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**Datasheet for the decision  
of 15 October 2024**

**Case Number:** T 1679/22 - 3.3.08

**Application Number:** 15795064.3

**Publication Number:** 3207132

**IPC:** C12N15/09, C12N5/00

**Language of the proceedings:** EN

**Title of invention:**

METHODS OF SHIFTING AN ISOELECTRIC PROFILE OF A PROTEIN  
PRODUCT AND USES THEREOF

**Patent Proprietor:**

Alexion Pharmaceuticals, Inc.

**Opponent:**

Stolmár, Matthias

**Headword:**

shifting an isoelectric profile / ALEXION PHARMACEUTICALS

**Relevant legal provisions:**

EPC 1973 Art. 113(1), 116(1)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 0073/84, T 0186/84, T 1182/17, T 0774/20, T 1995/21

**Catchword:**

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**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 1679/22 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 15 October 2024**

**Appellant:** Stilmár, Matthias  
(Opponent) Blumenstrasse 17  
80331 München (DE)

**Representative:** Simmons & Simmons LLP (Munich)  
Lehel Carré  
Gewürzmühlstraße 11  
80538 Munich (DE)

**Respondent:** Alexion Pharmaceuticals, Inc.  
(Patent Proprietor) 121 Seaport Boulevard  
Boston, MA 02210 (US)

**Representative:** J A Kemp LLP  
80 Turnmill Street  
London EC1M 5QU (GB)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 14 April 2022  
rejecting the opposition filed against European  
patent No. 3207132 pursuant to Article 101(2)  
EPC**

**Composition of the Board:**

**Chair** T. Sommerfeld  
**Members:** B. Claes  
R. Winkelhofer

## Summary of Facts and Submissions

1. The appeal lodged by the opponent (appellant) lies from the decision of the opposition division rejecting the opposition against European patent No. 3 207 132 granted on European patent application No. 15795064.3, which was filed as an international application under the PCT and published as WO 2016/061065.
2. The appellant requested *inter alia* that the decision under appeal be set aside and amended such that the patent be revoked.
3. The respondent (patent proprietor) requested *inter alia* that the appeal be dismissed (main request), or alternatively, that the patent be maintained with the set of claims of one of auxiliary requests 1 to 32.
4. The board summoned the parties to oral proceedings in accordance with their requests and subsequently issued a communication pursuant to Article 15(1) RPBA.
5. With a submission dated 8 October 2024 the patent proprietor declared the following:  
  

*"The patent proprietor withdraws its approval of the granted text of this patent, and will not be submitting an amended text.*

  

*We understand that this will result in revocation of the patent and termination of the opposition proceedings against the patent."*
6. In view of this declaration the oral proceedings were cancelled.

## **Reasons for the Decision**

7. Pursuant to Article 113(2) EPC, the EPO will examine, and decide upon, the European patent only in the text submitted to it, or agreed by the applicant or patent proprietor.
8. Since the text of the patent is at the disposition of the patent proprietor, their patent cannot be maintained against their will. In the present case the patent proprietor withdrew their approval of the text of the patent as granted. Further, by declaring that they will not be submitting any amended text of the patent and requesting that the patent be revoked, they also unequivocally declared that all pending auxiliary requests were at the same time withdrawn. Consequently, there is no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC.
9. In these circumstances, as there is no approved text, the patent is to be revoked without assessing issues relating to patentability (see e.g. decisions T 73/84 (OJ EPO 1985, 241), T 186/84, (OJ EPO 1986, 79); decisions T 1182/17, T 774/20, T 1995/21 and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, sections III.B.3.3 and IV.D.2). There is no reason to deviate from this consistent approach of the Boards of Appeal, with the consequence that the patent is to be revoked.
10. Revocation of the patent complies with the request of the appellant. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC and Article 12(8) RPBA 2020).

## 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:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated