Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 6 March 2018

Case Number: T 1595/13 - 3.3.10

Application Number: 07835890.0

Publication Number: 2044005

IPC: C07C235/60, C07D213/81, C07C237/42, C07C255/57

Language of the proceedings: EN

Title of invention:
PROLYL HYDROXYLASE INHIBITORS AND METHODS OF USE

Patent Proprietor:
Akebia Therapeutics Inc.

Opponent:
Pratt, Michelle Diane

Headword:

Relevant legal provisions:
EPC Art. 113(2)
EPC R. 103(2)(a)

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Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked

Decisions cited:
T 0073/84, T 0186/84, T 0655/01, T 1526/06, T 2405/12

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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
Fax +49 (0)89 2399-4465

Case Number: T 1595/13 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 6 March 2018

Respondent: (Patent Proprietor)	Akebia Therapeutics Inc. 245 First Street, Suite 1100 Cambridge, MA 02142 (US)
Representative:	Weber, Martin Jones Day Prinzregentenstraße 11 80538 München (DE)
Appellant: (Opponent)	Pratt, Michelle Diane VERULAM GARDENS 70 GRAY'S INN ROAD LONDON WC 1X 8BT (GB)
Representative:	Wise, Daniel Joseph Carpmaels & Ransford LLP One Southampton Row London WC1B 5HA (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 3 May 2013 concerning maintenance of the European Patent No. 2044005 in amended form.**

Composition of the Board:

Chairman	P. Gryczka
Members:	R. Pérez Carlón
	F. Blumer

Summary of Facts and Submissions

I. The appeal lies from the decision of the opposition division to maintain European patent No. 2 044 005 in the form of the auxiliary request 3 before it. Both the opponent and the patent proprietor appealed this decision.

II. With a letter dated 27 February 2018, the patent proprietor withdrew its appeal and requested reimbursement of the appeal fee according to Rule 103(2)(a) EPC. It withdrew any other request then pending, confirmed that no further requests would be filed, informed the board that it would not be attending the already scheduled oral proceedings before it, and withdrew its approval under Rule 71 EPC of the text in which the patent was maintained in amended form, and of the text in which the patent was granted. It argued that, in such situations, the opposition appeal proceedings were to be terminated by a decision ordering revocation of the patent, without going into any substantive issues.

III. The appellant (opponent) requested that the decision under appeal be set aside and the patent revoked.

Reasons for the Decision

1. The appeal of the opponent is admissible.

2. During these appeal proceedings, the patent proprietor withdrew its approval of the text of the patent as granted and as maintained by the opposition division.

Under Article 113(2) EPC the European Patent Office

must consider a European patent only in the text submitted to it, or agreed, by the proprietor of the patent. There is, however, no text of the patent on the basis of which the board can consider the appeal.

3. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the proprietor's will.

If a patent proprietor withdraws his approval of the text of the patent as granted and of the text in which the patent was maintained, withdraws every other request on file, and requests revocation of the patent in suit, it wishes to prevent any text whatever of the patent from being maintained.

4. In the case of T 73/84 (OJ EPO 1985, 241 see especially Headnote and Reasons) the board decided that, if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 655/01 (not published in OJ EPO), T 1526/06 (not published in OJ EPO) and T 2405/12 (not published in OJ EPO).

5. In the circumstances of the present case, the board sees no reasons to deviate from the principles set out in the above-mentioned decisions. The patent must therefore be revoked without going into any substantive issue.

6. Since the patent proprietor withdrew its appeal more than four weeks before the date set for oral proceedings, its appeal fee shall be reimbursed at 50%.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

3. The appeal fee of the patent proprietor shall be refunded at 50%.

The Registrar: The Chairman:

C. Rodríguez Rodríguez P. Gryczka

Decision electronically authenticated