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**Datasheet for the decision
of 14 December 2022**

Case Number: T 2243/22 - 3.3.08

Application Number: 16172568.4

Publication Number: 3085777

IPC: C12N9/36

Language of the proceedings: EN

Title of invention:

A polypeptide

Patent Proprietor:

Micreos Human Health B.V.

Opponent:

SONN & PARTNER Patentanwälte

Headword:

A polypeptide/MICREOS

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Basis of decision - text or agreement to text withdrawn by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 1111/10, T 1536/14, T 1182/17, T 1226/18, T 0774/20

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2243/22 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 14 December 2022

Appellant I: Microeos Human Health B.V.
(Patent Proprietor) Bankaplein 2
2585 EV Den Haag (NL)

Representative: ten Haaft, Petrus
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Appellant II: SONN & PARTNER Patentanwälte
(Opponent) Riemergasse 14
1010 Wien (AT)

Representative: Weinziger, Philipp
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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
26 July 2022 concerning maintenance of the
European Patent No. 3085777 in amended form

Composition of the Board:

Chairwoman T. Sommerfeld
Members: M. Montrone
A. Bacchin

Summary of Facts and Submissions

- I. European patent no. 3 085 777 was granted with effect of 6 November 2019.
- II. An opposition was timely filed. By decision of an opposition division of 26 July 2022, the patent was maintained in amended form.
- III. The patent proprietor (appellant I) appealed the decision, requesting that the decision under appeal be set aside. No amended text of the patent in the form of an auxiliary request was filed by the proprietor with the notice of appeal. Likewise the opponent (appellant II) appealed the decision, requesting that the decision under appeal be set aside and the patent be revoked. The opponent requested conditionally oral proceedings.
- IV. On 18 November 2022, the patent proprietor submitted the following statement:

"The proprietor of the patent, Microcos Human Health B.V., no longer approves of the text in which the patent was granted; revocation of the patent is requested."
- V. On 25 November 2022, the patent proprietor submitted the following additional statement:

"This is in response to the communication from the Board dated 24 November 2022. The proprietor of the patent, Microcos Human Health B.V., confirms that it no longer approves of the text of the patent as granted, nor as amended by the opposition division, nor in any other form; revocation of the patent is requested."

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted, or agreed, by the patent proprietor.
2. There is no such agreement if, as in the case at hand, the patent proprietor explicitly disapproves the text of the patent without filing any other amended text on which further pursuit of the appeal could be based.

Since there is no alternative text of the patent which could be deemed to be approved by the patent proprietor, their above declaration implies that the appeal is also withdrawn and this happened before expiry of the time limit for filing a statement of grounds of appeal, without such statement having been filed.

3. Under these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into substantive issues (see, *inter alia*, T 1111/10 of 8 September 2010, T 1536/14 of 14 October 2015, T 1182/17 of 22 October 2020, T 774/20 of 2 February 2022; cf. also T 1226/18 of 7 February 2022).
4. Revocation of the patent complies also with the request of the appealing opponent. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC and Article 12(8) RPBA 2020).

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:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated