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Datasheet for the decision of 7 November 2025

Case Number: T 0246/24 - 3.3.04

Application Number: 15781324.7

Publication Number: 3283510

IPC: C07K14/78, A61L27/24, A61L27/52, A61L27/54

Language of the proceedings: EN

Title of invention:
Collagen Mimetic Peptide

Patent Proprietor:
UAB Ferentis

Opponent:
Hammer, Jens

Headword:
CMP/UAB Ferentis

Relevant legal provisions:
EPC Art. 56, 123(2)
RPBA 2020 Art. 13(2)

Keyword:
Inventive step - main request (no)
Amendments - auxiliary request 1 - added subject-matter (yes)
Late-filed auxiliary request 16 - justification for late filing (no)

Decisions cited:
T 0892/08

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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 0246/24 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 7 November 2025

Appellant: (Opponent)	Hammer, Jens Leopoldstrasse 4 80802 München (DE)
Representative:	HGF HGF Europe LLP Neumarkter Straße 18 81673 München (DE)
Respondent: (Patent Proprietor)	UAB Ferentis Savanoriu 231 02300 Vilnius (LT)
Representative:	Armalyte, Elena AAA Law A. Gostauto 40B 03163 Vilnius (LT)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 20 November 2023 rejecting the opposition filed against European patent No. 3283510 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairwoman	M. Pregetter
Members:	A. Chakravarty
	A. Bacchin

Summary of Facts and Submissions

I. The opponent (appellant) filed an appeal against the opposition division's decision to reject the opposition. The patent proprietor is respondent to the opponent's appeal.

II. In the decision under appeal, the opposition division considered and dismissed objections raised under Article 100(a), (b) and (c) EPC on the grounds that the claimed subject-matter lacked an inventive step, was not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, and extended beyond the content of the application as filed.

III. The appellant submitted a statement of grounds of appeal to which the respondent replied. In this reply, the respondent stated that its main request was that the patent be maintained as granted. In the alternative it requested that the patent be maintained on the basis of one of auxiliary requests 1 to 15. Auxiliary requests 1 to 3 were first submitted before the opposition division as auxiliary requests 4 to 6, with the letter dated 24 August 2024. Auxiliary requests 4 to 15 were newly filed on appeal.

IV. The board appointed oral proceedings and subsequently issued a communication under Article 15(1) RPBA, setting out its preliminary opinion on the appeal case.

V. The respondent replied to the board's communication with a letter, submitted together with a set of claims of auxiliary request 16.

VI. Claims 1 and 9 to 15 of the patent as granted read:

"1. A peptide comprising a sequence of amino acid motifs wherein said peptide comprises at least four amino acid motifs represented in the following formula:

$(Xaa_1\ Xaa_2)_w\ (Xaa_3\text{-}Xaa_4\text{-}Xaa_5)_x\ (Xaa_6\text{-}Xaa_7\text{-}Xaa_8)_y\ (Xaa_9\text{-}Xaa_{10}\text{-}Xaa_{11})_z$

wherein (Xaa1 Xaa2)w is a first amino acid motif for chemical conjugation to a molecular template wherein Xaa1 is a thiol-containing amino acid and Xaa2 is a glycine amino acid wherein w equals 1 or more, (Xaa3-Xaa4-Xaa5)x is a second amino acid motif wherein Xaa3 is proline, Xaa4 is lysine, Xaa5 is glycine wherein x equals 1 to 4, (Xaa6-Xaa7-Xaas [sic])y is a third amino acid motif wherein Xaa6 is proline, Xaa7 is hydroxyproline, Xaa8 is glycine wherein y equals 1 to 4; and (Xaa9-Xaa10-Xaa11)z is a fourth amino acid motif wherein Xaa9 is aspartic acid or glutamic acid, Xaa10 is hydroxyproline, Xaa11 is glycine wherein z equals 1 to 4".

"9. The peptide according to any one of claims 1 to 8 wherein said peptide is derivatized by chemical modification to provide one or more reactive groups.

10. The peptide according to claim 9 wherein said peptide is modified by addition of one or more functional groups selected from the group consisting of: thiol, methyacrylate or acrylate functional groups.

