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**Datasheet for the decision  
of 9 October 2024**

**Case Number:** T 0162/22 - 3.3.07

**Application Number:** 09715020.5

**Publication Number:** 2252148

**IPC:** A61K31/437, A61P31/00

**Language of the proceedings:** EN

**Title of invention:**

METHODS FOR TREATING IRRITABLE BOWEL SYNDROME

**Patent Proprietor:**

Salix Pharmaceuticals, Inc.

**Opponents:**

Sandoz GmbH  
Kraus & Lederer PartGmbH  
Teva Pharmaceutical Industries Ltd.

**Headword:**

Treatment of dIBS with rifaximin/SALIX

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 0073/84, T 1306/22



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 0162/22 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 9 October 2024**

**Appellant:** Salix Pharmaceuticals, Inc.  
(Patent Proprietor) 8450 Colonnade Center Drive  
Raleigh, NC 27615 (US)

**Representative:** Maiwald GmbH  
Elisenhof  
Elisenstraße 3  
80335 München (DE)

**Respondent:** Sandoz GmbH  
(Opponent 1) Biochemiestrasse 10  
6250 Kundl (AT)

Representative: Ter Meer Steinmeister & Partner  
Patentanwälte mbB  
Nymphenburger Straße 4  
80335 München (DE)

**Respondent:** Kraus & Lederer PartGmbH  
(Opponent 2) Thomas-Wimmer-Ring 15  
80539 München (DE)

**Representative:** Ter Meer Steinmeister & Partner  
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80335 München (DE)

**Respondent:** Teva Pharmaceutical Industries Ltd.  
(Opponent 3) 124 Dvora HaNevi'a St.  
6944020 Tel Aviv (IL)

**Representative:** D Young & Co LLP  
3 Noble Street  
London EC2V 7BQ (GB)

**Decision under appeal:**      **Decision of the Opposition Division of the  
European Patent Office posted on 9 November 2021  
revoking European patent No. 2252148 pursuant to  
Article 101(3) (b) EPC**

**Composition of the Board:**

**Chairman**                    A. Usuelli  
**Members:**                    J. Molina de Alba  
                                      Y. Podbielski

## **Summary of Facts and Submissions**

- I. The decision under appeal is the opposition division's decision revoking European patent No. 2 252 148.
- II. The patent proprietor (appellant) filed an appeal against this decision. With the statement of grounds of appeal, the appellant filed three sets of claims as its main request and auxiliary requests 1 and 2.
- III. In their replies to the statement of grounds of appeal, opponents 1 to 3 (respondents 1 to 3, respectively), requested that the appeal be dismissed.
- IV. The Board scheduled oral proceedings, in line with the parties' requests, and issued a communication with its preliminary opinion on the case.
- V. Oral proceedings were held before the Board. At the end of the oral proceedings, the appellant declared that it no longer approved the text of the patent as granted and withdrew all pending claim requests. The appellant stated explicitly that it did not withdraw the appeal.

## **Reasons for the Decision**

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

2. By disapproving the text of the granted patent and withdrawing all amended text versions submitted to the EPO, the patent proprietor withdrew its approval of any text for maintenance of the patent. Therefore, there is no approved text of the patent on the basis of which the Board can decide on the appeal.
3. In these circumstances, it is established case law that 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, 10th edition 2022, section IV.D.2). However, as the patent had already been revoked by the opposition division, the Board's order cannot be a new revocation of the patent (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, III.B.3.3). Nor can the appellant's withdrawal of its approval of any text for maintaining the patent be interpreted as a withdrawal of the appeal, since that possibility was expressly excluded by the appellant. Therefore, in line with decision T 1306/22, the order must be a dismissal of the appeal, making the decision to revoke the patent final.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

A. Uselli

Decision electronically authenticated