that the patent be maintained on the basis of one of auxiliary requests 1 and 2 filed on 25 August 2023 before the opposition division and resubmitted with the reply to the statement of grounds of appeal.

V. Opponents 1 and 3, parties as of right to the appeal proceedings, did not make any substantive submissions in the appeal proceedings.

VI. The Board scheduled oral proceedings in line with the appellant's and the respondent's requests. In preparation for these oral proceedings, the Board issued a communication pursuant to Article 15(1) RPBA.

VII. Oral proceedings were held on 30 October 2025 in the presence of the appellant and the respondent. During the oral proceedings, the respondent withdrew its consent and agreement under Article 113(2) EPC to the text in which the patent was maintained by the opposition division, withdrew all claim requests on file, and indicated that it would not be filing a replacement text. At the end of the oral proceedings, the Chair announced the Board's decision.

Reasons for the Decision

1. Under Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

2. In view of the patent proprietor's statement during the oral proceedings (point VII. above), there is no approved text on the basis of which the Board could consider the appeal and examine whether a ground for opposition prejudices the maintenance of the patent. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged impediments to patentability (T 186/84, OJ 1986, 79, point 5 of the Reasons; T 646/08, point 4 of the Reasons and T 2434/18, point 4 of the Reasons).

3. It is established case law that in the present circumstances the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, 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 Chair:

A. Vottner L. Bühler

Decision electronically authenticated