11. The peptide according to claim 9 or 10 wherein said modified peptide comprises polyethylene glycol; preferably polyethylene glycol-maleimide or

polyethylene glycol diacrylate or polyethylene glycol methacrylate.

12. The peptide according to claim 11 wherein said polyethylene glycol-maleimide is at least 2, 4, 6 or 8 arm polyethylene glycol-maleimide, or preferably more than 8 arm polyethylene glycol-maleimide.

13. A hydrogel comprising: a plurality of modified collagen mimetic peptides according to any one of claims 1 to 12 chemically cross linked into a network.

14. A corneal implant comprising a hydrogel according to claim 13.

15. A corneal implant according to claim 14 for use in the repair or replacement of diseased or damaged corneal tissue."

Auxiliary request 1

Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that it includes the additional feature "wherein the peptide is conjugated to a template via the thiol group of Xaa_1."

Cited documents

VII. The following documents are referred to in this decision.

D2: WO 2013/023137

D4: Perez C. M. R. *et al.*, Macromol. Biosci. 2011, 11, 1426 - 1431

D5: Perez C. M. R. *et al.*, Chem. Commun., 2014, 50, 8174 - 8176

D9: Barth D. *et al.*, Chem. Eur. J. 2003, 9, 3703-3714

D22: Experimental report filed by the respondent before the opposition division, submitted with the respondent's letter of 24 August 2023

VIII. Oral proceedings before the board took place as scheduled. During the oral proceedings the appellant withdrew its request not to admit auxiliary request 1. The respondent withdrew auxiliary requests 2 to 15. At the end of the oral proceedings, the Chairwoman announced the decision of the board.

IX. The appellant's relevant submissions are summarised as follows:

Main request - claim 1
Inventive step (Article 56 EPC)

The closest prior art

In the proceedings before the opposition division, both parties had considered D2 as the closest prior art for the subject-matter of claim 1. The opposition division agreed. D2 disclosed a collagen mimetic peptide (CMP) comprising the motifs $(Pro\text{-}Lys\text{-}Gly)_4$-$(Pro\text{-}Hyp\text{-}Gly)_4$-$(Asp\text{-}Hyp\text{-}Gly)_4$, capable of multi-hierarchical self-assembly of collagen-like proteins, that could replace natural collagen in various applications, for example, in tissue regeneration, including implantation.

Differences between the closest prior art and the claimed subject-matter, technical effects thereof and the objective technical problem

The peptide disclosed in D2 did not comprise the first amino-acid motif $(Xaa_1–Xaa_2)_w$, wherein Xaa_1 was a thiol-containing amino acid and Xaa_2 was glycine, wherein w equals 1 or more, that was present in the claimed peptide.

The opposition division had held that beneficial effects relied on by the respondent, such as >80% light transmission, good mechanical/tensile strength, prolonged stability at 37°C, stability against collagenase digestion and support of cell adhesion and growth, were displayed only by hydrogels comprising the peptide conjugated to polyethylene glycol (PEG) and by corneal implants formed from such a hydrogel but not by the claimed peptide itself. The opposition division had held that no technical effect attributable to the distinguishing feature had been credibly demonstrated for the individual peptide.

This was correct and so, since no technical effect could be attributed to the distinguishing motif, the objective technical problem was: 'the provision of an alternative collagen-mimetic peptide suitable for attachment to a PEG template'.

Obviousness

The skilled person starting from the CMP disclosed in D2 would have known from D4 and D5 that collagen-like peptides could be N-terminally modified with a Cys-Gly-Gly linker for covalent conjugation to multi-arm PEG polymers. Thus they would have been directly led to the

claimed peptides as alternative CMPs that could be linked to PEG.

D2 did not teach away from the conjugation to PEG but merely discussed biocompatibility considerations. Since the technical problem was not improving biocompatibility, this alleged 'teaching away' was irrelevant.

The respondent had also cited D9 and D22 to argue that introducing N-terminal cysteine disrupted triple helix formation, making the skilled person avoid such modification. However, the objective problem was merely provision of an alternative CMP suitable for PEG attachment or hydrogel formation, not for optimising triple helix stability. D4 and D5 explicitly used N-terminal cysteine linkers for CMP-PEG conjugation and reported successful hydrogel formation. Thus these documents provided a clear incentive to add the claimed linker to the peptide of D2.

Auxiliary request 1
Amendments (Article 123(2) EPC) - claim 1

The amendment introduced into auxiliary request 1 constituted an intermediate generalisation of the disclosure of pages 14 and 19 of the application as originally filed and was not allowable under Article 123(2) EPC.

Auxiliary request 16
Admittance (Article 13(2) RPBA)

The request should not be admitted because it was filed at an extremely late stage of the proceedings without any justification for its late filing. There were no

exceptional circumstances that justified its admittance. Moreover it *prima facie* lacked support and did not overcome the objections of lack of sufficiency and inventive step. This also spoke against its admittance at such a late procedural stage.

X. The respondent's relevant submissions are summarised as follows:

Main request - claim 1
Inventive step (Article 56 EPC)

The closest prior art

D2 was accepted as representing the closest prior art. It disclosed a 36 amino acid long collagen-mimetic peptide (CMP) capable of triple-helix formation and self-assembly into higher-order structures.

Differences between the closest prior art and the claimed subject-matter, technical effects thereof and the objective technical problem

The peptides of claim 1 differed from that disclosed in D2 in that they included, at the N-terminal, an additional first amino-acid motif $(Xaa_1–Xaa_2)_w$, where Xaa_1 = thiol-containing amino acid, Xaa_2 = glycine and $w \geq 1$. This motif allowed covalent attachment to a molecular template, such as PEG-maleimide. This capacity was undisputedly absent in the D2 peptide.

The distinguishing feature produced several technical effects:
1) it enabled covalent conjugation to a PEG template. When said peptide was conjugated to a template, the resulting modified peptide formed triple helices (as

confirmed by Fig. 14B of the patent) and could then be used to prepare a hydrogel where a plurality of said modified peptides were chemically cross-linked in a network. The resulting covalently cross-linked hydrogel can be used to form a corneal implant and to provide it with the following properties:
1) >80% light transmission;
2) good mechanical/tensile strength;
3) prolonged stability at 37°C
4) stability against collagenase digestion and
5) support of cell adhesion and growth.
All of these properties were supported by evidence in the patent.

The opposition division had not accepted the above technical effects for the peptides of claim 1. However, above mentioned technical effects resulted from the properties of the claimed peptides and the peptides of the invention were specially adapted for making hydrogels suitable for use as corneal implant.

In view of the above, the objective technical problem was 'achieving a corneal implant that:
1) has properties that render it usable as implant (for which purpose it must contain stable triple helical structures mimicking natural collagen structures, be biocompatible, and allow cell adhesion and growth);
2) has properties that render it usable as corneal implant, i.e. once implanted will give properties comparable to a healthy cornea (in particular, >80% transparency, good mechanical strength to sustain sutures, stability at 37°C for prolonged use in an animal/human body);
3) does not suffer the drawbacks of the collagen/ collagen-like materials of the prior art (is stable in particular against collagenase digestion)'.

Obviousness

The collagen mimetic peptide of D2 was disclosed as self-assembling into a hydrogel with the following properties:

1) the hydrogel had similar viscoelasticity to that typically observed for a collagen hydrogel formed from natural sources,
2) similar to a natural collagen, the hydrogel treated with collagenase was fully dissolved after 4 hours at 30°C,
3) contrary to a natural collagen, the hydrogel was dissolved after incubation at 37°C for 24 hours, thus the hydrogel did not retain the triple helical structure.

D2 aimed at optimising CMPs assembling into long organized fibres without chemical conjugation to a molecular template such as 8-armed PEGmaleimide.

When modifying the peptide of D2 in order to solve the problem of achieving a corneal implant with the properties as set out above, the skilled person would not have considered conjugating the peptide to a molecular template because D2 does not discuss peptide conjugation at all. Therefore, when considering D2 alone, the skilled person would not have made the peptide of D2 to be suitable for chemical conjugation to a molecular template as required by Claim 1.

This conclusion was no different if D2 was combined with the disclosure in D4 or D5. D4 and D5 were concerned with drug delivery and cell encapsulation. The skilled person seeking to make a corneal implant

with the properties as set above, would not have turned to D4 or D5 because drug delivery and cell encapsulation required a different type of hydrogel.

In conclusion, the distinguishing structural motif of the claimed peptide provided functional advantages not suggested in the prior art. No cited document taught or suggested combining the thiol-glycine motif with the particular CMP architecture of D2 to produce long-term stable, collagen-mimetic hydrogels for corneal implants. The skilled person would not have arrived at the claimed subject matter.

Auxiliary request 1
Amendments (Article 123(2) EPC) - claim 1

Claim 1 was amended to specify that the peptide is modified and the feature "wherein the peptide is conjugated to a template via the thiol group of Xaa1" has been added. Support for this amendment was inherently in claim 1 of the opposed patent, as well as respectively for example page 13, line 5 and page 19, lines 5 to 7 of the application as filed.

Auxiliary request 16
Admittance (Article 13(2) RPBA)

Auxiliary Request 16 was submitted in reaction to a new aspect identified by the Board in the communication pursuant to Article 15(1) RPBA, paragraph 43, lines 3 to 10, in particular lines 7 to 10. Here the board stated that the answer to the questions of whether all compounds covered by the formula and also regardless of the "molecular template" they are finally conjugated to, […], have the asserted improved properties might be potentially decisive for the assessment of inventive

step. This aspect had not been dealt with by the opposition division and it was not raised in the appellant's statement of grounds of appeal. The need for a claim request responsive to the newly raised aspect could not reasonably have been anticipated and this represented exceptional circumstances in the sense of Article 13(2) RPBA that justified the admittance of the request.

The parties' requests

XI. The appellant requested that the decision under appeal be set aside and that the patent be revoked. Furthermore auxiliary request should not be admitted.

XII. The respondent requested:
- that the appeal be dismissed and the patent be maintained as granted (main request),
alternatively,
- that the patent be maintained on the basis of one of the set of claims according to auxiliary request 1, filed as auxiliary request 4 on 24 August 2023, or auxiliary request 16, as filed on 5 November 2025,
- furthermore, that the appellant's line of argument in the context of amendments in view of the term "template" not be admitted.

XIII. Both parties had requests relating to admittance or otherwise of documents (see minutes of the oral proceedings). As these documents are not relevant to the board's decision, they are not repeated here and they are not discussed below.

Reasons for the Decision

Introduction

1. The invention concerns collagen mimetic peptides (CMPs) and their use in forming hydrogels. These hydrogels may be used to manufacture corneal implants (see paragraph [0001] of the patent in suit).

2. The claims as granted relate to unconjugated CMPs (claims 1 to 8), derivatised (chemically modified) CMPs (claims 9 and 10) and to CMPs conjugated to polyethylene glycol (PEG) (claims 11 and 12). Also claimed are hydrogels comprising either the unconjugated or the conjugated CMPs (claim 13), corneal implants comprising said hydrogels (claim 14) and its specific use (claim 15).

Main request - claim 1
Claim construction

3. The subject-matter of claim 1 is a peptide, i.e. a product as such. The claimed peptide is defined as comprising four amino acid motifs in a set order, but these motifs need not be contiguous and may be separated by other residues, as can be seen by, e.g., the dependent claims. A non-contiguous embodiment is illustrated by SEQ ID NO: 6 in claim 7, which includes a Gly triplet between the first and second motif. It is therefore apparent that the four motifs, (Xaa_1-Gly), (Pro-Lys-Gly) (Pro-Hyp-Gly), and (Asp/Glu-Hyp-Gly) are not necessarily contiguous and may be separated by intervening amino acid sequences.

4. Furthermore, the embodiments represented by SEQ ID NOs: 7 and 8, together with the "comprising" language used

in claim 1, mean that the peptide may also be extended by additional sequences beyond the defined motifs. The claimed peptide is not conjugated, e.g. to PEG.

5. The claim further contains an indication of a purpose for the "$(Xaa_1\ Xaa_2)_w$" motif: "for chemical conjugation to a molecular template". This indication however does not change the fact that the claimed peptide is unconjugated. Moreover, the expression "molecular template" is not defined in the claim or in the description.

