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**Datasheet for the decision
of 27 November 2023**

Case Number: T 1938/21 - 3.3.07

Application Number: 16804858.5

Publication Number: 3209309

IPC: A61K35/74, A61P29/00, A61P35/00

Language of the proceedings: EN

Title of invention:
COMPOSITIONS COMPRISING BACTERIAL STRAINS

Patent Proprietor:
CJ Bioscience, Inc.

Opponents:
Janssen Biotech, Inc.
Hoffmann Eitle

Headword:
Eubacterium/CJBIOSCIENCE

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Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern
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Case Number: T 1938/21 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 27 November 2023

Appellant: Hoffmann Eitle
(Opponent 2) Patent- und Rechtsanwälte PartmbB
Arabellastrasse 30
81925 München (DE)

Respondent: CJ Bioscience, Inc.
(Patent Proprietor) 7F, B, 14, Sejong-daero
Jung-gu
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Representative: Bates, Philip Ian
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Party as of right: Janssen Biotech, Inc.
(Opponent 1) 800/850 Ridgeview Drive
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PA 19044 (US)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 July 2021 concerning maintenance of the
European Patent No. 3209309 in amended form**

Composition of the Board:

Chairman A. Usuelli
Members: J. Molina de Alba
 Y. Podbielski

Summary of Facts and Submissions

- I. The decision under appeal is the opposition division's interlocutory decision finding that European patent No. 3 209 309 as amended in the form of auxiliary request 3 met the requirements of the EPC.
- II. The patent had been opposed by two opponents. Opponent 2 (appellant) filed an appeal against the decision.
- III. The proceedings were interrupted and resumed with a new patent proprietor (respondent).
- IV. The board scheduled oral proceedings in line with the parties' requests.
- V. In a letter dated 23 November 2023, the respondent wrote:

"The patentee hereby withdraws their approval of the text approved for grant.

Further, the patentee hereby withdraws requests presently on file.

We understand this terminates the Appeal proceedings and we look forward to confirmation that the proceedings are terminated."

Reasons for the Decision

1. With the letter dated 23 November 2023, the respondent withdrew its agreement to the text of the patent approved for grant and "requests presently on file". The latter expression does not explicitly refer to all the requests on file. However, the respondent understands that its withdrawals terminate the appeal proceedings and requests confirmation that the proceedings are terminated. Therefore, it can only be understood that the respondent's intention is to withdraw all its requests on file.
2. Under Article 113(2) EPC, the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by its proprietor.
3. By disapproving the text of the granted patent and withdrawing all amended text versions submitted to the EPO, the patent proprietor withdrew its approval of any text for maintenance of the patent. Therefore, there is no approved text of the patent on the basis of which the board can decide on the appeal.
4. In these circumstances, it is established case law that the patent must be revoked without further substantive examination as 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, section IV.D.2). The board has no reason to deviate from this case law.

Order

For these reasons it is decided that:

The patent is revoked.

The Registrar:

The Chairman:



B. Atienza Vivancos

A. Uselli

Decision electronically authenticated