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**Datasheet for the decision
of 14 January 2009**

Case Number: T 0126/07 - 3.3.08

Application Number: 95944420.9

Publication Number: 0800579

IPC: C12N 15/19

Language of the proceedings: EN

Title of invention:
Combination gene delivery vehicles

Patentee:
Novartis Vaccines and Diagnostics, Inc.

Opponent:
TRANSGENE S.A.

Headword:
Gene delivery/NOVARTIS

Relevant legal provisions:
EPC Art. 113(2)

Relevant legal provisions (EPC 1973):
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Keyword:
"Abandonment of the patent: no approved text"
"Revocation of the patent"

Decisions cited:
-

Catchword:
-



Case Number: T 0126/07 - 3.3.08

D E C I S I O N
of the Technical Board of Appeal 3.3.08
of 14 January 2009

Appellant I
(Patent Proprietor) Novartis Vaccines and Diagnostics, Inc.
4560 Horton Street
Emeryville
CA 94608 (US)

Representative: Mallalieu, Catherine Louise
D Young & Co
120 Holborn
London EC1N 2DY (GB)

Appellant II:
(Opponent) TRANSGENE S.A.
11 Rue de Molsheim
F-67082 Strasbourg Cedex (FR)

Representative: Warcoin, Jacques
Cabinet Régimbeau
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F-75847 Paris Cedex 17 (FR)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
3 November 2006 concerning maintenance of
European patent No. 0800579 in amended form.

Composition of the Board:

Chairman: L. Galligani
Members: T. J. H. Mennessier
 C. Heath

Summary of Facts and Submissions

- I. The patent proprietor (appellant I) and the opponent (appellant II) lodged appeals against the interlocutory decision of the opposition division dated 3 November 2006, whereby European patent N° 0 800 579, which had been granted on the European application 95 944 420.9 (published as International application WO 96/21015) with the title "*Combination Gene Delivery Vehicles*", was maintained on the basis of the seventh auxiliary request as filed at the oral proceedings of 10 May 2005, the preceding requests being found not allowable under the EPC.
- II. Together with its statement of grounds of appeal dated 5 March 2007, appellant I filed a main request which was the same as the main request filed at the oral proceedings before the opposition division and four auxiliary requests.
- III. Appellant II filed its statement of grounds of appeal on 2 March 2007 in which it was argued that the request accepted by the opposition division did not comply with the requirements of Articles 123(2) and 56 EPC.
- IV. With a letter dated 8 June 2007, appellant II requested an extension of two months for filing a reply to the appellant I's statement of grounds. The request was refused by the board with a communication faxed on 12 June 2007. Appellant II filed a reply with a letter dated 18 July 2007, in which five new documents were cited.

- V. In the meantime, with a letter dated 6 July 2007, appellant I replied to the appellant II's statement of grounds.
- VI. A communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal dated 14 October 2008 presenting some preliminary and non-binding views of the board was then sent to the parties.
- VII. In a letter dated 11 December 2008, appellant I declared "*We hereby abandon the subject patent*" and announced that, accordingly, they did not intend to attend the oral proceedings scheduled for 22 January 2009.
- VIII. With a letter dated 15 December 2008, appellant II informed the board that they also did not intend to attend the scheduled oral proceedings.
- IX. With a communication faxed on 12 January 2009, the board informed the parties that the oral proceedings scheduled on 22 January 2009 were cancelled.
- X. The appellant II (opponent) requests that the decision of the opposition division be set aside and the patent be revoked.

Reasons for the Decision

1. The expression "*We hereby abandon the subject patent*", as used in the appellant I's letter of 11 December 2008, is interpreted by the board as the appellant I's disapproval of any of the requests currently on file

and intention not to submit any further request. As a result, no text is on file that could form a basis of maintaining the patent and to which the patent proprietor has agreed.

2. Thus, in accordance with Article 113(2) EPC which stipulates that 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, the board decides to revoke the patent.

Order

For these reasons it is decided that:

1. The decision of the opposition division is set aside.
2. The patent is revoked.

The Registrar

The Chairman

A. Wolinski

L. Galligani