

**Internal distribution code:**

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

**Datasheet for the decision  
of 20 October 2021**

**Case Number:** T 1576/18 - 3.3.04

**Application Number:** 10182334.2

**Publication Number:** 2295126

**IPC:** C07K14/81

**Language of the proceedings:** EN

**Title of invention:**

Alpha-1-antitrypsin composition

**Patent Proprietor:**

CSL Behring LLC

**Opponents:**

Furo Ventures B.V.  
Leeming, John Gerard  
Octapharma AG

**Headword:**

Alpha-1-antitrypsin/CSL BEHRING

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

**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 1576/18 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 20 October 2021**

**Appellant:** Leeming, John Gerard  
(Opponent 2) J.A. Kemp & Co.  
14 South Square  
Gray's Inn  
London, Greater London WC1R 5JJ (GB)

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

**Appellant:** Octapharma AG  
(Opponent 3) Seidenstrasse 2  
8853 Lachen (CH)

**Representative:** Patent- und Rechtsanwälte Ullrich & Naumann  
PartG mbB  
Schneidmühlstrasse 21  
69115 Heidelberg (DE)

**Respondent:** CSL Behring LLC  
(Patent Proprietor) 1020 First Avenue  
King of Prussia, PA 19406 (US)

**Representative:** Wise, Daniel Joseph  
Carpmaels & Ransford LLP  
One Southampton Row  
London WC1B 5HA (GB)

**Party as of right:** Furo Ventures B.V.  
(Opponent 1) Willemsplein 2  
5211 AK s'Hertogenbosch (NL)

**Decision under appeal:**            **Decision of the Opposition Division of the  
European Patent Office posted on 24 April 2018  
rejecting the opposition filed against European  
patent No. 2295126 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chair**                            G. Alt  
**Members:**                      A. Chakravarty  
                                      E. Mille

## **Summary of Facts and Submissions**

- I. Three oppositions were filed against European patent No. 2 295 126 , entitled "*Alpha-1-antitrypsin composition*" under Article 100(a) EPC in conjunction with Articles 54 and 56 EPC and under Article 100(b) EPC. The opposition division decided to reject the oppositions.
- II. Opponents 2 and 3 (appellants I and II) filed appeals against this decision. The patent proprietor is respondent to these appeals. Opponent 1 is party as of right to the appeal proceedings but made no substantive submissions in the appeal proceedings.
- III. Both appellants requested that the decision under appeal be set aside and the patent be revoked, and furthermore oral proceedings on an auxiliary basis.
- IV. The respondent requested that the appeals be dismissed as their main request or alternatively that the patent be maintained in amended form on the basis of auxiliary requests 1 or 2, originally filed with the reply to the notices of opposition. They also requested oral proceedings on an auxiliary basis.
- V. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- VI. Oral proceedings duly were held on 20 October 2021. During these oral proceedings, the respondent withdrew the approval of the text of the patent as granted and of all requests on file. At the end of the oral proceedings, the chair announced the decision of the board.

## **Reasons for the Decision**

1. The appeals comply with Articles 106 to 108 and Rule 99 EPC and are admissible.

*Disapproval of the text of the patent by the patent proprietor*

2. 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.
3. Such agreement does not exist if the patent proprietor - as in the present case - has expressly stated that they disapprove the text of the granted patent and of all requests on file.
4. 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:



I. Aperribay

G. Alt

Decision electronically authenticated