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**Datasheet for the decision  
of 18 May 2026**

**Case Number:** T 1222/24 - 3.3.02

**Application Number:** 17754571.2

**Publication Number:** 3497104

**IPC:** C07D471/16, C07C309/30

**Language of the proceedings:** EN

**Title of invention:**

SOLID STATE FORMS OF LUMATEPERONE DITOSYLATE SALT

**Patent Proprietor:**

Assia Chemical Industries Ltd.

**Opponent:**

Intra-Cellular Therapies, Inc.

**Relevant legal provisions:**

EPC Art. 113(1), 113(2)  
EPC R. 103(1) (a)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked  
Substantial procedural violation - appealed decision  
sufficiently reasoned (yes)

**Decisions cited:**

G 0002/21, T 0073/84, T 0070/02, T 1627/21



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1222/24 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 18 May 2026**

**Appellant:** Intra-Cellular Therapies, Inc.  
(Opponent) 135 Route 202/206, Suite 6  
Bedminster, NJ 07921 (US)

**Representative:** Marks & Clerk LLP  
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**Respondent:** Assia Chemical Industries Ltd.  
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Tel Aviv 6944020 (IL)

**Representative:** D Young & Co LLP  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted/electronically transmitted on 29 July 2024 rejecting the opposition filed against European patent No. 3497104 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** S. Bertrand  
**Members:** P. O'Sullivan  
L. Bühler

## **Summary of Facts and Submissions**

- I. The appeal of the opponent (appellant) lies from the decision of the opposition division to reject the opposition against European patent 3 497 104.
- II. The patent was opposed under Articles 100(a) (novelty and inventive step), 100(b) and 100(c) EPC.
- III. In a communication pursuant to Article 15(1) RPBA, the board provided its preliminary considerations.
- IV. Oral proceedings by videoconference took place as scheduled on 18 May 2026 in the presence of both parties. During oral proceedings, the parties were heard on substantive and procedural issues. After the the board's conclusions were announced, the respondent (patent proprietor) withdrew their consent and agreement under Article 113(2) EPC to the text of the patent as granted, withdrew all auxiliary requests on file, and indicated that they would not be filing a replacement text.
- V. Requests relevant to the present decision

The appellant requested reimbursement of the appeal fee under Rule 103(1) (a) EPC in view of a fundamental procedural violation of the opposition division in the contested decision.

## **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Since the patent proprietor (respondent) withdrew its approval of the text of the patent in any form and also withdrew all claim requests on file, there is no text of the patent submitted or agreed by the patent proprietor, on the basis of which the board can consider compliance with the requirements of the EPC. It is therefore 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 (e.g. T 1627/21, point 2 of the Reasons and decisions cited therein).
3. It is established case law of the Boards of Appeal (see e.g. T 73/84, OJ EPO 1985, page 241 and the decisions cited in the Case Law of the Boards of Appeal, 11th Edition 2025, III.B.3.3 and IV.D.2) that under these circumstances the patent is to be revoked without substantive examination.
4. Substantial procedural violation
  - 4.1 The appellant requested reimbursement of the appeal fee under Rule 103(1) (a) EPC in view of a fundamental procedural violation of the opposition division in the contested decision, resulting from an alleged failure to address an essential argument submitted in relation to inventive step of claim 1 of the main request (patent as granted). Specifically, the issue under dispute related to whether post-published evidence

submitted by the respondent could be relied on for inventive step within the meaning of Enlarged Board of Appeal decision G 2/21.

