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**Datasheet for the decision  
of 24 November 2017**

**Case Number:** T 1564/15 - 3.3.08

**Application Number:** 06706455.0

**Publication Number:** 1853700

**IPC:** C12N9/00

**Language of the proceedings:** EN

**Title of invention:**

RECOMBINANT CO-EXPRESSION OF VITAMIN K EPOXIDE REDUCTASE  
SUBUNIT 1 TO IMPROVE VITAMIN K DEPENDENT PROTEIN EXPRESSION

**Patent Proprietor:**

Baxalta Incorporated  
Baxalta GmbH

**Opponent:**

Cangene Corporation

**Headword:**

Vitamin K dependent protein expression/BAXALTA

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis for a decision on the appeal (no) - revocation of the patent

**Decisions cited:**

T 0073/84, T 0186/84

**Catchword:**



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

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Case Number: T 1564/15 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 24 November 2017**

**Appellant:** Cangene Corporation  
(Opponent) 155 Innovation Drive,  
Winnipeg MB R3T 5Y3 (CA)

**Representative:** Gill Jennings & Every LLP  
The Broadgate Tower  
20 Primrose Street  
London EC2A 2ES (GB)

**Respondent:** Baxalta Incorporated  
(Patent Proprietor 1) 1200 Lakeside Drive  
Bannockburn, IL 60015 (US)

**Respondent:** Baxalta GmbH  
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6300 Zug (CH)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 22 June 2015  
rejecting the opposition filed against European  
patent No. 1853700 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman**            B. Stolz  
**Members:**            M. R. Vega Laso  
                              J. Geschwind

## **Summary of Facts and Submissions**

- I. The appeal of the opponent (appellant) lies from a decision of an opposition division under Article 101(2) EPC posted on 22 June 2015, rejecting the opposition to the grant of the European patent No. 1 853 700. The patent with the title "Recombinant co-expression of vitamin K epoxide reductase subunit 1 to improve vitamin K dependent protein expression" was granted on the European patent application No. 06 706 455.0 which had been filed under the Patent Cooperation Treaty and published as WO2006/089613.
- II. The appellant filed a statement setting out the grounds of appeal and requested that the decision under appeal be set aside and the patent be revoked. As a subsidiary request, the appellant requested oral proceedings.
- III. The patent proprietor (respondent) replied to the statement of grounds of appeal and submitted four sets of amended claims as auxiliary requests 1 to 4. The respondent requested, as its main request, that the appeal be dismissed and, subsidiarily, that the patent be maintained on the basis of any of the auxiliary requests 1 to 4.
- IV. The appellant submitted comments on the respondent's reply to the grounds of appeal.
- V. By letter dated 17 October 2017, the respondent informed the board that it did no longer approve either the text in which the patent was granted, or the amended text of the patent according to any of the requests filed during the opposition or appeal proceedings.

## **Reasons for the Decision**

1. According to Article 113(2) EPC, the European Patent Office may decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Agreement cannot be held to be given if the patent proprietor expressly states that it no longer approves the text of the patent as granted or as amended by way of any of the claim requests on file (see section V above).
3. There is therefore no text of the patent on the basis of which the board can consider the appeal. It is established case law that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see, *inter alia*, decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79, followed by numerous decisions cited in 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 Chairman:



A. Wolinski

B. Stolz

Decision electronically authenticated