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**Datasheet for the decision  
of 22 March 2022**

**Case Number:** T 0319/20 - 3.3.04

**Application Number:** 11729200.3

**Publication Number:** 2575762

**IPC:** A61K38/17, C07K1/36, C07K16/06,  
A61K35/16, A61K9/08, C07K1/30,  
A61K47/18, A61K9/00

**Language of the proceedings:** EN

**Title of invention:**  
Removal of serine proteases by treatment with finely divided  
silicon dioxide

**Patent Proprietor:**  
Baxalta Incorporated  
Baxalta GmbH

**Opponents:**  
Octapharma AG  
CSL Behring GmbH

**Headword:**  
Silicon dioxide treated serine protease/BAXALTA

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  
patent proprietors - patent revoked

**Decisions cited:**

T 0073/84

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 0319/20 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 22 March 2022**

**Appellant:** Baxalta Incorporated  
(Patent Proprietor 1) 1200 Lakeside Drive  
Bannockburn, IL 60015 (US)

**Appellant:** Baxalta GmbH  
(Patent Proprietor 2) Thurgauerstrasse 130  
8152 Glattpark (Opfikon) (CH)

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

**Appellant:** Octapharma AG  
(Opponent 1) Seidenstrasse 2  
8853 Lachen (CH)

**Representative:** Ullrich & Naumann PartG mbB  
Schneidmühlstrasse 21  
69115 Heidelberg (DE)

**Appellant:** CSL Behring GmbH  
(Opponent 2) Emil-von-Behring-Strasse 76  
35041 Marburg (DE)

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

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
3 December 2019 concerning maintenance of the  
European Patent No. 2575762 in amended form.**

**Composition of the Board:**

<b>Chair</b>	G. Alt
<b>Members:</b>	B. Rutz
	R. Romandini

## **Summary of Facts and Submissions**

- I. The appeals lodged by the patent proprietors and the opponents lie from the decision of the opposition division that European patent No. 2 575 762 in its amended form based on auxiliary request 3d fulfilled the requirements of the EPC.
- II. With their statement of grounds of appeal the patent proprietors requested that the decision under appeal be set aside and the patent be maintained as granted, or alternatively on the basis of one of the (re-filed) sets of claims of auxiliary requests 1 to 3 and description versions 3, 3b, 3c and 3d (identical to the requests dealt with in the decision under appeal) and auxiliary requests 4 to 9 (originally filed on 12 April 2018).
- III. With their statements of grounds of appeal, the opponents requested that the decision under appeal be set aside and the patent be revoked.
- IV. All parties requested oral proceedings as an auxiliary measure.
- V. The board appointed oral proceedings and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- VI. In a letter dated 15 March 2022, the patent proprietors declared as follows:

*"The Patent Proprietors herewith declare that they no longer approve the text in which the patent was*

*granted, and that they no longer approve the amended text of the patent that is contained in any of the Requests that they have filed during the present opposition/appeal proceedings.*

*Additionally, the Patent Proprietors herewith withdraw their appeal."*

VIII. The board cancelled the oral proceedings.

### **Reasons for the Decision**

1. The appeals of the opponents comply with Articles 106 to 108 and Rule 99 EPC and are admissible.
2. Pursuant to 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 is deemed not to exist if the patent proprietors - as in the present case - expressly declare that they no longer approve the text in which the patent was granted, and that they no longer approve the amended text of the patent contained in any of the requests filed during the opposition/appeal proceedings (see section VI.).
4. There is therefore no text of the patent on the basis of which the board can decide. In these circumstances, the patent is to be revoked, without assessing issues relating to patentability (see decision T 73/84, OJ EPO 1985, 241, followed by numerous decisions, see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, IV.D.2). The board has no reason to deviate from this approach of the boards of appeal.

5. Revocation of the patent is also the main request of the opponents (see section III.). There are also no ancillary issues that need to be dealt with by the board in the present appeal case. The decision in the present appeal case can therefore be taken without holding oral proceedings.
  
6. In view of the point in time of the withdrawal of the patent proprietors' appeal, the appeal fee is reimbursed 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:



I. Aperribay

G. Alt

Decision electronically authenticated