Inventive step (Article 56 EPC)

The closest prior art

6. It is common ground that document D2 represents the closest prior art. Document D2 relates to the synthesis of CMPs which are able to self-assemble to form a triple helix and nanofibers and finally a hydrogel. D2 describes a peptide (SEQ ID NO: 1) with the following formula: $(Pro\text{-}Lys\text{-}Gly)_4(Pro\text{-}Hyp\text{-}Gly)_4(Asp\text{-}Hyp\text{-}Gly)_4$ (page 8, lines 27 to 33) .

According to D2 "*The most notable feature of collagen is its multi-hierarchical self-assembly (peptide chain to triple helix to nanofibers and finally a hydrogel). The peptide* $(Pro\text{-}Lys\text{-}Gly)_4(Pro\text{-}Hyp\text{-}Gly)_4(Asp\text{-}Hyp\text{-}Gly)_4$*, is characterized by the ability to replicate the self-assembly of collagen through each of the discrete steps*"(*ibid*). D2 also discloses the intended applications of the disclosed peptides - "*in certain embodiments, the peptides and hydrogels of the present disclosure may be used in may different applications, including but not limited to, cosmetic surgery, joint repair, artificial skin grafts, vascular tissue*

regenerations, scaffolds for tissue engineering applications, and as carriers for drug delivery" (see page 11, first full paragraph).

Differences between the closest prior art and the claimed subject-matter, technical effects thereof and the objective technical problem

7. The peptide of claim 1 differs from the peptide disclosed in document D2 in that the latter does not contain the first amino acid motif $(Xaa_1\ Xaa_2)_w$, wherein Xaa_1 is a thiol-containing amino acid and Xaa_2 is a glycine amino acid, wherein w equals 1 or more. Instead, the D2 peptide starts with a $(Pro\text{-}Lys\text{-}Gly)_4$ motif, which is identical to $(Pro\text{-}Lys\text{-}Gly)_x$ when x=4, being an embodiment of the second amino acid motif in the formula of claim 1.

8. In proceedings before the opposition division, the respondent relied on properties of peptides chemically conjugated to a molecular template in its arguments on the technical effect resulting from the differences between the claimed and closest prior art peptides.

9. The opposition division considered that since the technical effects relied on by the patent proprietor (respondent) were only valid for the peptide when in the form of hydrogel (see point 3.3.2.1 of the decision under appeal), these could not be taken into account when considering inventive step of the peptide *per se*. As there were no technical effects resulting from the difference between the peptide disclosed in D2 and the claimed ones, the problem to be solved was '*the provision of an alternative collagen mimetic peptide which is suitable for forming a hydrogel*' (see point 3.3.2.3 of the decision under appeal).

10. On appeal, the respondent submits that the problem to be solved as 'achieving a corneal implant that:
1) has properties that render it usable as implant (for which purpose it must contain stable triple helical structures mimicking natural collagen structures, be biocompatible, and allow cell adhesion and growth);
2) has properties that render it usable as corneal implant, i.e. once implanted will give properties comparable to a healthy cornea (in particular, >80% transparency, good mechanical strength to sustain sutures, stability at 37°C for prolonged use in an animal/human body);
3) does not suffer the drawbacks of the collagen/ collagen-like materials of the prior art (is stable in particular against collagenase digestion). In other words, the formulation of the problem relies on the properties of a hydrogel formed from a peptides of claim 1, chemically conjugated to a molecular template and formed into a hydrogel.

11. In contrast, the appellant considers that the problem to be solved was the provision of an alternative collagen mimetic or collagen like peptide which can be attached to a PEG template.

12. The board notes that all of the technical effects relied on by the respondent are exhibited by subject-matter not covered by claim 1, which is for a CMP *per se*. Instead, these technical effects are exhibited only by hydrogels that comprise CMP peptides conjugated to certain particular PEG molecules and by corneal implants formed from these hydrogels. No argument has been made that the claimed peptides or hydrogels comprising them themselves exhibit any technical effect beyond that of the closest prior art peptide. Thus, no

particular technical effect can be ascribed to the differences between the closest prior art peptide and the claimed ones. It is noted that the technical effects relied on by the respondent could be taken into account if the claims were limited to the subject-matter of claim 12. This however is not the case.

13. The above conclusion is confirmed by the Examples in the patent, where all experiments relate to CMP-PEG hydrogels. Moreover, it can also be seen from Figs. 1 to 4 that all evidence of the desirable properties, relied on by the respondent, are exhibited by CMP-PEG conjugates and hydrogels containing them. It is also notable that the set of claims as granted includes claims directed to hydrogels formed from unconjugated CMPs. Thus, the claims have been drafted to cover both hydrogels having the superior properties relied on by the respondent and embodiments for which no evidence of superior properties has been asserted. Thus said properties cannot be taken into account in formulating the objective technical problem because they are not exhibited over the whole of the scope claimed.

14. The objective technical problem is therefore the provision of alternative CMP peptides. The objective technical problem formulated in the decision under appeal (see point 9. above) is essentially the same as the above problem because suitability for forming hydrogen is encompassed by the indication that the peptide is a CMP.

Obviousness

15. The question to be answered in assessing obviousness is therefore whether a skilled person, at the relevant date of the patent, starting from the disclosure in D2

of a peptide with the formula: $(Pro\text{-}Lys\text{-}Gly)_4(Pro\text{-}Hyp\text{-}Gly)_4(Asp\text{-}Hyp\text{-}Gly)_4$ would have arrived at a presently claimed peptide. This includes asking if the skilled person seeking an alternative CMP would have modified the D2 peptide (SEQ ID NO: 1), by extending it to include a thiol containing amino acid and a glycine (e.g. Cys-Gly-).

16. The answer to this question is "yes" because it was part of the skilled person's common general knowledge that alternative peptides, including alternative CMP peptides could be generated simply by addition of arbitrarily chosen amino acids (of which Cys-Gly- is an example), e.g. at the N-terminal. It is established case law that an arbitrary choice from a host of equally possible solutions cannot be considered inventive if not justified by a hitherto unknown technical effect that distinguishes the claimed solution from the other solutions (see Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, I.D.9.21.9 and e.g. T 892/08, cited therein). The claimed subject-matter therefore does not meet the requirements of Article 56 EPC for the presence of an inventive step.

17. In the decision under appeal, the opposition division held that the claimed subject matter met requirements of Article 56 EPC because "*the skilled person starting from the teaching of D2 would not have modified the peptides of D2 in order to make them 'suitable for chemical conjugation to a molecular template*" (see point 3.3.4.1). However, suitability for conjugation to a molecular template is not (and was not) part of the technical problem to be solved and therefore should not be taken into account in the assessment of inventive step.

18. The opposition division also held that the skilled person, starting from the peptide disclosed in D2 would not have considered extending it N-terminally because D9 taught against having an N-terminal Cys in collagen-like peptides, as the triple helix assembly is affected. The opposition division also referred to D22, filed by the respondent, to show that the N-terminal cysteine negatively affects the triple helix assembly of the CMP.

19. D9 is a paper concerning the "*Conformational Properties of (Pro-Hyp-Gly)$_n$ Model Trimers with N- and C-Terminal Collagen Type III Cystine Knots*" and reports that the peptides IV: [Ac-Cys-Cys-Gly-(Pro-Hyp-Gly)$_5$-Gly-Gly-Gly-NH_2]$_3$ and V: [Ac-Cys-Cys-Gly-(Pro-Hyp-Gly)$_5$-Pro-Cys-Cys-Gly-Gly-Gly-NH_2)$_3$ "*generate the desired trimer IV with the N-terminal cystine knot in only very low yields*" (see page 3705, right column)

20. The board does not share the opposition division's conclusions on inventive step based on an alleged teaching away from the invention in D9, for a number of reasons. Firstly, the skilled person merely seeking an alternative CMP would not have been concerned about reducing the yield of cystine knots because the problem to be solved does not include any functional aim of this nature. Secondly, D9 in fact serves as an illustration that the skilled person knew of CMPs having N-terminal Cys residues and further provided an incentive to make them, i.e. for the purpose of experimental comparison.

