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**Datasheet for the decision
of 11 July 2023**

Case Number: T 0820/21 - 3.3.08

Application Number: 11845786.0

Publication Number: 2647707

IPC: C12N15/09, A61K39/395,
A61P35/00, C07K16/28,
C07K16/46, C12N1/15, C12N1/19,
C12N1/21, C12N5/10, C07K16/30

Language of the proceedings: EN

Title of invention:
Cytotoxicity-inducing therapeutic agent

Patent Proprietor:
Chugai Seiyaku Kabushiki Kaisha

Opponents:

- (1) Janssen Biotech, Inc.
- (2) Boehringer Ingelheim RCV GmbH & Co KG /
Boehringer Ingelheim International GmbH
- (3) James Poole Limited
- (4) Mathys & Squire LLP
- (5) Genmab A/S

Headword:
Cytotoxicity-inducing therapeutic agent/CHUGAI SEIYAKU
KABUSHIKI KAISHA

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84, T 0454/15



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Case Number: T 0820/21 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 11 July 2023

Appellant:
(Patent Proprietor)
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Respondent II:
(Opponent 2)
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 1 April 2021
revoking European patent No. 2647707 pursuant to
Article 101(3) (b) EPC**

Composition of the Board:

Chairman M. Montrone
Members: R. Morawetz
A. Bacchin

Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the opposition division's decision revoking European patent EP 2 647 707 B ("the patent"). Opponents 1, 2, 3, 4 and 5 are respondents I, II, III, IV and V or "respondents" to this appeal.
- II. With its statement setting out the grounds of appeal, the appellant requested, *inter alia*, that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the new main request or on any of the new auxiliary requests 1 to 3 filed with the statement of grounds of appeal.
- III. With their respective replies to the statement of grounds of appeal the respondents requested, *inter alia*, that the appeal be dismissed.
- IV. The board appointed oral proceedings, as requested by the parties, and in a subsequent communication pursuant to Article 15(1) RPBA 2020, provided its preliminary appreciation of some matters concerning the appeal.
- V. Oral proceedings before the board were held as scheduled. The appellant declared that they no longer approved of the text of the patent as granted, that they withdrew the consent given to such text, that they further withdrew all requests on file and that they did not intend to file any replacement text, including any auxiliary requests.

Reasons for the Decision

1. Pursuant to the principle of party disposition established by 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.
2. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly states that it no longer approves the text of the patent as granted, withdraws all claim requests on file and states that they do not intend to file any replacement text, including any auxiliary requests (see section V.).
3. According to the case law of the boards of appeal, in these circumstances the proceedings are to be terminated by a decision ordering revocation of the patent under Article 101 EPC 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, III.B.3.3). In the case at hand, where the patent had already been revoked by the opposition division and, as correctly pointed out in decision T 454/15 (see Reasons 6), cannot be revoked again, the effect of the appellant's declaration is that the appeal has to be dismissed.
4. There are no remaining issues that need to be dealt with by the board in the present appeal case.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



L. Malécot-Grob

M. Montrone

Decision electronically authenticated