

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 21 May 2019**

Case Number: T 1464/15 - 3.3.04

Application Number: 10075310.2

Publication Number: 2236155

IPC: A61K39/145, C12Q1/70

Language of the proceedings: EN

Title of invention:

Decreasing potential iatrogenic risks associated with influenza vaccines

Patent Proprietor:

Novartis Vaccines and Diagnostics GmbH

Opponent:

Janssen Vaccines & Prevention B.V.

Headword:

Iatrogenic risks/NOVARTIS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1464/15 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 21 May 2019

Appellant: Janssen Vaccines & Prevention B.V.
(Opponent) Archimedesweg 4
2333 CN Leiden (NL)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Respondent: Novartis Vaccines and Diagnostics GmbH
(Patent Proprietor) Emil-von-Behring-Strasse 76
35041 Marburg (DE)

Representative: Rudge, Sewkian
Novartis Pharma AG
Patent Department
Forum 1
Novartis Campus
4056 Basel (CH)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 May 2015 concerning maintenance of the
European Patent No. 2236155 in amended form.**

Composition of the Board:

Chair R. Morawetz
Members: A. Chakravarty
L. Bühler

Summary of Facts and Submissions

- I. European patent No. 2 236 155, entitled "Decreasing potential iatrogenic risks associated with influenza vaccines" was opposed under Articles 100(a) to (c) EPC.
- II. By way of an interlocutory decision, the opposition division held that the patent as amended met the requirements of the European Patent Convention.
- III. The opponent (appellant) filed an appeal against this decision requesting revocation of the patent.
- IV. The patent proprietor (respondent) requested dismissal of the appeal as a main request and (re)submitted auxiliary requests 1, 1a, 2, 2a, 2b, 3, 3a and 3b, all previously filed before the opposition division.
- V. The board appointed oral proceedings and in a subsequent communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of substantive and legal matters concerning the appeal.
- VI. The appellant replied to the board's communication and stated that they would not be represented at the oral proceedings.
- VII. Oral proceedings before the board were held on 21 May 2019 in the absence of the appellant. At these proceedings the respondent disapproved of the text of the granted patent and of all requests on file and stated that it would not submit an amended text. At the end of the oral proceedings, the chair announced the decision of the board.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is therefore admissible.
2. The appellant did not attend the oral proceedings and is treated as relying on the written case (Rule 115(2) EPC and Article 15(3) RPBA).

Disapproval of the text of the patent by the patent proprietor

3. Pursuant to Article 113(2) EPC, the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
4. Such agreement is not deemed to exist if the patent proprietor - as in the present case - has expressly stated that it disapproved of the text of the granted patent and of all requests on file and stated that it would not submit an amended text.
5. There is therefore no text on the basis of which the board can maintain the patent. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see decision T 73/84, OJ EPO, 1985, 241 and Case Law of the Boards of Appeal of the EPO, 8th edition, 2016, IV.C.5.2, page 979).

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:



S. Lichtenvort

R. Morawetz

Decision electronically authenticated