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**Datasheet for the decision
of 26 November 2021**

Case Number: T 2190/16 - 3.3.04

Application Number: 06751519.7

Publication Number: 1879606

IPC: A61K38/10, A61P7/04

Language of the proceedings: EN

Title of invention:

Self-assembling peptides for promoting hemostasis

Patent Proprietors:

Massachusetts Institute of Technology
Versitech Limited

Opponents:

Hammer, Jens
EIP Limited

Headword:

Self-assembling peptides/MIT VERSITECH

Relevant legal provisions:

EPC Art. 113(2)
EPC R. 103(4) (a)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked
Reimbursement of appeal fee - withdrawal of appeal

Decisions cited:

T 0073/84

Catchword:

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Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2190/16 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 26 November 2021

Appellants I: Massachusetts Institute of Technology
(Joint Patent Proprietors) 77 Massachusetts Avenue
Cambridge, MA 02142-1324 (US)

Versitech Limited
1/F Technology Innovation and Incubation Bldg.
The University of Hong Kong
Pokfulam Road
Hong Kong (CN)

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

Appellant II: Hammer, Jens
(Opponent 1) Leopoldstrasse 4
80802 München (DE)

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

Appellant III: EIP Limited
(Opponent 2) Fairfax House
15 Fulwood Place
London WC1V 6HU (GB)

Representative: EIP
Fairfax House
15 Fulwood Place
London WC1V 6HU (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 August 2016 concerning maintenance of the
European Patent No. 1879606 in amended form.

Composition of the Board:

Chair B. Claes
Members: R. Morawetz
M. Blasi
B. Rutz
P. de Heij

Summary of Facts and Submissions

- I. Appeals were lodged by the joint patent proprietors (appellants I), opponent 1 (appellant II) and opponent 2 (appellant III) against the opposition division's interlocutory decision that, account being taken of the amendments in the form of auxiliary request 2, European patent no. 1 879 606 (the "patent") and the invention to which it relates met the requirements of the EPC.
- II. With their statement of grounds of appeal, appellants I requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the set of claims of the main request or of one of auxiliary requests 1 to 6, all claim requests filed with the statement of grounds of appeal. Oral proceedings were requested on an auxiliary basis.
- III. In their respective statements of grounds of appeal, appellant II and appellant III requested that the decision under appeal be set aside and that the patent be revoked in its entirety. Oral proceedings were requested on an auxiliary basis.
- IV. In the further course of the written appeal proceedings, appellants I requested that the appeals of opponents 1 and 2 be dismissed (i.e. the patent be maintained on the basis of auxiliary request 7, being identical to auxiliary request 2 considered allowable in the decision under appeal), or further alternatively, that the patent be maintained in amended form on the basis of the set of claims of one of auxiliary requests 8 and 9 filed with letter of 12 May 2017, or of one of auxiliary requests 10 and 11,

filed with letter of 21 November 2018.

- V. The board appointed oral proceedings as requested by the parties and, in a subsequent communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- VI. With letter dated 21 October 2019, appellant II informed the board that it would not attend the oral proceedings scheduled for 21 and 22 December 2020.
- VII. The oral proceedings were rescheduled to take place by videoconference on 26 November 2021.
- VIII. Oral proceedings before the board were held in the absence of appellant II in accordance with Rule 115(2) EPC and Article 15(3) RPBA. Appellants I withdrew their appeal, the auxiliary requests and the approval of the text of the patent in the form as considered allowable by the opposition division. At the end of the oral proceedings, the Chair announced the decision of the board.

Reasons for the Decision

- 1. The appeals of appellants II and III comply with Articles 106 to 108 and Rule 99 EPC and are admissible.
- 2. Pursuant to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
- 3. Such an agreement cannot be deemed to exist if the joint patent proprietors - as in the present case -

expressly declare that they withdraw the consent to the text of the patent in the form as held allowable by the opposition division and all claim requests on file (see section VIII.).

4. There is therefore no text of the patent on the basis of which the board can consider the appeals of appellants II and III. In these circumstances, the patent is to be revoked, without assessing issues relating to patentability (see decision T 73/84, OJ EPO 1985, 241, and Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, IV.D.2).
5. There are no remaining issues that need to be dealt with by the board in the present appeal case.

Reimbursement of the appeal fee

6. As stated under section VIII. above, appellants I withdrew their appeal before the decision was announced at oral proceedings. As a consequence, the appeal fee paid by appellants I is to be reimbursed at 25% in accordance with Rule 103(4) (a) EPC.

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:



A. Chavinier Tomsic

B. Claes

Decision electronically authenticated