

**Internal distribution code:**

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

**Datasheet for the decision  
of 15 September 2020**

**Case Number:** T 0012/16 - 3.3.04

**Application Number:** 10734546.4

**Publication Number:** 2421357

**IPC:** A01K67/027, C07K16/00,  
C07K16/46, C12N15/85

**Language of the proceedings:** EN

**Title of invention:**  
Animal Models and Therapeutic Molecules

**Patent Proprietor:**  
Kymab Limited

**Opponents:**  
Regeneron Pharmaceuticals, Inc.  
Ricker, Mathias  
Vogelsang-Wenke, Heik

**Headword:**  
Animal models/KYMAB

**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Basis of decision - text or agreement to text withdrawn by  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 0012/16 - 3.3.04**

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 15 September 2020**

**Appellant:** Regeneron Pharmaceuticals, Inc.  
(Opponent 1) 777 Old Saw Mill River Road  
Tarrytown NY 10591 (US)

**Representative:** J A Kemp LLP  
14 South Square  
Gray's Inn  
London WC1R 5JJ (GB)

**Party as of right:** Ricker, Mathias  
(Opponent 2) Wallinger, Ricker, Schlotter, Tostmann  
Zweibrückenstr. 5-7  
80331 Munich (DE)

**Representative:** Ricker, Mathias  
Wallinger Ricker Schlotter Tostmann  
Patent- und Rechtsanwälte Partnerschaft mbB  
Zweibrückenstrasse 5-7  
80331 München (DE)

**Party as of right:** Vogelsang-Wenke, Heike  
(Opponent 3) Grünecker Kinkeldey  
Stockmair & Schwanhäusser  
Anwaltssozietät  
Leopoldstrasse 4  
80802 München (DE)

**Representative:** Grünecker Patent- und Rechtsanwälte  
PartG mbB  
Leopoldstraße 4  
80802 München (DE)

**Respondent:** Kymab Limited  
(Patent Proprietor) The Bennet Building (B930)  
Babraham Research Campus  
Cambridge CB22 3AT (GB)

**Representative:** CMS Cameron McKenna Nabarro  
Olswang LLP  
Cannon Place  
78 Cannon Street  
London EC4N 6AF (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
27 November 2015 concerning maintenance of the  
European Patent No. 2421357 in amended form**

**Composition of the Board:**

**Chairman** B. Claes  
**Members:** A. Chakravarty  
M. Blasi

## **Summary of Facts and Submissions**

- I. In an interlocutory decision, the opposition division decided that European Patent No. 2 421 357 as amended in the form of auxiliary request 1 and the invention to which it related, met the requirements of the EPC.
- II. All three opponents duly filed notice of appeal against this decision and paid the required appeal fee, with opponents 2 and 3 subsequently withdrawing their appeals. Thus opponent 1 is the sole appellant and the patent proprietor is the respondent to this appeal.
- III. With the statement of grounds of appeal the appellant requested that the decision be set aside and the patent be revoked. Oral proceedings were requested on an auxiliary basis.
- IV. Both parties were summoned to oral proceedings to take place on 29 September 2020.
- V. Subsequently, the board issued a communication pursuant to Article 15(1) RPBA setting out its preliminary appreciation of some of aspects concerning the appeal.
- VI. In a letter dated 24 July 2020 the respondent stated:  
*"The Patentee hereby expressly disapproves of [sic] the text of the granted patent, and is not offering any alternative text.  
We anticipate that this action will remove the need for the scheduled oral proceedings, and for completeness we will not attend the scheduled proceedings and withdraw our request for oral proceedings"*.
- VII. The oral proceedings were subsequently cancelled.

### **Reasons for the Decision**

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is admissible.
2. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
3. Such an agreement cannot be deemed to exist if the patent proprietor expressly states that they no longer approve the text of the patent as granted and no alternative text is offered. This is the present situation.
4. There is therefore no text of the patent on the basis of which the board can consider compliance thereof with the requirements of the EPC. It is established case law of the boards of appeal of the EPO that in these circumstances the patent must be revoked without further substantive examination (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the EPO, 9th edition 2019, III.B.3.3).
5. There are no remaining issues that have to be dealt with by the board in the present appeal case.
6. Revocation of the patent complies with the requests of both parties and the present decision can therefore be taken without holding oral proceedings.

## 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:



I. Aperribay

B. Claes

Decision electronically authenticated