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**Datasheet for the decision
of 26 August 2020**

Case Number: T 0344/15 - 3.3.08

Application Number: 07811872.6

Publication Number: 2021472

IPC: C12N15/113

Language of the proceedings: EN

Title of invention:

COMPOUNDS AND METHODS FOR MODULATING GENE EXPRESSION

Patent Proprietor:

Ionis Pharmaceuticals, Inc.

Opponent:

Roche Innovation Center Copenhagen A/S

Headword:

Gapmer antisense compound/IONIS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

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

Decisions cited:

T 0073/84, T 0186/84, T 1561/17, T 0655/14

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0344/15 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 26 August 2020

Appellant I: Ionis Pharmaceuticals, Inc.
(Patent Proprietor) 2855 Gazelle Court
Carlsbad, CA 92010 (US)

Representative: Chapman, Desmond Mark
Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Appellant II: Roche Innovation Center Copenhagen A/S
(Opponent) Fremtidsvej 3
2970 Hørsholm (DK)

Representative: D Young & Co LLP
Briton House
Briton Street
Southampton SO14 3EB (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 December 2014 concerning maintenance of the
European Patent No. 2021472 in amended form.**

Composition of the Board:

Chairman B. Stolz
Members: M. R. Vega Laso
J. Geschwind

Summary of Facts and Submissions

- I. European patent No. 2 021 472 with the title "Compounds and methods for modulating gene expression" was granted on the European patent application No. 07811872.6.
- II. An opposition to the grant of the patent was filed. In an interlocutory decision posted on 22 December 2014, an opposition division found that, account being taken of the amendments made in the claims according to the auxiliary request 1 filed by the patent proprietor during the oral proceedings, the patent and the invention to which it related met the requirements of the EPC.
- III. Each of the patent proprietor (appellant I) and the opponent (appellant II) filed an appeal against the interlocutory decision.
- IV. Together with its statement of grounds of appeal, appellant I filed two sets of amended claims as new auxiliary requests 1 and 2. It maintained its main request (patent as granted) as well as the sets of claims according to the auxiliary request 1 filed during the oral proceedings before the opposition division, and the auxiliary requests 1 to 3 filed on 27 February 2014, which had been renumbered at the oral proceedings as auxiliary requests 2 to 4.
- V. Appellant II submitted a statement setting out the grounds of appeal, including additional evidence.
- VI. Each party replied to the statement of grounds of the other party.

- VII. Under cover of its reply dated 18 September 2015, appellant I filed twelve sets of amended claims as auxiliary requests 1 to 12, of which auxiliary requests 1 to 6 corresponded to the auxiliary requests submitted together with its statement of grounds of appeal, and auxiliary requests 7 to 12 were new requests.
- VIII. Together with its reply, appellant II filed additional evidence.
- IX. Further submissions were made by the parties. Appellant II's submissions included yet further evidence.
- X. Pursuant to their respective request, the parties were summoned to oral proceedings.
- XI. Appellant II submitted further arguments and evidence.
- XII. By letter dated 23 July 2020, appellant I withdrew its approval of the text of the patent as well as all its outstanding requests, including the request for oral proceedings.
- XIII. The oral proceedings were cancelled.

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 (the present appellant I) expressly states that it no longer approves the text of the patent and withdraws all its outstanding requests. It should be noted that the auxiliary request 6 submitted by appellant I on 18 September 2015 is identical to the auxiliary request 1 filed during the oral proceedings in opposition proceedings, which the opposition division found to meet the requirements of the EPC.

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; T 186/84, OJ EPO 1986, 79; T 1561/17 of 27 November 2017; and T 655/14 of 11 May 2020).

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