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D E C I S I O N
of 13 March 2000

Case Number: T 0508/96 - 3.3.2

Application Number: 88305718.4

Publication Number: 0296845

IPC: A61K 31/71

Language of the proceedings: EN

Title of invention:

Drug emulsion

Patentee:

The University of Nottingham

Opponent:

Yoshitomi Pharmaceutical Industries, Ltd.
Taisho Pharmaceutical Co., Ltd.

Headword:

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Relevant legal provisions:

EPC Art. 111(1)

Keyword:

"Revocation of European patent as consequence of patentee stating: 'He no longer approves of the text of the patent that was granted'"

Decisions cited:

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Catchword:

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Case Number: T 0508/96 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 13 March 2000

Appellant: Yoshitomi Pharmaceutical Industries, Ltd.
(Opponent) 6-9, Hiranomachi 2-chome
Chuo-ku
Osaka (JP)

Taischo Pharmaceutical Co., Ltd.
24-1, Takata-3-chome
Toshima-ku
Tokio 171 (JP)

Representative: Kraus, Walter, Dr.
Patentanwälte Kraus, Weisert & Partner
Thomas-Wimmer-Ring 15
D-80539 München (DE)

Respondent: The University of Nottingham
(Proprietor of the patent) University Park
University Boulevard
Nottingham NG7 2RD (GB)

Representative: Bassett, Richard Simon
Eric Potter Clarkson
Park View House
58 The Ropewalk
Nottingham NG1 5DD (GB)

Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 1 April 1996
concerning maintenance of European patent
No. 0 296 845 in amended form.

Composition of the Board:

Chairman: U. Oswald
Members: J. Riolo
M. B. Günzel

Summary of Facts and Submissions

- I. In a decision posted on 1 April 1996, the Opposition Division maintained the European patent No. 296 845 in amended form.

- II. On 31 May 1996 the Appellant (Opponent) appealed against this decision and paid the appropriate fees on the same date. Statements of Grounds were filed on 12 August 1996 in which the Appellant requested that the patent be revoked.

- III. In a letter dated 3 March 2000 the representative of the Respondent (proprietor of the patent) stated "the patentee no longer approves of the text of the patent that was granted".

Reasons for the Decision

- 1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.

- 2. The Respondent made it clear through his representative that he no longer approves of the text in which the patent was granted. Since he did not submit an amended text on which further prosecution of the appeal could be based, the patent must be revoked (see Decision T 73/84, OJ EPO 1985, 241).

Order

For these reasons it is decided that:

1. The decision of the Opposition Division is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

M. Dainese

U. Oswald