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Datasheet for the decision of 23 June 2026

Case Number: T 1373/24 - 3.3.04

Application Number: 18156974.0

Publication Number: 3342786

IPC: C07K16/30, A61K39/395, A61P35/00, C12N15/02, C12Q1/02, C12Q1/68, G01N33/50, G01N33/574, G01N33/68, C07K16/28

Language of the proceedings: EN

Title of invention:
ANTI-DLL3 ANTIBODY

Patent Proprietors:
Chugai Seiyaku Kabushiki Kaisha
The University of Tokyo

Opponents:
Guder, André
Boehringer Ingelheim RCV GmbH & Co KG /
Boehringer Ingelheim International GmbH

Headword:
Anti-DLL3 antibody/CHUGAI

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It can be changed at any time and without notice

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by patent proprietor

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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 1373/24 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 23 June 2026

Appellants: (Patent Proprietors)	Chugai Seiyaku Kabushiki Kaisha 5-1, Ukima 5-chome Kita-ku Tokyo 115-8543 (JP) and The University of Tokyo 3-1, Hongo 7-chome Bunkyo-ku, Tokyo 113-8654 (JP)
Representative:	Simmons & Simmons LLP (Munich) Lehel Carré Gewürzmühlstraße 11 80538 Munich (DE)
Respondent: (Opponent 1)	Guder, André Am Klövensteen 19 22869 Schenefeld (DE)
Representative:	Uexküll & Stolberg Partnerschaft von Patent- und Rechtsanwälten mbB Beselerstraße 4 22607 Hamburg (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted/electronically transmitted on 26 September 2024 revoking European patent No. 3342786**

Composition of the Board:

Chairwoman	M. Pregetter
Members:	D. Luis Alves
	M. Blasi

Summary of Facts and Submissions

I. The patent proprietors (appellants) filed an appeal against the decision of the opposition division to revoke European patent No 3 342 786.

II. With the statement of grounds of appeal the appellants requested *inter alia* that the oppositions be rejected, implying 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 auxiliary requests 1, 1A and 2 to 8, all as filed with the statement of grounds of appeal.

III. With its reply to the appeal, opponent 1 (respondent I) requested *inter alia* that the appeal be rejected as partially inadmissible and in any case that the appeal be dismissed. With its reply to the appeal opponents 2 requested *inter alia* that the appeal be dismissed.

IV. The appellants and respondent I made one further substantive submission each.

V. The board appointed oral proceedings and subsequently issued a communication pursuant to Article 15(1) RPBA, setting out its preliminary opinion.

VI. Subsequently the appellants made one further substantive submission. Respondent I made three further substantive submissions. Opponents 2 withdrew their opposition and ceased to be party to the appeal proceedings.

VII. Oral proceedings were held as scheduled, in the presence of the appellants and respondent I (sole respondent).

VIII. At the oral proceedings before the board, the appellant-patent proprietors stated that they withdrew the consent to the text of the patent as granted, withdrew all auxiliary requests and did not wish to present any further requests.

IX. At the end of the oral proceedings the chair announced the decision of the board.

Reasons for the Decision

1. The appeal is admissible. In particular, the statement of grounds of appeal complies with Rule 99(2) EPC as it could be understood why the decision under appeal was incorrect in the appellant-patent proprietors' view. Furthermore, there is no partial inadmissibility of an appeal, in line with established case law.

2. Pursuant to Article 113(2) EPC, the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

3. Such an agreement is deemed not to exist if the patent proprietor, as done by the appellant-patent proprietors at oral proceedings, declares that it withdraws the consent to the text of the patent as granted and withdraws all auxiliary requests filed in the appeal

proceedings and further declares that it does not intend to file any other request.

4. There was therefore no text of the patent on the basis of which the board can consider compliance thereof with the requirements of the EPC. It follows from such withdrawal of the agreement to any text for the maintenance of the patent that the appeal case has became devoid of subject-matter for substantive examination as regards patentability.

5. There were no remaining issues within the scope of the appeal that had to be dealt with by the board in the present case.

6. Thus, the appellant-patent proprietors' appeal against the opposition division's decision revoking the patent could not be found allowable and, therefore, had to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairwoman:

I. Aperribay M. Pregetter

Decision electronically authenticated