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Datasheet for the decision of 20 February 2025

Case Number: T 1174/22 - 3.3.10

Application Number: 12888899.7

Publication Number: 2922818

IPC: C07C317/02, C07C317/06, C07F9/30, A61K31/10, A61K31/662, A61K49/00, A61P31/00, A61P35/00, A61P37/00, A61K31/454, C07F9/572, C07F9/58, C07F9/6558, C07F9/6561, C07D401/12, C07D207/46, C07F9/32, A61K47/68

Language of the proceedings: EN

Title of invention:

HYDROPHILIC LINKERS AND THEIR USES FOR CONJUGATION OF DRUGS TO CELL BINDING MOLECULES

Patent Proprietor:

Hangzhou Dac Biotech Co., Ltd

Opponents:

Strawman Limited
Maschio & Soames IP Limited

Headword:

HYDROPHILIC LINKERS / HANZOU

Relevant legal provisions:
EPC Art. 54
RPBA 2020 Art. 12(4), 12(6)

Keyword:
Novelty - (no)
Late-filed request - should have been submitted in first-instance proceedings (yes) - circumstances of appeal case justify admittance (no)

Decisions cited:
T 1919/19

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1174/22 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 20 February 2025

Appellant: (Patent Proprietor)	Hangzhou Dac Biotech Co., Ltd Room B2001-B2019 Building 2. No. 452 Sixth Street HEDA Hangzhou City, Zhejiang Province 310018 (CN)
Representative:	Carpmaels & Ransford LLP One Southampton Row London WC1B 5HA (GB)
Respondent: (Opponent 1)	Strawman Limited Orchard Lea Horns Lane Combe, Witney Oxfordshire OX29 8NH (GB)
Representative:	Mewburn Ellis LLP Aurora Building Counterslip Bristol BS1 6BX (GB)
Respondent: (Opponent 2)	Maschio & Soames IP Limited 30 Carlton Crescent Southampton SO15 2EW (GB)
Representative:	Maschio & Soames IP Ltd 30 Carlton Crescent Southampton SO15 2EW (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 1 March 2022 revoking European patent No. 2922818 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	P. Gryczka
Members:	M. Kollmannsberger
	L. Basterreix

Summary of Facts and Submissions

I. The patent proprietor appealed the Opposition Division's decision to revoke patent EP 2 922 818 as amended during opposition proceedings pursuant to Article 101(3)(b) EPC.

II. The patent deals with hydrophilic linkers and their uses for conjugation of drugs to cell binding agents. The grant of the patent had been opposed by two opponents based on Articles 100(a), 100(b) and 100(c) EPC, i. e. lack of novelty and inventive step, insufficient disclosure and unallowable amendments.

III. Documents relevant for the present decision are the following:

D1:	WO2012/145112 A2
D6:	Morales-Sanfrutos et al. J. Org. Chem. (2010), 75(12), 4029-4047
D7:	Morales-Sanfrutos et al., Org. Biomol. Chem. (2010), 8, 667-675
D8:	WO 02/087497 A2
D9:	Temming et al., Bioconjugate Chem. (2006), 17(6), 1385-1394
D24:	Straus et al., Histochemistry (1986), 85(4), 277-285
D25:	Straus et al., Histochemistry (1987) 86(5), 453-457

IV. In the decision under appeal the Opposition Division came i. a. to the following conclusions:

The claims of the main request, auxiliary requests (ARs) 0A-8E and 9-12C contained unallowable and/or unclear amendments and thus did not comply with the provisions of Articles 123(2), 123(3) or 84 EPC.

The claims of AR 8F complied with the requirements of Articles 123(2), 123(3) and 83 EPC. However, the amendments introduced a lack of clarity (Article 84 EPC) and the claims lacked novelty (Article 54 EPC). In particular, claim 2 lacked novelty over D1, D8 and D9 and claim 3 lacked novelty over D6 and D7. More novelty objections had been raised, but were not decided upon.

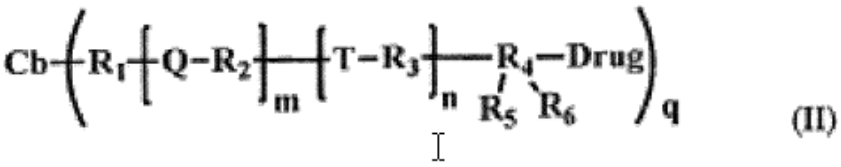
Since none of the amended claim sets was considered to comply with the relevant provisions of the EPC the patent was revoked, Article 101(3)(b) EPC.

V. In appeal proceedings the appellant defended the patent in amended form based on the claims of a main request and auxiliary requests (ARs) 1-10.

The main request corresponds to AR8 underlying the appealed decision. ARs 1-6 correspond to ARs 8A to 8F underlying the appealed decision. ARs 7-10 were newly filed in appeal.

VI. Relevant for the present decision is the wording of claims 2 and 3 of AR 6 and AR 7. Some parts of these claims not relevant for the present decision have been omitted for better readability ([...]).

(a) Claim 2 of AR 6 reads as follows:
"*A cell-binding agent-drug conjugate of formula (II)*



(II)

wherein:

Cb represents a cell-binding agent/molecule;

"Drug" represents a cytotoxic drug linked to the cell-binding agent via the hydrophilic linker by a disulfide, thioether, thioester, peptide, hydrazone, ether, ester, carbamate, carbonate, cycloheteroalkyane, heteroaromatic, alkoxime or amide bond; wherein the "Drug" is selected from:
Chemotherapeutic agents: a) [...]; b) Plant Alkaoids selected from: [...] Maytansinoids (DM1, DM2, DM3, DM4, DM5, DM6, DM7, maytansine and ansamitocins) and their synthetic analogs, [...], c) [...], d) [...], e) [...], f) [...]; and the pharmaceutically acceptable salts, or acids of any of the above drugs;

Q and T are either -P(=O)(OM)-, or ($S(O_2)$)- or -S(O)-;

m and n are integers from 0 to 5, but not 0 at the same time; in addition, when m = 1, n = 0, Q is not -P(=O)(OM)-; or when n = 1, m = 0, T is not or -S(O)-; -P(=O)(OM)-; q is an integer from 1 to 20;

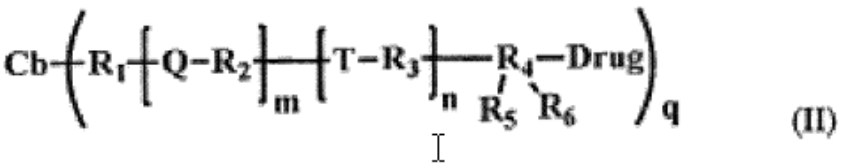
R_5 and R_6, are the same or different and are H, linear alkyl having from 1-6 carbon atoms, branched or cyclic alkyl having from 3 to 6 carbon atoms, linear, branched or cyclic alkenyl or alkynyl, or 1-6 carbon atoms of esters, ether, amide, or polyethyleneoxy unit of formula $(OCH_2CH_2)_p$, wherein p is an integer from 0 to 1000, or combination thereof;

R_1, R_2, R_3, R_4, are the same or different and are H, linear alkyl having from 1-6 carbon atoms, branched or cyclic alkyl having from 3 to 6 carbon atoms, linear, branched or cyclic alkenyl or alkynyl, or 1-6 carbon atoms of esters, ether, amide, or polyethyleneoxy unit of formula $(OCH_2CH_2)_p$, wherein p is an integer from 1 to 1000, or combination thereof;

M is H, or Na, or K, or $N^+R_1R_2R_3$ or a pharmaceutical salt, wherein R_1, R_2 and R_3 are as described hereinabove."

(b) Claim 2 of AR 7 reads as follows (relevant differences with respect to claim 2 of AR 6 are highlighted by ~~strike through~~ and underscore):

"*An antibody-drug* ~~*A cell-binding agent-drug*~~ *conjugate of formula (II)*



(II)

wherein:

Cb represents an antibody ~~*a cell-binding agent/ molecule*~~*;*

"Drug" represents a ~~*cytotoxic*~~ *drug linked to the cell-binding agent via the hydrophilic linker by a disulfide, thioether, thioester, peptide, hydrazone, ether, ester, carbamate, carbonate, cycloheteroalkyane, heteroaromatic, alkoxime or amide bond;* ~~*wherein the "Drug" is selected from:*~~

~~*Chemotherapeutic agents: a) [...]; b) Plant Alkaoids selected from: [...] Maytansinoids (DM1, DM2, DM3, DM4, DM5, DM6, DM7, maytansine and ansamitocins) and their synthetic analogs, [...], c) [...], d) [...], e) [...], f) [...]; and the pharmaceutically acceptable salts, or acids of any of the above drugs;*~~

Q and T are either -P(=O)(OM)-, or ($S(O_2)$)- or -S(O)-;

m and n are integers from 0 to 5, but not 0 at the same time; in addition, when m = 1, n = 0, Q is not -P(=O)(OM)-; or when n = 1, m = 0, T is not or -S(O)-; -P(=O)(OM)-; q is an integer from 1 to 20;

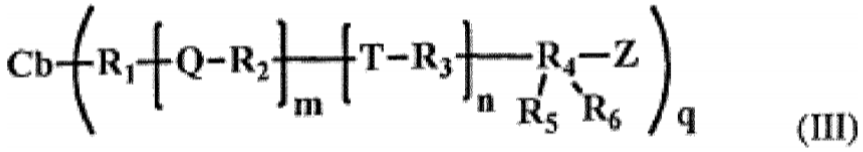
R_5 and R_6, are the same or different and are H, linear alkyl having from 1-6 carbon atoms, branched or cyclic alkyl having from 3 to 6 carbon atoms, linear, branched or cyclic alkenyl or alkynyl, or 1-6 carbon atoms of esters, ether, amide, or polyethyleneoxy unit of formula $(OCH_2CH_2)_p$, wherein p is an integer from 0 to 1000, or combination thereof;

R_1, R_2, R_3, R_4, are the ~~same or different and are H,~~ linear alkyl having from 1-6 carbon atoms,~~ branched or cyclic alkyl having from 3 to 6 carbon atoms, linear, branched or cyclic alkenyl or alkynyl, or 1-6 carbon atoms of esters, ether, amide,~~ or polyethyleneoxy unit of formula $(OCH_2CH_2)_p$, wherein p is an integer from 1 to 100~~0, or combination thereof~~;

M is H, or Na, or K, or $N^+R_1R_2R_3$ or a pharmaceutical salt, wherein R_1, R_2 and R_3 are as described hereinabove."

(c) Claim 3 of AR 6 reads as follows:

"*A compound of formula (III):*



(III)

wherein:

Cb represents a cell-binding agent/molecule;

Z represents a functional group that enables reaction with a cytotoxic drug;

Q and T are either -P(=O)(OM)-, or (S(O_2))- or -S(O)-;

m and n are integers from 0 to 5, but not 0 at the same time; in addition, when m = 1, n = 0, Q is not -P(=O)(OM)-; or when n = 1, m = 0, T is not -P(=O)(OM)-; q is an integer from 1 to 20;

Z represents a functional group that enables linkage of a cytotoxic drug via a disulfide, thioether, thioester, peptide, hydrazone, ether, ester, carbamate, carbonate, amine (secondary, tertiary, or quaternary), imine, cycloheteroalkyl, heteroaromatic, alkoxime or amide bond;

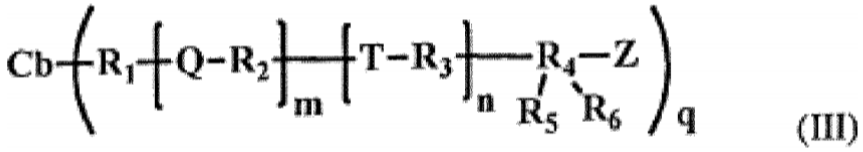
R_5 and R_6, are the same or different and are H, linear alkyl having from 1-6 carbon atoms, branched or cyclic alkyl having from 3 to 6 carbon atoms, linear, branched or cyclic alkenyl or alkynyl, or 1-6 carbon atoms of esters, ether, amide, or polyethyleneoxy unit of formula $(OCH_2CH_2)_p$, wherein p is an integer from 0 to 1000, or combination thereof;

R_1, R_2, R_3, R_4, are the same or different and are H, linear alkyl having from 1-6 carbon atoms, branched or cyclic alkyl having from 3 to 6 carbon atoms, linear, branched or cyclic alkenyl or alkynyl, or 1-6 carbon atoms of esters, ether, amide, or polyethyleneoxy unit of formula $(OCH_2CH_2)_p$, wherein p is an integer from 1 to 1000, or combination thereof;

M is H, or Na, or K, or $N^+R_1R_2R_3$ or a pharmaceutical salt, wherein R_1, R_2 and R_3 are as described hereinabove."

(d) Claim 3 of AR 7 reads as follows (relevant differences with respect to claim 3 of AR 6 are highlighted by ~~strike through~~ and underscore):

"*A compound of formula (III):*



(III)

wherein:

Cb represents an antibody ~~cell-binding agent/molecule~~;

Z represents a functional group that enables reaction with a cytotoxic drug;

Q and T are either -P(=O)(OM)-, or (S(O_2))- or -S(O)-;

m and n are integers from 0 to 5, but not 0 at the same time; in addition, when m = 1, n = 0, Q is not -P(=O)

(OM)-; or when n = 1, m = 0, T is not -P(=O)(OM)-; q is an integer from 1 to 20;

Z represents a functional group that enables linkage of a cytotoxic drug via a disulfide, thioether, thioester, peptide, hydrazone, ether, ester, carbamate, carbonate, amine (secondary, tertiary, or quaternary), imine, cycloheteroalkyl, heteroaromatic, alkoxime or amide bond;

R_5 and R_6, are the same or different and are H, linear alkyl having from 1-6 carbon atoms, branched or cyclic alkyl having from 3 to 6 carbon atoms, linear, branched or cyclic alkenyl or alkynyl, or 1-6 carbon atoms of esters, ether, amide, or polyethyleneoxy unit of formula $(OCH_2CH_2)_p$, wherein p is an integer from 0 to 1000, or combination thereof;

R_1, R_2, R_3, R_4, are ~~the same or different and are H,~~ linear alkyl having from 1-6 carbon atoms, ~~branched or cyclic alkyl having from 3 to 6 carbon atoms, linear, branched or cyclic alkenyl or alkynyl, or 1-6 carbon atoms of esters, ether, amide,~~ or polyethyleneoxy unit of formula $(OCH_2CH_2)_p$, wherein p is an integer from 1 to 100~~0, or combination thereof~~;

M is H, or Na, or K, or $N^+R_1R_2R_3$ or a pharmaceutical salt, wherein R_1, R_2 and R_3 are as described hereinabove."

VII. Regarding the amended claim requests underlying the decision under appeal the appellant contested all negative findings of the Opposition Division. The appellant submitted in particular that the novelty objections against claims 2 and 3 were not justified.

VIII. Regarding the amended claim requests newly filed in appeal the appellant submitted that the provisions of the Rules of Procedure, in particular Articles 12(4) and 12(6) RPBA, did not prejudice their admittance into the proceedings. These requests had been filed at the earliest possible occasion after the developments during oral proceedings before the Opposition Division. Furthermore they solved all issues addressed in the decision under appeal.

IX. The respondents defended the Opposition Division's decision with regard to the requests underlying it. New ARs 7-10 should have been already filed during opposition proceedings and should not be admitted into appeal proceedings.

X. Oral proceedings were held on 20 February 2025. The parties requests were the following:

The appellant requested the appealed decision to be set aside and the patent to be maintained in amended form based on the claims of the main request and auxiliary requests 1-4 filed together with the statement setting out the grounds of appeal, or auxiliary requests 5-10 as filed with submission dated 16 December 2024. The appellant requested a remittal to the opposition division should inventive step need to be discussed.

The respondents requested the appeal to be dismissed. Auxiliary requests 7-10 (as filed with the appellant's submission dated 16 December 2024) and documents D31 to

D33 were requested not to be admitted into appeal proceedings.

XI. The decision was announced at the end of the oral proceedings.

Reasons for the Decision

1. The appeal is admissible

Requests underlying the decision under appeal

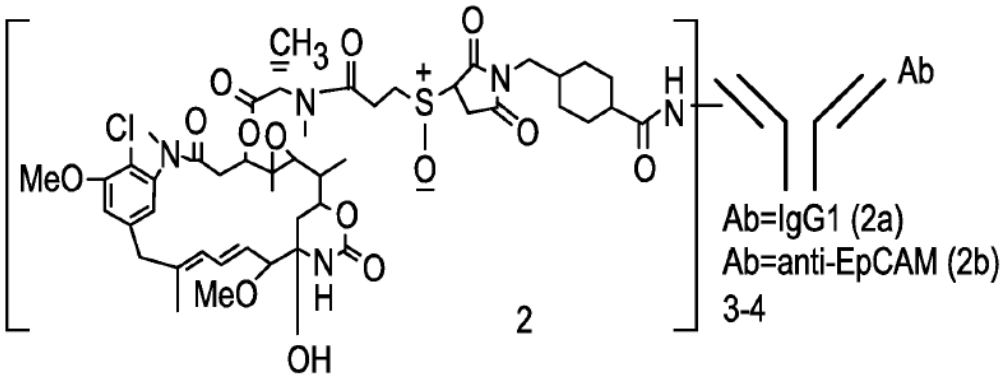
2. Novelty (Article 54 EPC)

2.1 Auxiliary request 6 (AR 6) corresponds to auxiliary request 8F (AR 8F) underlying the decision under appeal. The Opposition Division concluded that claim 2 of this request lacked novelty over D1, D8 and D9 and that claim 3 lacked novelty over D6 and D7. Since the claims of AR 6 are the ones with the narrowest substituent definitions of all requests underlying the decision under appeal, i.e. the present main request and ARs 1-5, any negative finding on novelty applies also to these higher ranking requests. This was undisputed.

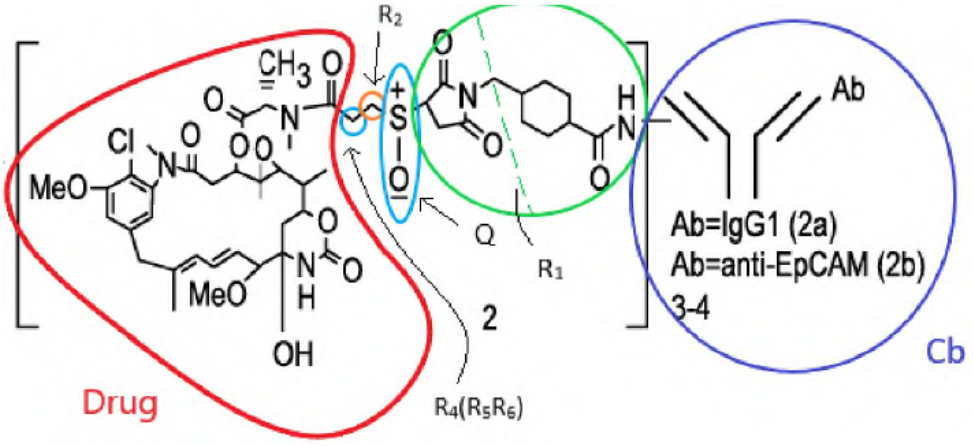
2.2 Claim 2

2.2.1 According to point 9.4.1 of the decision claim 2 lacks novelty over D1, conjugate 2 (see figure 1 of D1).

Conjugate 2 has the following structure:



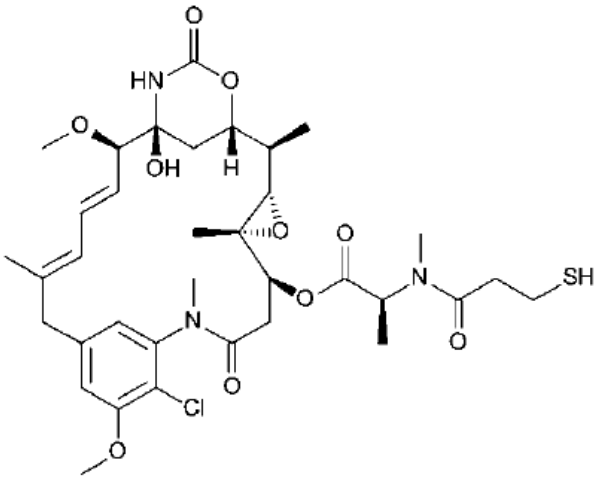
2.2.2 The Opposition Division conceptually divided conjugate 2 in the following way:



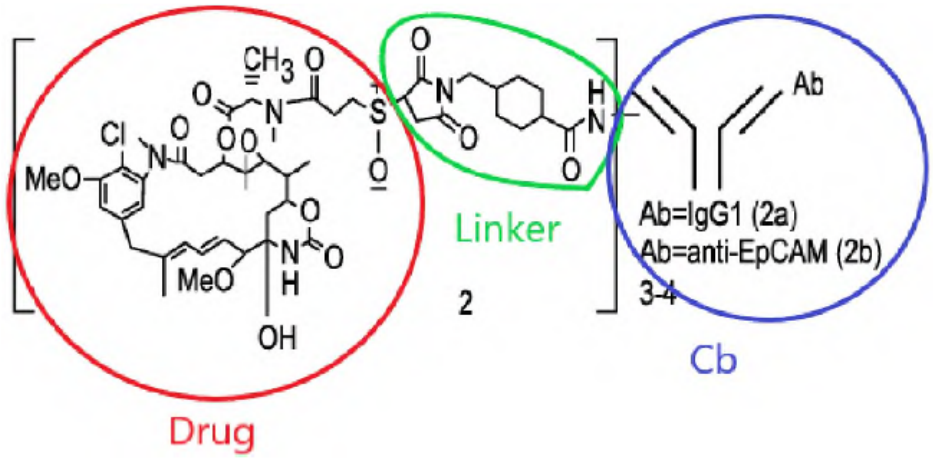
The Opposition Division concluded that conjugate 2 may be read on the definitions of claim 2, equalling parts of the side chain of the maytansinoid cyclic system with the linker defined in the claim. In particular, from left to right, the drug stopped at the carbonyl group, the two methylene groups corresponded to $R_4(R_5R_6)$ and R_2, the sulfoxide group to Q, and the two linked cycles together with the amide group formed the group R1.

2.2.3 The appellant argued that dividing the conjugate in this way was not appropriate. The drug moiety in

conjugate 2 of D1 was a specific molecule, DM1 maytansinoid, having the following structure:



Thus, a correct conceptual division of conjugate 2 was rather the following:



As was apparent from this drawing, the linker lacked any phosphorous or sulphur containing group Q or T as required by the claim. The sulfoxide was part of the drug molecule, not of the linker.

2.2.4 The appellant's argument is unconvincing. For the drug molecule part, claim 2 of AR 6 defines i. a. maytansinoids, such as DM1, but also maytansinoid "*synthetic analogs*". Such a definition covers maytansinoids with a shortened side chain. The Board notes that maytansine itself also has a shorter side chain. The sulfoxide group may well be seen as part of the linker, linking a maytansinoid synthetic analogue to a cell binding agent. D1 is titled "*Novel maytansinoid derivatives with sulfoxide linker*". Arguing that the sulfoxide in conjugate 2 of D1 cannot be seen as part of the linker between a maytansinoid and a cell binding agent is not at all supported by the teaching of D1.

2.2.5 The Opposition Division's finding that claim 2 of AR6 lacks novelty over D1 is correct. Claim 2 of AR6 is not novel already for this reason alone, the other objections against this claim need not be further considered.

2.3 Claim 3

2.3.1 According to point 9.4.4 of the decision claim 3 lacks novelty over D6, compound HRP-4 (see scheme 4 of D6).

2.3.2 The appellant argued that claim 3 was novel over D6 for two reasons, namely (i) because HRP (horse raddish peroxidase) was not a cell-binding agent according to the claim and (ii) because the moiety made up of the nitrogen atom, the fluorophore and the alkinyl group could not be read on the reactive group Z. In particular, the reactive group in compound HRP-4 was *only* the alkinyl group, whereas the nitrogen atom and the fluorophore were separate functional groups and,

comparing HRP-4 with the claim, would have to be seen as part of the linker.

2.3.3 Cell-binding properties of HRP are known, e. g. from D24 and D25. Claim 3 requires the group Cb to be a cell-binding agent, without defining any further requirements. The appellant did not provide any argument why cell binding properties of HRP should be lost in the conjugate HRP-4.

2.3.4 Group Z is defined in claim 3 as a functional group that enables linkage i. a. via heteroaromatic groups. This requirement is fulfilled by the moiety of HRP-4 made up of the nitrogen atom, the fluorophore and the alkinyl group. It is of course correct that conjugation reactions undergone by compound HRP-4 will occur at the alkinyl site. However, the claim does not impose any limitation on the functional group Z other than to enable linkage i. a. via heteroaromatic groups. Conceptually grouping the nitrogen atom, the fluorophore and the alkinyl group of HRP-4 together to a functional group that can be subsumed under definition Z of claim 3 is at least as justified as other possible groupings, such as the one proposed by the appellant, and is in any case covered by the wording of the claim.

2.3.5 The Opposition Division's finding that claim 3 of AR6 lacks novelty over D6 is correct. Claim 3 of AR6 is not novel already for this reason alone, the other objections against this claim need not be further considered.

3. Thus, at least two novelty objections were correctly assessed by the Opposition Divisions. Further novelty

objections against claims 2 and 3 or against other claims, or further objections that had been raised in opposition or appeal proceedings need not be dealt with. The patent cannot be maintained in amended form on the basis of the main request or any of ARs 1-6 under Article 101(3)(a) EPC at least because the claimed subject-matter is not novel.

Auxiliary requests newly filed in appeal

4. Admissibility of ARs 7-10 into appeal proceedings

4.1 According to Article 12(2) RPBA appeal proceedings are primarily meant to allow a judicial review of the decision under appeal and thus a party's appeal case shall be directed to requests on which the decision under appeal was based. ARs 7-10 were filed together with the appellant's statement setting out the grounds of appeal and are thus an amendment to the appellant's appeal case as defined in Article 12(4) RPBA. Such amendments are admitted only at the discretion of the Board. In particular, under Article 12(6) RPBA requests which should have been submitted in opposition proceedings shall not be admitted, unless the circumstances of the appeal case justify their admittance.

4.2 In ARs 7-10 the definitions of several groups in the structural formulae of the linker are significantly restricted when compared to the requests underlying the decision under appeal. In particular, R_1-R_4 is restricted to alkyl or polyethyleneoxy and the cell binding part of the molecules to antibodies. None of the requests underlying the Opposition Division's decision contains such amendments.

4.3 Such requests should have been submitted already in opposition proceedings.

4.3.1 The patent, in its narrowest amended form (corresponding to present AR 6) was revoked for lack of clarity of the newly introduced term "*cytotoxic drug*" and for lack of novelty. The novelty objections, including the ones based on D1 and D6 discussed above, were already raised in the notices of opposition. The amendments made in ARs 7-10, i. e. the severe restriction of substituent definitions in the structural formulae, are intended to address and to overcome these novelty objections.

4.3.2 During opposition proceedings the appellant filed over 70 differently amended claim sets as a basis for maintenance of the patent in amended form. However, none of them overcame objections which were on file since the very beginning of the procedure. The Board does not see any valid reason that could justify the filing of new requests addressing these very objections only in appeal proceedings. Admittance of ARs 7-10 would not result in judicial review of the decision under appeal, but in an examination of whether the patent could have been maintained in amended form on the basis of these requests, had they been filed during opposition proceedings.

4.4 The appellant's arguments for admission of AR 7-10 are not convincing.

4.4.1 It was argued that the requests were filed at the earliest possibility in reaction to unexpected objections encountered at the oral proceedings before the Opposition Division.

However, any unexpected new objections related to the (lack of) clarity of the definition of "cytotoxic drugs" in the claim sets. The Board acknowledges that these objections may have emerged only late in opposition proceedings. However, this is unrelated to the novelty issues for which the patent was likewise revoked. Removing the unclear features as a reaction to late objections by the opponents may be allowable under Articles 12(4)(6) RPBA, but would lead to claim sets still lacking novelty for the same reasons as AR6. Since the novelty objections had been on file from the beginning of the opposition procedure the amendments in ARs 7-10 addressing them were not made at the earliest possibility.

4.4.2 It was argued that ARs 7-10 are allowable, do not introduce new issues and *prima facie* address the issues which led to the patent being revoked. It is correct that these requests address the issues which led to the patent being revoked. However, the procedural question is whether requests addressing these issues should have been already submitted before the Opposition Division. The Board considers this to be the case. Moreover, addressing the issues that led to the revocation of the patent does not automatically mean that the requests are allowable. There were further objections on file during opposition proceedings which were not decided upon, so that it is not clear whether the patent could be maintained in amended form under Article 101(3)(a) EPC on the basis of these requests. In particular, since none of the requests defined novel subject-matter inventive step was not decided upon.

4.4.3 It was also argued that the complexity of interrelated issues and the multitude of objections under Articles 123, 84 and 54 EPC prevented the appellant from filing requests addressing all these issues at an earlier stage of the proceeding.

However, the novelty and clarity issues are not interrelated. Addressing novelty objections against compound claims by restricting or deleting corresponding substituent definitions in structural formulae, as has been done now in ARs 7-10, is not complex and should have clearly been done already before the Opposition Division.

4.4.4 Finally, it was submitted that admittance of ARs 7-10 under Article 12 RPBA was supported by case law. The appellant pointed to decisions T 2002/17, T 488/13, T 427/99, T 1112/12, T 1977/13, T 260/13, T 101/17, T 847/20, T 938/20, T 1019/92, T 0718/98 and in particular to case T 1919/19.

The Board stresses that admittance of amendments under Articles 12(4)(6) RPBA is a discretionary power of the Board and, in particular regarding Article 12(6) RPBA, may be justified only by the circumstances of the case. That in the present case the circumstances are such that admittance is not justified has been reasoned above.

Moreover, the factual and legal situations underlying the cases cited by the appellant are different from the present situation, so that any conclusions drawn cannot be applied to the present case. In detail:

In T 1919/19 the amendments related to combinations of requests underlying the decision under appeal, see point 7.1 of the decision's reasoning. The requests underlying the decision had individually addressed the multiple objections raised, but not all combinations of them. Under such circumstances the Board considered that it would have been difficult for the patent proprietor to file auxiliary requests covering all possible combinations of objections already during opposition proceedings, see points 7.3.2 and 7.3.3 of the reasoning. Thus, in this case the individual amendments had already been assessed by the Opposition Division. In contrast, present ARs 7-10 do not relate to combinations of requests underlying the decision. None of the requests underlying the decision contains any of the amendments carried out in ARs 7-10, in particular not the restriction of R_1-R_4 to alkyl or polyethyleneoxy or the restriction of the cell binding part of the molecules to antibodies.

T 2002/17 concerned amendments submitted during oral proceedings before the Board as a reaction to objections raised during appeal proceedings, see point 2 of the reasoning.

T 488/13 related to amendments made during the appeal procedure as a reaction to objections raised by the opponents in their statements setting out the grounds for appeal, see point 2.2 of the reasoning.

In case T 427/99 amendments submitted during oral proceedings before the Board related to a restriction to particular claims as granted. This is not the case here.

In case T 1112/12 the Board considered the amended main request to relate to a form of the patent which was dealt with in first-instance proceedings, see point 1.1 of the reasoning.

Decisions T 1977/13 and T 260/13 were referred to by the appellant with respect to allowability of the deletion of claims under Article 84 EPC, see points 14.5 and 20.6 of the statement setting out the grounds of appeal. This issue is not at stake here.

Decision T 938/20 was referred to by the appellant for the question of convergence of requests, see point 2.15 of the submission of 13 February 2023. This issue is not at stake here.

Decisions T 1019/92 and T 718/92 were referred to by the appellant with respect to the question of abuse of procedure, see points 20.20 and 22.14 of the statement setting out the grounds of appeal. This issue is not at stake here.

Finally, in T 101/17 and T 847/20 the amended requests were not admitted, so these cases anyway cannot support the appellant's case.

4.5 To summarize the issue of admittance, ARs 7-10, or similar requests addressing the novelty objections, should have been filed during the opposition procedure, Article 12(6) RPBA. In the present case the Board does not see any circumstances of the appeal case that could justify their admittance into appeal procedure.

5. The Opposition Division's decision to revoke the patent as amended before it, Article 101(3)(b), was correct.

The further amendments submitted by the appellant in appeal proceedings are not admitted, Articles 12(2)(4)(6) RPBA. The appellant's request to maintain the patent in amended form under Article 101(3)(a) EPC based on the claims of the main request, or on the basis of any of auxiliary requests 1-10, cannot be granted.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

L. Stridde P. Gryczka

Decision electronically authenticated