21. D22, with the title "C*omparison of Cys-Gly-(Pro-Lys-Gly)$_4$(Pro-Hyp-Gly)$_4$(Asp-Hyp-Gly)$_4$ and (Pro-Lys-Gly)$_4$(Pro-Hyp-Gly)$_4$(Asp-Hyp-Gly)$_4$ peptide assemblies*"

is an experimental report submitted by the appellant in the proceedings before the opposition division and was referred to in the decision under appeal. However, it is not part of the state of the art for the patent in suit and cannot have influenced the skilled person seeking a solution to the objective technical problem.

Auxiliary request 1 -claim 1

Amendments (Article 123(2) EPC)

22. The claim differs from claim 1 of the main request in that it includes the additional feature "wherein the peptide is conjugated to a template via the thiol group of Xaa_1".

23. The respondent referred to page 13, line 5, page 19, lines 5 to 7 of the application as filed as a basis for this amendment.

24. The referenced passage on page 13 reads:

"*In a preferred embodiment of the invention the matrix material comprises at least the collagen mimetic peptide according to the invention modified with polyethylene glycol wherein the PEG has 2, 4, 6 or 8 arms; preferably 8 arms*". This passage does not refer to a template at all and therefore cannot serve as a basis for the amended claim.

25. The complete passage on page 19 reads "*Molar composition of PEG:CMP is 1:8 in this example. Please note that this composition will change according to the number of functional arms present on the scaffold. In above example, since we have used 8-arm PEG, we can attach only 8 CMP peptide units to one PEG (template)*".

26. Although 'template' is mentioned in parentheses after PEG, this passage is also not a basis for the amended claim. The above passage could only be basis for a claim where 'template' refers exclusively to 8-arm PEG. However, neither the wording nor the claims as a whole allow such a reading, *inter alia* because 8-arm PEG is merely one of the embodiments of different kinds of PEG defined in claim 14 of the application as filed.

27. Thus, the claim has been amended to include subject-matter that extends beyond the content of the application as filed and does not meet the requirements of Article 123(2) EPC. Auxiliary request 1 is therefore not allowable.

Auxiliary request 16
Admittance (Article 13(2) RPBA)

28. Auxiliary requests 2 to 15 were withdrawn during the oral proceedings before the board.

29. Auxiliary request 16 was not admitted by the board. It was filed after the board had issued a communication pursuant to Article 15(1) RPBA. The board therefore applied the provisions in Article 13(2) RPBA according to which "*Any amendment to a party's appeal case made after ... notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned*".

30. The appellant *inter alia* submitted that the request should not be admitted as it was filed at an extremely late stage without any justification for its late filing.

31. The respondent submitted that auxiliary request 16 was filed in reaction to a new aspect identified by the board's Article 15(1) communication, specifically in the section on inventive step where it was stated that the board would "*hear the parties on the issue of the objective technical problem to be solved at the oral proceedings. [...]. Questions may include whether or not the improved properties asserted by the respondent are the direct result of the structural formula in claim 1, e.g. whether all compounds covered by the formula and also regardless of the "molecular template" they are finally conjugated to, or of the conjugation chemistry used, have the asserted improved properties*". In its view, this aspect has not been dealt with by the opposition division and it was not raised in the statement of grounds of appeal and thus could not reasonably have been anticipated.

32. The board however cannot agree with the respondent that its observations in the Article 15(1) RPBA communication represent a new issue which was objectively surprising to the respondent, in the sense that exceptional circumstances have arisen. In fact, the board's communication at point 43, merely sets out how the board preliminarily considered that the problem and solution approach applied to the case. The cited paragraph in effect states that the board may hear the parties on the technical effects that result from the differences between the claimed subject-matter and the closest prior art. The same consideration was done by the opposition division in the decision under appeal (see point 3.3.2). Furthermore, that the assessment of inventive step involves such considerations should not come as a surprise to the party, since they are a fundamental part of how inventive step is assessed

under the EPC (see Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, I.D. 2.1).

33. In view of the above considerations, the board concluded that there were no exceptional circumstances, which have been justified with cogent reasons that warranted the admittance the auxiliary request.

34. Since no admissible claim request is allowable, the patent must be revoked.

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