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**Datasheet for the decision
of 11 May 2020**

Case Number: T 0655/14 - 3.3.08

Application Number: 04764305.1

Publication Number: 1658376

IPC: C12N1/21, C12P21/02

Language of the proceedings: EN

Title of invention:

PROCESS FOR THE PREPARATION OF RECOMBINANT POLYPEPTIDES

Patent Proprietor:

SANDOZ AG

Opponents:

GLAXO GROUP LIMITED
Zimmer, Franz-Josef

Headword:

Process for preparing recombinant polypeptides/SANDOZ AG

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis for a decision on the appeal (no) - revocation of the patent

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0655/14 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 11 May 2020

Appellant:
(Patent Proprietor)

SANDOZ AG
Lichtstrasse 35
4056 Basel (CH)

Representative:

Dörries, Hans Ulrich
df-mp Dörries Frank-Molnia & Pohlman
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Appellant:
(Opponent 1)

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Representative:

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Appellant:
(Opponent 2)

Zimmer, Franz-Josef
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Representative:

Zimmer, Mr F.
Seisenberger, Mr G.
Grünecker Patent- und Rechtsanwälte
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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
11 March 2014 concerning maintenance of the
European Patent No. 1658376 in amended form.**

Composition of the Board:

Chairman B. Stolz
Members: D. Pilat
 D. Rogers

Summary of Facts and Submissions

- I. European patent No. 1 658 376 based on European patent application No. 04764305.1 (published as International patent application WO 2005/019466; hereinafter "the patent application") was opposed on the grounds of Articles 100(a), (b) and (c) EPC.
- II. In an interlocutory decision the opposition division found the main request to contravene Article 56 EPC and took the view that auxiliary request 1 and the description adapted thereto complied with the requirements of the EPC.
- III. The patent proprietor (appellant I), and opponents 1 and 2 (appellant II and III respectively) lodged an appeal against the decision of the opposition division. All parties requested that the decision under appeal be set aside.
- IV. The parties were summoned to oral proceedings.
- V. During oral proceedings, the patent proprietor informed the board of appeal that it no longer approved the text of the patent as granted, and of any other version of the text. Appellant I filed a written note of its withdrawal of approval of the text of the patent.

Reasons for the Decision

1. According to Article 113(2) EPC, the European Patent Office may decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. Agreement cannot be held to be given if the patent proprietor expressly states that it no longer approves the text of the patent as amended by way of any of the claim requests on file (see section V above).

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 proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see, *inter alia*, decisions T 73/84, OJ EPO 1985, 241; followed by numerous decisions, see e.g. recent decisions T 307/13 and T 1536/14 and T 186/84, OJ EPO 1986, 79, cited in Case Law of the Boards of Appeal of the EPO, 9th edition, 2019, IV.D.2, page 1121).

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