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Datasheet for the decision of 2 May 2019

Case Number: T 1571/13 - 3.3.08

Application Number: 08005732.6

Publication Number: 1992697

IPC: C12N15/62, C07K14/715, C12P21/02

Language of the proceedings: EN

Title of invention:
Production of TNFR-Fc

Patent Proprietor:
Pfizer Ireland Pharmaceuticals

Opponents:
Duckett, Anthony Joseph
Steinecke, Peter

Headword:
Etanercept/PFIZER

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
No text agreed by patent proprietor - revocation of the patent

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1571/13 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 2 May 2019

Appellant I: (Patent Proprietor)	Pfizer Ireland Pharmaceuticals Operations Support Group Ringaskiddy Cork (IE)
Representative:	Ford, Timothy J. Pfizer European Patent Department 23-25 avenue du Docteur Lannelongue 75668 Paris Cedex 14 (FR)
Appellant II: (Opponent 1)	Duckett, Anthony Joseph Mathys & Squire LLP 120 Holborn London EC1N 2SQ (GB)
Representative:	Goodfellow, Hugh Robin Carpmaels & Ransford LLP One Southampton Row London WC1B 5HA (GB)
Appellant III: (Opponent 2)	Steinecke, Peter Müller Fottner Steinecke Rechtsanwälte - Patentanwälte Technologiezentrum Jülich Karl-Heinz-Beckurts-Strasse 13 52428 Jülich (DE)
Representative:	Steinecke, Peter Müller Fottner Steinecke Rechtsanwalts- und Patentanwaltspartnerschaft mbB Römerstrasse 16 b 52428 Jülich (DE)

Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted on 30 April 2013 concerning maintenance of the European Patent No. 1992697 in amended form.**

Composition of the Board:

Chairman B. Stolz
Members: P. Julià
D. Rogers

Summary of Facts and Submissions

I. European patent no. 1 992 697, based on European patent application no. 08 005 732.6 (a divisional application of European patent application no. 05 791 482.2, published as International patent application WO 2006/026447), was opposed on the grounds of Articles 100(a), (b) and (c) EPC. The opposition division considered the main request to contravene Article 76(1) EPC and the patent was maintained in amended form on the basis of an auxiliary request 1.

II. Appeals against the interlocutory decision of the opposition division were filed by the patent proprietor (appellant I) and opponents O1 and O2 (appellants II and III, respectively). All parties requested oral proceedings as an auxiliary measure.

With the statement setting out the grounds of appeal, appellant I filed a main request and auxiliary requests 1 to 18. Appellant I requested that the decision under appeal be set aside and the patent maintained on the basis of any of these requests.

With the statement setting out their grounds of appeal, appellants II and III filed new documentary evidence and requested that the decision under appeal be set aside and the patent revoked. Appellant II further requested the reimbursement of the appeal fee because of substantial procedure violations allegedly committed by the opposition division.

III. The board summoned the parties to oral proceedings. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), the

parties were informed of the board's provisional, non-binding opinion on some of the issues of the case.

IV. Under cover of a letter dated 16 April 2019, appellant I withdrew its approval of the text in which the patent was granted and further in which the patent was maintained by the opposition division. Appellant I further indicated that it would not file any replacement text and that all pending requests were withdrawn, including the request for oral proceedings.

V. The board cancelled the scheduled oral proceedings.

VI. Upon invitation of the board to clarify whether it maintained its requests, appellant III, under cover of a letter dated 30 April 2019, withdrew its request for reimbursement of the appeal fee and its auxiliary request for oral proceedings.

Reasons for the Decision

1. Article 113(2) EPC requires that the EPO shall decide upon the European patent only in the text submitted to it, or agreed by the proprietor of the patent.

Agreement cannot be held to be given if the patent proprietor without submitting an amended text, expressly states that he no longer approves the text of the patent as granted or previously amended.

Thus, a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without

going into the substantive issues (see "Case Law of the Boards of Appeal of the European Patent Office", 8th edition 2016, IV.C.5.2, 979, and decisions cited therein).

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:

L. Malécot-Grob B. Stolz

Decision electronically authenticated