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**Datasheet for the decision
of 10 March 2026**

Case Number: T 0100/24 - 3.3.08

Application Number: 19168383.8

Publication Number: 3539548

IPC: A61K35/742

Language of the proceedings: EN

Title of invention:

Composition for inducing proliferation or accumulation of regulatory cells

Patent Proprietor:

The University of Tokyo

Opponents:

Société des Produits Nestlé S.A.
Rieck, Markus
Potter Clarkson LLP
Strawman Limited (opposition withdrawn)

Headword:

Composition for inducing proliferation or accumulation of regulatory cells II/THE UNIVERSITY OF TOKYO

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Basis of decision - text or agreement to text withdrawn by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 0073/84, T 0186/84, T 1182/17, T 0774/20, T 1995/21



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0100/24 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 10 March 2026

Appellant I: Société des Produits Nestlé S.A.
(Opponent 1) Avenue Nestlé 55
1800 Vevey (CH)

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Appellant II : Rieck, Markus
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Representative: Fuchs Patentanwälte Partnerschaft mbB
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Respondent: The University of Tokyo
(Patent Proprietor) 3-1, Hongo 7-chome
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Tokyo 113-8654 (JP)

Representative: Hoffmann Eitle
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Party as of right: Potter Clarkson LLP
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 13 November
2023 rejecting the opposition filed against
European patent No. 3539548 pursuant to Article
101(2) EPC**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: R. Morawetz
 D. Rogers

Summary of Facts and Submissions

- I. The appeals lodged by opponent 1 (appellant I) and opponent 2 (appellant II) lie from the opposition division's decision rejecting the oppositions filed against European patent No. 3 539 548.
- II. As their main request, both appellants requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- III. The patent proprietor (respondent) initially requested that the appeal be dismissed and that the patent be maintained as granted (main request) or, alternatively, that the patent be maintained in amended form on the basis of the set of claims of one of its auxiliary requests.
- IV. The board appointed oral proceedings and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation on some matters concerning the appeal.
- V. Oral proceedings were held as scheduled. At the oral proceedings, the respondent stated that it no longer approved the text of the patent as granted and withdrew all its auxiliary requests on file.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO will examine, and decide upon the European patent only in the text submitted to it, or agreed by the applicant or patent proprietor.

2. Since the text of the patent is at the disposition of the patent proprietor, their patent cannot be maintained against their will. In the present case the patent proprietor withdrew its approval of the text of the patent as granted and all pending auxiliary requests (section V. above). Consequently, there is no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC.
3. In these circumstances, as there is no approved text, the patent is to be revoked without assessing issues relating to patentability (see e.g. decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79; T 1182/17; T 774/20; T 1995/21 and Case Law of the Boards of Appeal, 11th edition 2025, sections III.B.3.3 and IV.D.2). There is no reason to deviate from this consistent approach of the Boards of Appeal, with the consequence that the patent is to be revoked.
4. Revocation of the patent complies with the main request of the appellants.
5. There are no remaining issues that have to be dealt with by the board in the present appeal case.

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:



C. Rodríguez Rodríguez

T. Sommerfeld

Decision electronically authenticated