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**Datasheet for the decision  
of 4 January 2024**

**Case Number:** T 0356/20 - 3.3.08

**Application Number:** 10178127.6

**Publication Number:** 2319301

**IPC:** A01K67/027, C12N15/13,  
C12N15/85, C12N5/07, C07K16/00

**Language of the proceedings:** EN

**Title of invention:**  
Transgenic animals bearing human Ig lambda light chain genes

**Patent Proprietor:**  
Amgen Fremont Inc.

**Opponent:**  
STRAWMAN LIMITED

**Headword:**  
Agreement to text withdrawn/AMGEN

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

**Keyword:**  
Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked

**Decisions cited:**

T 0073/84



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Case Number: T 0356/20 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 4 January 2024**

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

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

**Appellant II:** STRAWMAN LIMITED  
(Opponent) Winnington House  
2 Woodberry Grove  
North Finchley  
London  
N12 0DR (GB)

**Representative:** Potter Clarkson  
Chapel Quarter  
Mount Street  
Nottingham NG1 6HQ (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
3 January 2020 concerning maintenance of the  
European Patent No. 2319301 in amended form**

**Composition of the Board:**

**Chair** T. Sommerfeld  
**Members:** A. Schmitt  
A. Bacchin

## **Summary of Facts and Submissions**

- I. The appeals lodged by the patent proprietor (appellant I) and the opponent (appellant II) lie from the opposition division's interlocutory decision that European patent No. 2 319 301 (hereinafter "the patent") as amended in the form of auxiliary request 1 and the invention to which it relates meet the requirements of the EPC.
- II. In their statement of grounds of appeal appellant I requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, alternatively, that the opponent's appeal be dismissed, i.e. that the patent be maintained in amended form based on the set of claims in auxiliary request 1 submitted on 31 October 2019, or, alternatively, based on auxiliary requests 2 to 6 submitted on 30 August 2019 as auxiliary requests 1 to 5, respectively.
- III. In their statement of grounds of appeal appellant II requested that the decision under appeal be set aside and that the patent be revoked.
- IV. The board issued a summons to oral proceedings, as requested by both appellants, and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary opinion on some matters concerning the appeal.
- V. In a submission dated 7 September 2023, the patent proprietor stated that they no longer approved the text of the patent as granted, that they withdrew all requests pending in the appeal proceedings and that

they expected a decision ordering the revocation of the patent based on the absence of an agreed text.

VI. The board then cancelled the oral proceedings.

### **Reasons for the Decision**

1. Pursuant to the principle of party disposition established by Article 113(2) EPC, the EPO will examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Such an agreement cannot be deemed to exist if the patent proprietor, as in the present case, expressly withdraws the consent to the text of the patent in the form as granted and withdraws all requests on file (see section V.).
3. There is therefore no text of the patent on the basis of which the board can consider the appeals. 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, 10th edition 2022, IV.D.2).
4. Revocation of the patent is also appellant II's main request (see section III.). There are no remaining issues that need to be dealt with by the board in this appeal case, either. The decision in this appeal case can therefore be taken without holding oral proceedings.

## 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:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated