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**Datasheet for the decision
of 23 April 2024**

Case Number: T 1407/22 - 3.3.04

Application Number: 15821331.4

Publication Number: 3170842

IPC: C07K19/00, C12N15/62,
C12N15/867, C12N5/10,
A61K48/00, A61P35/00

Language of the proceedings: EN

Title of invention:

Immunologic effector cell of targeted CLD18A2, and preparation method and use thereof

Patent Proprietor:

CRAGE medical Co., Limited

Opponent:

BioNTech Cell & Gene Therapies GmbH

Headword:

CLD18A2 targeting CAR T-cells/CRAGE

Relevant legal provisions:

EPC 1973 Art. 113(2)

Keyword:

Basis of decision - agreement to text of the patent as granted
withdrawn by patent proprietor - patent revoked



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Chambres de recours

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Case Number: T 1407/22 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 23 April 2024

Appellant: BioNTech Cell & Gene Therapies GmbH
(Opponent) An der Goldgrube 12
55131 Mainz (DE)

Representative: Wilk, Thomas
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Respondent: CRAGE medical Co., Limited
(Patent Proprietor) RM12, 20/F, Ho King Comm CTR,
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Mongkok Kowloon,
Hong Kong (CN)

Representative: Mewburn Ellis LLP
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
4 April 2022 concerning maintenance of the
European Patent No. 3170842 in amended form.**

Composition of the Board:

Chairwoman M. Pregetter
Members: O. Lechner
L. Bühler

Summary of Facts and Submissions

- I. The appeal of the opponent (appellant) lies from the interlocutory decision of the opposition division that the patent as amended in the form of the main request (comprising the set of claims as filed with letter of 29 October 2020) and the invention to which it related met the requirements of the EPC.
- II. The board appointed oral proceedings, and in a subsequent communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- III. During the oral proceedings before the board, which took place on 23 April 2024, the patent proprietor stated that it no longer approved the text of the patent as granted and any replacement text on file, i.e., the text of all claim requests, and that it expected the patent to be revoked.

Reasons for the Decision

Disapproval of the text of the patent by the patent proprietor

1. According to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine and decide on the European patent only in the text submitted to it or agreed upon by the proprietor of the patent.
2. In view of the patent proprietor's statement during the oral proceedings (see point III. above), there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for

opposition prejudices the maintenance of the patent. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged impediments to patentability (T 186/84, OJ 1986, 79, point 5 of the Reasons; T 646/08, point 4 of the Reasons and T 2434/18, point 4 of the Reasons).

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 since the patent proprietor no longer challenges the request for revocation of the opposed patent, and the patent cannot be maintained against the proprietor's will (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).

Order

For these reasons it is decided that:

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

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated