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**Datasheet for the decision
of 27 March 2012**

Case Number: T 1580/08 - 3.3.04

Application Number: 99301747.4

Publication Number: 0941738

IPC: A61K 39/385

Language of the proceedings: EN

Title of invention:

Antigenic conjugates of conserved lipooligosaccharides of gram negative bacteria

Patentee:

University of Iowa Research Foundation

Opponents:

GlaxoSmithKline Biologicals s.a.
Sanofi Pasteur SA

Headword:

Antigenic conjugates/UNIVERSITY OF IOWA

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"Basis of decision - patent proprietor no longer approves of the text of the patent"

Decisions cited:

T 0073/84

Catchword:

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Case Number: T 1580/08 - 3.3.04

D E C I S I O N
of the Technical Board of Appeal 3.3.04
of 27 March 2012

Appellant: University of Iowa Research Foundation
(Patent Proprietor) Iowa Centers for Enterprise
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Representative: Dörries, Hans Ulrich
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Appellant: GlaxoSmithKline Biologicals s.a.
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Representative: Lubienski, Michael John
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Party as of right: Sanofi Pasteur SA
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Representative: Ayroles, Marie-Pauline
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
5 June 2008 concerning maintenance of European
patent No. 0941738 in amended form.

Composition of the Board:

Chairman: C. Rennie-Smith
Members: R. Morawetz
R. Gramaglia

Summary of Facts and Submissions

I. Appeals were lodged by the proprietor (hereinafter appellant I) and opponent 01 (hereinafter appellant II) against the interlocutory decision of the opposition division on the amended form in which the patent No. 0 941 738 can be maintained.

II. The board issued a summons to oral proceedings dated 13 December 2011 accompanied by a communication pursuant to Article 15(1) Rules of Procedure of the Boards of Appeal (RPBA).

III. Appellant I informed the board by a letter of 29 February 2012 as follows:

"we herewith indicate in accordance with Legal Advice No. 11/82 (OJ 1982, 57) that the Proprietor no longer approves the text of the European Patent 0 941 738 as granted. We also indicate that the Proprietor does not intend to submit or wish to pursue any otherwise amended text.

We understand that the oral hearing scheduled for April 18, 2012 will now be cancelled and that the European Patent 0 941 738 will now be revoked without further ado in accordance with the above Legal Advice."

IV. Appellant II requested that the decision under appeal be set aside and that the patent be revoked. It also requested oral proceedings if the board was minded to maintain the patent in any form.

- V. The parties were informed by a communication of 7 March 2012 that the oral proceedings had been cancelled.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Such an agreement does not exist if the proprietor - as in the present case - expressly states that it no longer approves the text as granted and does not intend to submit or wishes to pursue any amended text. From these statements it may be inferred that the proprietor wishes to prevent any text whatever of the patent from being maintained.
3. There is therefore no text of the patent on the basis of which the board can consider the appeal. It is established case law that in these circumstances the patent must be revoked without further substantive examination (decision T 73/84 OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the EPO, 6th edition 2010, VII.C.6.1.2).
4. The statement contained in the letter of appellant I (see section III) can only be interpreted as a withdrawal of its earlier request for oral proceedings. The summons to oral proceedings could therefore be cancelled because the decision is in line with appellant's II main request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

P. Cremona

C. Rennie-Smith