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**Datasheet for the decision
of 10 September 2021**

Case Number: T 2436/18 - 3.3.04

Application Number: 12180292.0

Publication Number: 2556841

IPC: A61K39/395, A61P19/08,
C07K16/18

Language of the proceedings: EN

Title of invention:

Method for inhibiting bone resorption

Patent Proprietor:

Amgen, Inc

Opponent:

James Poole Limited

Headword:

Anti-sclerostin antibody therapy/AMGEN

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Agreement to text withdrawn by patent proprietor - appeal
dismissed

Decisions cited:

T 0454/15

Catchword:



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Case Number: T 2436/18 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 10 September 2021

Appellant: Amgen, Inc
(Patent Proprietor) One Amgen Center Drive
Thousand Oaks, CA 91320-1799 (US)

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

Respondent: James Poole Limited
(Opponent) c/o Carpmaels and Ransford LLP
One Southampton Row
Holborn
London
WC1B 5HA (GB)

Representative: Carpmaels & Ransford LLP
One Southampton Row
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 19 July 2018
revoking European patent No. 2556841 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairwoman G. Alt
Members: O. Lechner
L. Bühler

Summary of Facts and Submissions

- I. The appeal by the patent proprietor (appellant) lies from the decision of the opposition division revoking European patent No. 2 556 841 (henceforth: the patent).
- II. With the statement setting out the grounds of appeal, the appellant filed sets of claims of a main request (claims as granted) and of 13 auxiliary requests and requested the maintenance of the patent on the basis one of them. Oral proceedings were requested on an auxiliary basis.
- III. The opponent (respondent) filed a reply to the statement of grounds of appeal and requested, *inter alia*, that the appeal be dismissed and oral proceedings on an auxiliary basis.
- IV. The board issued summons for oral proceedings and a communication pursuant to Article 15(1) RPBA.
- V. In reply, the appellant withdrew the main request and auxiliary requests 1 to 4. The previous auxiliary request 5 became the new main request and the remaining auxiliary requests were renumbered as auxiliary requests 1 to 8.
- VI. By a further letter, the respondent replied to both the board's communication and the appellant's subsequent submission.

VII. In their letter dated 26 August 2021, the appellant declared that:

"The Proprietor no longer approves the text of the patent as granted or as amended by way of any of the claim requests currently on file. The Proprietor will not be filing any further claim requests. The Proprietor thus requests revocation of the patent in accordance with Article 113(2) EPC, the Guidelines for Examination D-VI-2.2, Board or Appeal Decisions T186/84 and T73/84, and the Case Law of the Boards of Appeal of the European Patent Office, Ninth Edition, section IV-D-2."

VIII. By a communication dated 2 September 2021 the parties were informed that the oral proceedings were cancelled.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is admissible.
2. According to Article 113(2) EPC the European Patent Office 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. The patent proprietor no longer approves the text in which the patent was granted or as amended by way of any of the claim requests on file and explicitly states that no new requests will be filed (see section VII. above).
4. In the present case, since the patent had already been revoked by the opposition division and, as correctly

pointed out in decision T 454/15 (see Reasons, point 6), cannot be revoked again, the effect of this declaration filed on 26 August 2021 is that the appeal shall be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



I. Aperribay

G. Alt

Decision electronically authenticated