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**Datasheet for the decision  
of 8 July 2011**

**Case Number:** T 1429/08 - 3.3.08

**Application Number:** 96945669.8

**Publication Number:** 0811063

**IPC:** C12N 15/12

**Language of the proceedings:** EN

**Title of invention:**

Chemokine receptor 88C and its antibodies

**Patent Proprietor:**

Euroscreen S.A.

**Opponent:**

PROGENICS PHARMACEUTICALS, INC.

**Headword:**

Chemokine receptor 88C/EUROSCREEN

**Relevant legal provisions:**

EPC Art. 110

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Claims of 9 June 2011: outside the framework of the appeal  
(yes)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1429/08 - 3.3.08

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.08  
of 8 July 2011

**Appellant:**  
(Opponent)

PROGENICS PHARMACEUTICALS, INC.  
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**Representative:**

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**Respondent:**  
(Patent Proprietor)

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**Representative:**

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**Decision under appeal:**

Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
13 May 2008 concerning maintenance of European  
patent No. 0811063 in amended form.

**Composition of the Board:**

**Chairman:** M. Wieser  
**Members:** T. J. H. Mennessier  
C. Heath

## Summary of Facts and Submissions

- I. The opponent (appellant) lodged an appeal against the interlocutory decision of the opposition division dated 13 May 2008, whereby European patent No. 0 811 063, which had been granted on European application No. 96 945 669.8 (published under the international publication No. WO 97/22698), was maintained in an amended form on the basis of the first auxiliary request (claims 1 to 23) filed at the oral proceedings held on 19 February 2008.
- II. The patent had been opposed on the grounds as set forth in (i) Article 100(a) EPC that the invention was neither new nor inventive, (ii) Article 100(b) EPC that it was not sufficiently disclosed and (iii) Article 100(c) EPC that the patent contained subject-matter which extends beyond the content of the application as filed.
- III. The appellant filed its statement of grounds of appeal on 23 September 2008. Objections were raised only against claims 16 to 18 of the request on the basis of which the patent was maintained. Oral proceedings were requested.

Claims 16 to 18 read as follows:

"16. An antibody product that specifically binds a human 88C polypeptide consisting of the amino acid sequence set out in SEQ ID NO:2."

"17. A hybridoma producing an antibody according to claim 16."

"18. An antibody product according to claim 16 for use in therapy."

- IV. In its reply to the statement of grounds, dated 23 January 2009, the respondent refuted the appellant's objections and requested Oral proceedings.
- V. On 7 March 2011, the board issued a communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal expressing a provisional and non-binding opinion on some of the pending issues.
- VI. On 9 June 2011, the respondent replied to the board's communication by filing a set of claims 1 to 20 as its sole request which corresponded to the set of claims of the statement of grounds without claims 16 to 18 as well as amended description pages 3 to 5.
- VII. In a communication faxed on 28 June 2011, the board informed the parties that it was now in a position to set aside the decision under appeal and to maintain the patent on the basis of the documents filed under cover of the letter of 9 June 2011. In view of the fact that the appellant in its grounds of appeal had only challenged the claims that had been deleted, the board asked the parties to indicate whether they maintained their respective requests for oral proceedings.
- VIII. Both parties replied to the board's communication, on 30 June 2011 (respondent) and 1 July 2011 (appellant), by conditionally withdrawing their respective requests for oral proceedings. In consequence, oral proceedings were cancelled.

- IX. The appellant (opponent) agreed that the patent be maintained on the basis of the set of claims and the amended description pages filed with the letter of 9 June 2011.
- X. The respondent (patentee) requested that the decision under appeal be dismissed and the patent be maintained on the basis of claims 1 to 20 of the request filed under cover of the letter of 9 June 2011 and description pages 3 to 5 filed under cover of the same letter.

### **Reasons for the decision**

1. The set of claims 1 to 20 filed under cover of the letter of 9 June 2011 consists exclusively of claims which, while present in the set of claims as granted (see claims 1 to 15 and 25 to 29), had not been challenged in the statement of grounds. Therefore, as these new filed claims are outside the framework within which the first instance decision is to be reviewed by the board under Article 110 EPC, the board reaches the conclusion that the patent may be maintained on their basis.
2. The board is satisfied that, by filing amended description pages 3 to 5 under cover of the letter of 9 June 2011, the description was satisfactorily amended in accordance with the EPC.

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent in the following version:

Description:

Pages 2 and 6 to 38, including the sequence listing, of the patent specification

Pages 3 to 5 filed under cover of the letter dated 9 June 2011

Claims:

No. 1 to 20 of the request filed under cover of the letter dated 9 June 2011

The Registrar

The Chairman

A. Wolinski

M. Wieser