- 4.2 More specifically, during opposition proceedings, the appellant submitted that paragraph [0030] of the application as filed did not disclose any technical effect in relation to the specifically claimed crystalline form F1, or indeed in comparison to any specific prior-art form, nor did it disclose any particular specific property as being linked to this form. According to the appellant, paragraph [0030] merely contained a general statement not linked to any comparative teaching capable of supporting the alleged inventive step effects relied upon by the respondent. It was further argued that the opposition division, by selectively quoting paragraph [0030], in particular by omitting the first half sentence, namely "[d]epending on which other solid states forms comparison is made...", mischaracterised the technical teaching of that paragraph.
- 4.3 Consequently, although the opposition division referred to paragraph [0030] of the application as filed in its reasoning on inventive step, it failed to deal with the appellant's specific submissions concerning the actual technical teaching of that paragraph and its alleged lack of connection to any particular crystalline form, in particular form F1, or technical property. According to the appellant, this argument was expressly raised and repeatedly developed throughout its written submissions in opposition proceedings as well as during oral proceedings before the opposition division. It was not addressed in the written decision, despite paragraph [0030] playing a crucial role in the

opposition division's acceptance of the technical effects relied upon by the respondent.

4.4 Relying on decisions T 70/02 and the corresponding section of the Case Law of the Boards of Appeal (11th Edition, III.B.2.5.2), the appellant argued that the failure to address this essential argument amounted to a substantial procedural violation justifying reimbursement of the appeal fee.

4.5 The board is not persuaded that a substantial procedural violation occurred. Firstly, although the opposition division did not quote paragraph [0030] of the application as filed in full in the contested decision (page 15, second full paragraph), the subsequent paragraph (decision, page 15, third full paragraph) refers to the appellant's arguments related to paragraph [0030]. Specifically, the opposition division referred to the opponent's argument that paragraph [0030] related to solid-state forms in general, and therefore not specifically form F1, and that there was therefore no link between form F1 and the alleged properties (i.e. the effects demonstrated in D9). Hence, this passage indicates that the opposition division took the appellant's arguments concerning paragraph [0030] into account. The opposition division addressed this objection by accepting that form F1 was the preferred form according to the application as filed, and that, consequently, any advantageous property mentioned in paragraph [0030] unequivocally related to form F1. In view of these considerations, the opposition division accepted that requirement (i) of order 2 of G 2/ 21, i.e. that the effect was encompassed by the technical teaching of the application as filed, was met (decision, page 16, first paragraph). Paragraph [0030] of the application as

filed was also taken into account in arriving at the conclusion that requirement (ii) of order 2 of G 2/21, i.e. that the effect was embodied by the same originally disclosed invention, was met (decision, page 17, second full paragraph).

4.6 Hence, the contested decision contains reasoning on the decisive issue underlying the appellant's inventive step objection. In particular, the opposition division expressly stated that, based on the criteria set out in order 2 of G 2/21, the respondent's experimental data could be relied upon for the assessment of inventive step, and in that context, assessed the disclosure of the application as filed, including paragraph [0030]. The decision therefore sets out why the opposition division considered the requirements for relying on post-published evidence to be fulfilled.

4.7 Even if the decision does not expressly discuss each aspect of the appellant's submissions concerning paragraph [0030], this does not amount to a substantial procedural violation. According to established case law, including T 70/02 (reasons, point 7), the opposition division is not required to address explicitly every argument advanced by a party, provided that the decision contains sufficient reasoning on the decisive issues to provide the party concerned with a fair idea of why its submissions were not considered convincing and to enable it to base its grounds of appeal on relevant issues.

4.8 In the present case, the board is satisfied that the reasoning given by the opposition division addressed the point of dispute which the appellant considered crucial to their case in a manner that showed that it considered this issue relevant to its decision and that

enabled the appellant to understand why the opposition division considered the alleged technical effects to be derivable from the application as filed such that the respondent's post-published evidence could be relied upon.

- 4.9 The fact that the opposition division did not expressly address every detailed argument advanced by the appellant does not in itself establish a violation of Article 113(1) EPC. For observance of the right to be heard, the reasons may be incomplete, provided that they show that the opposition division has examined the substance of a point relevant both to the opponent's case and to the decision, and that they also make it possible to understand why the contested decision was reached. As these conditions are met in the contested decision, the absence of a detailed discussion of each individual argument does not constitute a violation of the right to be heard.
- 4.10 The request for reimbursement of the appeal fee is therefore rejected.

## Order

### For these reasons it is decided that:

1. The decision under appeal be set aside.
2. The patent is revoked.
3. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:



U. Bultmann

S. Bertrand

Decision electronically authenticated