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**Datasheet for the decision  
of 31 October 2025**

**Case Number:** T 0097/24 - 3.3.04

**Application Number:** 14723324.1

**Publication Number:** 2986312

**IPC:** A61K38/20, G01N33/50,  
A61P31/00, A61P35/00,  
A61P37/04, A61K47/64

**Language of the proceedings:** EN

**Title of invention:**

Cytokine derived treatment with reduced vascular leak syndrome

**Patent Proprietors:**

Cytune Pharma  
Institut Gustave Roussy (IGR)

**Opponents:**

Wuesthoff & Wuesthoff Patentanwälte PartG mbB  
SANOFI

**Headword:**

Cytokine treatment/CYTUNE PHARMA

**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Basis of decision - text or agreement to text withdrawn by  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**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0

Case Number: T 0097/24 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 31 October 2025**

**Appellant I:** Wuesthoff & Wuesthoff Patentanwälte PartG mbB  
(Opponent 1) Schweigerstraße 2  
81541 Munich (DE)

**Representative:** Wichmann, Hendrik  
Wuesthoff & Wuesthoff  
Patentanwälte und Rechtsanwalt PartG mbB  
Schweigerstraße 2  
81541 München (DE)

**Appellant II:** SANOFI  
(Opponent 2) 54 rue La Boétie  
75008 Paris (FR)

**Representative:** Zwicker, Jörk  
ZSP Patentanwälte PartG mbB  
Hansastraße 32  
80686 München (DE)

**Respondents:** Cytune Pharma  
(Patent Proprietors) 3 Chemin du Pressoir Chênaie  
44 100 Nantes (FR)

and

Institut Gustave Roussy (IGR)  
39, rue Camille Desmoulins  
94800 Villejuif (FR)

**Representative:** Maiwald GmbH  
Elisenhof  
Elisenstraße 3  
80335 München (DE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
16 November 2023 concerning maintenance of the  
European Patent No. 2 986 312 in amended form

**Composition of the Board:**

**Chairwoman** M. Pregetter  
**Members:** B. Rutz  
M. Blasi

## **Summary of Facts and Submissions**

- I. The appeals by opponents 1 and 2 (appellants I and II) lie from the decision of the opposition division that European Patent No. 2 986 312 as amended in the form of auxiliary request 1 fulfilled the requirements of the EPC.
- II. The patent had been opposed on the grounds of Article 100(a) EPC, in relation to novelty (Article 54 EPC) and inventive step (Article 56 EPC), and of Article 100(b) and (c) EPC.
- III. With their statements of grounds of appeal, the appellants requested that the decision under appeal be set aside and the patent be revoked.
- IV. With their reply to the appeals the respondents requested that the appeals be dismissed and that the patent be maintained as amended in the form of auxiliary request 1 considered allowable by the opposition division (main request), or, alternatively, that the patent be maintained in amended form based on the set of claims of one of auxiliary requests 1 to 17.
- V. The board appointed oral proceedings, as requested by the parties, and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal case.
- VI. In a letter dated 3 July 2025 the respondents filed auxiliary requests 18 to 21 and requested their admittance.

VII. In a letter dated 15 October 2025, the respondents withdrew the approval to the text of the patent as granted and all requests previously pending in the appeal proceedings and requested that the patent be revoked.

VIII. The board then cancelled the oral proceedings.

### **Reasons for the Decision**

1. The appeals comply with Articles 106 to 108 and Rule 99 EPC and are admissible.
2. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
3. Such an agreement cannot be deemed to exist if the patent proprietors - as in the present case - expressly declare that they withdraw the consent to the text of the patent in the form as granted, withdraw all claim requests on file and request revocation of the patent (see section VII.).
4. There is therefore no text of the patent on the basis of which the board can consider the appeal case. In these circumstances, the patent is to be revoked, without assessing issues relating to patentability (see also decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, IV.D.2).
5. Revocation of the patent is also the main request of the appellants (see section III.). There are also no remaining issues that need to be dealt with by the

board in the present appeal case. The decision can therefore be taken without holding oral proceedings.

## 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:



A. Wille

M. Pregetter

Decision electronically authenticated