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

Case Number: T 1994/21 - 3.3.07

Application Number: 12769787.8

Publication Number: 2750707

IPC: A61K39/39, A61K9/127, A61K9/00

Language of the proceedings: EN

Title of invention:
PEGYLATED LIPOSOMES FOR DELIVERY OF IMMUNOGEN-ENCODING RNA

Patent Proprietor:
GlaxoSmithKline Biologicals SA

Opponents:
Müller, Christian
Strawman Limited

Headword:
Pegylated Liposomes / GSK BIOLOGICALS

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 1994/21 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 11 September 2023

Appellant: Müller, Christian
(Opponent 1) ZSP Patantanwälte PartG mbB
Hansastr. 32
80686 Munich (DE)

Appellant: Strawman Limited
(Opponent 2) Orchard Lea,
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Representative: Mewburn Ellis LLP
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Respondent: GlaxoSmithKline Biologicals SA
(Patent Proprietor) Rue de l'Institut 89
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Representative: Hitchcock, Lucy Rose
GlaxoSmithKline
Global Patents (CN925.1)
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Brentford, Middlesex TW8 9GS (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 September 2021 concerning maintenance of the
European Patent No. 2750707 in amended form.**

Composition of the Board:

Chairman	A. Uselli
Members:	J. Lécaillon
	L. Basterreix

Summary of Facts and Submissions

- I. An opposition was filed against European patent 2 750 707 (hereinafter "the patent").
- II. The opposition division took the interlocutory decision that, on the basis of auxiliary request 2 filed during the oral proceedings on 8 July 2021, the patent met the requirements of the EPC.
- III. Both opponents 1 and 2 lodged an appeal against the above decision of the opposition division.
- IV. By letter dated 10 January 2022, opponent 2 withdrew its appeal.
- V. With the statement of the grounds of appeal, opponent 1 (appellant) requested that the decision under appeal be set aside and that the patent be revoked.
- VI. With the reply to the appeal, the patent proprietor (respondent) requested that the appeal be dismissed and filed two auxiliary requests.
- VII. The Board issued a summons to oral proceedings.
- VIII. By letter dated 15 August 2023, the respondent withdrew their approval of the text in which the European Patent was granted as well as the main and all auxiliary requests. They further stated that they would not be filing a replacement text or any further requests. They concluded that the proceedings were to be terminated by a decision ordering the revocation of the patent without reference to any of the substantive issues.

IX. The Board subsequently cancelled the oral proceedings.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall decide upon the European patent only in the text submitted to it, or agreed, by the patent proprietor.
2. By expressly stating that they no longer approve the text of the patent, withdraw all pending requests and will not be submitting an amended text, the respondent withdrew their approval of any text for maintenance of the patent.
3. Therefore, there is no approved text of the patent on the basis of which the Board can consider the appeal.
4. Under these circumstances, as expressly indicated by the respondent, it is established case law that the patent is to be revoked without substantive examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office, 10th edition, 2022, IV.D.2).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



S. Sánchez Chiquero

A. Uselli

Decision electronically authenticated