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**Datasheet for the decision
of 5 May 2026**

Case Number: T 1001/24 - 3.3.04

Application Number: 15817678.4

Publication Number: 3233108

IPC: A61K38/28, A61K47/12, A61P3/10

Language of the proceedings: EN

Title of invention:
Rapid-acting insulin compositions

Patent Proprietor:
Eli Lilly and Company

Opponent:
Scorpio IP Limited

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:
T 0073/84



Beschwerdekammern
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Case Number: T 1001/24 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 5 May 2026

Appellant: Scorpio IP Limited
(Opponent) Mercury House
19-21 Chapel Street
Marlow
Buckinghamshire SL7 3HN (GB)

Representative: Sagittarius IP
Marlow International
Parkway
Marlow SL7 1YL (GB)

Respondent: Eli Lilly and Company
(Patent Proprietor) Lilly Corporate Center
Indianapolis, IN 46285 (US)

Representative: Boanas-Evans, Duncan Richard
Eli Lilly and Company Limited
8 Arlington Square West
Downshire Way
Bracknell, Berkshire RG12 1PU (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 June 2024 concerning maintenance of the
European Patent No. 3233108 in amended form.**

Composition of the Board:

Chairwoman M. Pregetter
Members: R. Hauss
M. Blasi

Summary of Facts and Submissions

- I. Following the grant of European patent No. 3 233 108 (patent in suit), an opposition was filed.
- II. The decision under appeal is the opposition division's interlocutory decision finding that the patent as amended in the form of the first auxiliary request met the requirements of the EPC.
- III. The opponent (appellant) filed an appeal against this decision, requesting that it be set aside and that the patent be revoked.
- IV. 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 7, all filed with the reply to the statement setting out the grounds of appeal.
- V. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- VI. Oral proceedings before the board took place on 5 May 2026. During the oral proceedings, the respondent stated that it withdrew its approval of the text of the patent according to the main request, withdrew all other requests on file, would not be filing any amended text, and anticipated that the board would revoke the patent and would issue a written decision without any assessment of substantive issues. The board then announced its decision revoking the patent.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO decides 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 text on the basis of which the board can consider whether the contested patent or an amended version thereof complies with the requirements of the EPC. No other issues were within the scope of 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 T 73/84, OJ EPO 1985, 241).

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:



I. Aperribay

M. Pregetter

Decision electronically authenticated