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**Datasheet for the decision
of 29 October 2020**

Case Number: T 0845/19 - 3.3.04

Application Number: 08798550.3

Publication Number: 2215124

IPC: C07K16/40, A61P3/06,
A61K39/395, A61K45/06,
A61K31/22, A61K31/366,
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A61K31/44, A61K31/47,
A61K31/505, A61K31/66,
A61K39/00, C12N15/113

Language of the proceedings: EN

Title of invention:

Antigen binding proteins to proprotein convertase subtilisin
kexin type 9 (PCSK9)

Patent Proprietor:

Amgen Inc.

Opponents:

Sanofi
Strawman Limited
Eli Lilly and Company
Sanofi-Aventis Deutschland GmbH/Sanofi-Aventis
Groupe S.A./Sanofi Winthrop Industries S.A.
Regeneron Pharmaceuticals, Inc.

Headword:

Anti-PCSK9 antibodies/AMGEN

Relevant legal provisions:

Keyword:

Main Request - Maintenance in amended form (yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0845/19 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 29 October 2020

Appellant I: Amgen Inc.
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Appellant II: Sanofi
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Appellants III: Sanofi-Aventis Deutschland GmbH
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Appellant IV: Regeneron Pharmaceuticals, Inc.
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Party as of right: Eli Lilly and Company
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 March 2019 concerning maintenance of the
European Patent No. 2215124 in amended form**

Composition of the Board:

Chair G. Alt
Members: A. Chakravarty
L. Bühler
R. Morawetz
M. Blasi

Summary of Facts and Submissions

- I. Five oppositions were filed against European patent No. 2 215 124, entitled "*Antigen binding proteins to proprotein convertase subtilisin kexin type 9 (PCSK9)*" under Article 100(a) EPC in conjunction with Articles 54 and 56 EPC and under Article 100(b) and (c) EPC.
- II. In the course of the opposition procedure, opponent 2 withdrew their opposition and ceased to be party to the proceedings.
- III. In an interlocutory decision, the opposition division decided that, account being taken of the amendments in the form of auxiliary request 2, the patent and the invention to which it related met the requirements of the EPC (Article 101(3)(a) EPC).
- IV. The patent proprietor and opponents 1, 4 and 5 all filed appeals against this decision (appellants I, II, V and VI). Opponent 3 is party to the proceedings as of right but made no substantive submissions in the appeal proceedings.
- V. In this decision, the parties will be referred to as patent proprietor and opponents 1 and 3 to 5.
- VI. The board accelerated the appeal proceedings on request of opponents 4 and 5, as supported by opponent 1, and of the Oberlandesgericht Düsseldorf.
- VII. In view of corresponding requests of the parties, the board issued a summons to oral proceedings. It subsequently issued a communication pursuant to

Article 15(1) RPBA 2020 in which it set out its preliminary and non-binding opinion on various matters relevant in the appeal proceedings.

- VIII. In a letter dated 22 October 2020 an anonymous third party raised an objection according to Article 24 EPC against the Chair of the board.
- IX. The board decided that this objection was not admissible and furthermore that it would not initiate the procedure pursuant to Article 24(4) EPC *ex officio* (Article 3(1) RPBA 2020). It informed the parties of its decision in a communication dated 27 October 2020.
- X. Oral proceedings before the board were held by video conference, with the agreement of all parties. During the oral proceedings, the board decided not to exclude document D166 from the proceedings (Article 12(4) RPBA 2007) and allowed the patent proprietor's request to make claim request 7, filed with the reply of 3 December 2019, the main request. At the end of these oral proceedings, the Chair announced the board's decision.
- XI. The final requests of the parties were as follows:
- The patent proprietor requested that the decision under appeal be set aside and that the patent be maintained in accordance with the claims of the main request, filed as auxiliary request 7 with the reply of 3 December 2019, or, alternatively, in accordance with the claims of one of auxiliary requests 8 to 14, and 16 to 21, all filed with the reply of 3 December 2019.
 - The opponents 1, 4, and 5 requested that the decision under appeal be set aside and that the patent not be

maintained in a form other than in accordance with the claims of auxiliary request 7 filed with the patent proprietor's reply of 3 December 2019 and a description and drawings adapted thereto.

Reasons for the Decision

1. The appeals comply with Articles 106 to 108 and Rule 99 EPC and are admissible.
2. Opponent 3 made no substantive submissions in the appeal proceedings and informed the board in writing that they would not attend the oral proceedings. Accordingly, the proceedings were continued in their absence, pursuant to Rule 115(2) EPC.

Main Request

3. This claim request was filed as auxiliary request 7 by the patent proprietor with the reply to the opponents' statements of grounds of appeal. The board saw no reason to hold this claim request inadmissible under Article 12(4) RPBA 2007. The opponents did not make a request to this effect either.
4. The opponents had no substantive or procedural objections to this claim request. The board saw no reason to raise any of its own.
5. Accordingly, the set of claims of the main request is allowable. In view of this decision, the board has not dealt with any of the lower ranking claim requests.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent with the following claims and a description and drawings adapted thereto:

Claims 1 to 15 of the main request, filed as auxiliary request 7 with the patent proprietor's reply of 3 December 2019.

The Registrar:

The Chair:



L. Malécot-Grob

G. Alt

Decision electronically authenticated