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**Datasheet for the decision
of 7 March 2024**

Case Number: T 1361/21 - 3.3.08

Application Number: 17206749.8

Publication Number: 3321361

IPC: C12N15/113

Language of the proceedings: EN

Title of invention:

Selective reduction of allelic variants

Patent Proprietor:

Ionis Pharmaceuticals, Inc.

Opponent:

Hoffmann Eitle

Headword:

Allelic variants/IONIS PHARMACEUTICALS

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Basis of decision - text or agreement to text withdrawn by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 0073/89, T 1182/17, T 1226/18, T 1310/19, T 0774/20,
T 1995/21



Beschwerdekammern

Boards of Appeal

Chambres de recours

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European Patent Office
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Case Number: T 1361/21 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 7 March 2024

Appellant: Hoffmann Eitle
(Opponent) Patent- und Rechtsanwälte PartmbB
Arabellastrasse 30
81925 München (DE)

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

Respondent: Ionis Pharmaceuticals, Inc.
(Patent Proprietor) 2855 Gazelle Court
Carlsbad, CA 92010 (US)

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
17 June 2021 concerning maintenance of the
European Patent No. 3321361 in amended form**

Composition of the Board:

Chair T. Sommerfeld
Members: R. Morawetz
R. Winkelhofer

Summary of Facts and Submissions

- I. The opponent (appellant) appealed the interlocutory decision of the Opposition Division of 17 June 2021 to maintain, in amended form, European patent EP 3 321 361 ("Selective reduction of allelic variants").
- II. The appellant requested, *inter alia*, that this decision be set aside and amended such that the patent be revoked.

The patent proprietor (respondent) in their reply requested, *inter alia*, that the appeal be dismissed (main request), or that the patent be maintained on the basis of auxiliary requests 1 to 68.

- III. Oral proceedings were appointed for 3 and 4 June 2024.
- IV. On 28 February 2024, the respondent filed a submission as follows:

"The patentee withdraws its approval of the text of EP3321361 under Rule 71 EPC. The patentee withdraws all outstanding requests, including its request for oral proceedings. For the avoidance of doubt, the patentee will not be attending the oral proceedings scheduled for 3rd June 2024 and 4th June 2024."

- V. In view thereof, oral proceedings were cancelled.

Reasons for the Decision

1. Art. 113(2) EPC requires that the European Patent Office decides upon the European patent only in the text submitted, or agreed, by the patent proprietor.
2. In the present case, the patent proprietor as respondent has explicitly disapproved the text of the patent without filing any other amended text on which further patent prosecution could be based, and has explicitly withdrawn the request for oral proceedings.
3. According to the established jurisprudence of the Boards of Appeal, in these circumstances the proceedings are to be terminated by a decision ordering revocation of the patent, without going into substantive issues (Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2; T 73/84, OJ EPO 1985, 241; T 1995/21, T 774/20, T 1182/17, T 1310/19, T 1226/18).
4. Revocation of the patent is also the main request of the appellant.
5. There are also no other issues that need to be decided upon by the board in the present appeal case. The present decision can therefore be taken without holding oral proceedings (Art. 116(1) 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:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated