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**Datasheet for the decision  
of 16 July 2019**

**Case Number:** T 0804/15 - 3.3.04

**Application Number:** 10700449.1

**Publication Number:** 2387585

**IPC:** C07K16/14, G01N33/558

**Language of the proceedings:** EN

**Title of invention:**

Antibody

**Applicant:**

University of Exeter

**Headword:**

Antibody/UNIVERSITY OF EXETER

**Relevant legal provisions:**

EPC Art. 84

**Keyword:**

Claims - clarity (no)

**Decisions cited:**

G 0010/93, T 0967/10, T 1988/12

**Catchword:**



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Case Number: T 0804/15 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 16 July 2019**

**Appellant:** University of Exeter  
(Applicant) Northcote House  
The Queen's Drive  
Exeter EX4 4QJ (GB)

**Representative:** Greaves Brewster LLP  
Copa House  
Station Road  
Cheddar, Somerset BS27 3AH (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 11 November  
2014 refusing European patent application No.  
10700449.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairwoman** G. Alt  
**Members:** A. Chakravarty  
L. Bühler

## Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division to refuse the European patent application No. 10 700 449.1.
- II. In the procedure leading to the refusal, the examining division issued a communication together with a summons to oral proceedings pursuant to Rule 115(1) EPC, dated 13 March 2014. The applicant (appellant) responded to this communication with the letter dated 13 October 2014 in which they informed the examining division that they would not be attending the scheduled oral proceedings and requested "*an appealable decision regarding the allowance of the application based on the state of the file*".
- III. The examining division subsequently issued a decision to refuse the application on the basis of Article 97(2) EPC, making reference to the communication dated 13 March 2014 for the reasons why the application did not meet the requirements of the EPC.
- IV. With the statement of grounds of appeal, the appellant filed three sets of claims as main and auxiliary requests 1 and 2.
- V. Claims 1 to 2 of the main, first and second auxiliary requests read:
- "1. A hybridoma deposited under accession number ECACC 08120202.
2. An antibody obtained from the hybridoma of claim 1, or a functional fragment of such an antibody".

Claim 3 of the main request reads:

"3. An antibody, or antibody fragment of other molecule capable of specifically binding to *Aspergillus*, that antibody, fragment or binding molecule comprising a CDR, light chain, heavy chain, light chain variable region, heavy chain variable region or antigen binding region, especially FAb region, that has at least 85% homology with the corresponding region of the antibody of claim 2".

Claim 3 of auxiliary request 1 differs from that of the main request in that the phrase "a CDR" is deleted.

Claim 3 of auxiliary request 2 reads:

"3. An antibody, or antibody fragment of other molecule capable of specifically binding to *Aspergillus*, that antibody, fragment or binding molecule comprising a light chain and a heavy chain: or a light chain variable region and a heavy chain variable region; or an antigen binding region, especially FAb region, that has at least 85% homology with the corresponding region of the antibody of claim 2; wherein the heavy chain comprises a first CDR comprising an amino acid sequence having the amino acid sequence shown in figure 19: a second CDR having the amino acid sequence shown in figures: 21 or 22; and a third CDR having the amino acid sequence shown in figure 24; and wherein the light chain comprises a first CDR having the amino acid sequence shown in figure 20; a second CDR having the amino acid sequence shown in figure 23; and a third CDR having the amino acid sequence shown in figure 25."

- VI. The board issued a summons to oral proceedings together with a communication pursuant to Article 15(1) RPBA in which the appellant was *inter alia* informed that the subject-matter of claims of the main request lacked clarity (Article 84 EPC; see reasons, points 2 to 4, below).
- VII. The appellant did not reply to the board's communication and, after an enquiry made by the Registrar, informed the board by e-mail that they would not attend the oral proceedings.
- VIII. Oral proceedings were held on 16 July 2019 in the absence of the appellant. At the end of these proceedings, the Chair announced the decision of the board.
- IX. The appellant's requests were that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or alternatively, of the claims of one of auxiliary requests 1 and 2, all filed with the statement of grounds of appeal.

Furthermore, the appellant requested oral proceedings in the event that the main request could not be granted on the basis of written proceedings.

### **Reasons for the Decision**

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is therefore admissible.
2. The oral proceedings took place in the absence of the appellant, in accordance with Rule 115(2) EPC. The

appellant is treated as relying on their written case in accordance with Article 15(3) RPBA.

3. The board set out its preliminary opinion on the appeal in its communication pursuant to Article 15(1) RPBA.
4. The board raised objections *inter alia* pursuant to Article 84 EPC in view of Article 111(1) EPC in combination with decision G 10/93 of the Enlarged Board of Appeal. The appellant was informed that claims of the main request lacked clarity for two reasons.
5. The first was "*that the subject-matter of claim 2 is in fact an embodiment of that of claims 3 to 7, with claim 3 being the broadest. Thus, to be clear in the sense of Article 84 EPC, claim 2 should properly be dependent on claim 3. Since claim 2 makes reference to the subject-matter of claim 1, it follows that for clarity, claim 1 should define the claimed hybridoma additionally by reference to the respective claim for the antibody produced*".
6. The second issue was "*that claim 3 relates to an antibody defined by showing substantial homology [at least 85% homology] with 'the corresponding region' (i.e. the amino acid sequence) of the antibody of claim 2, which in turn is defined in that it 'may be obtained by culture' of the deposited hybridoma of claim 1. However, the amino acid sequence of the 'corresponding region' of the antibody of claim 2 is unknown, i.e. it is not disclosed by indicating a deposit number, leading to a lack of clarity (see also decisions T 967/10, reasons 3 to 13 and T 1988/12, reasons 2 to 16)*".

7. The appellant did not respond to these objections. In view of this lack of response and since the board has no other reasons to depart from the views put forward in the communication, the claims of the main request are held to lack clarity for the reasons set out above (Article 84 EPC).
8. The objections raised in relation to claims of the main request, concerning the claim dependency and concerning the definition of the "corresponding region of the antibody of claim 2", apply *mutatis mutandis* to the claims of auxiliary requests 1 and 2, which therefore also lack clarity.
9. In view of the above considerations, no claim request is allowable.

## Order

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

The appeal is dismissed.

The Registrar:

The Chair:



G. Rauh

G. Alt

Decision electronically authenticated