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Datasheet for the decision of 5 February 2019

Case Number: T 0458/15 - 3.3.04

Application Number: 02724176.9

Publication Number: 1361890

IPC: A61K39/145, C12N7/04

Language of the proceedings: EN

Title of invention:
Influenza vaccine formulations for intradermal delivery

Patent Proprietor:
GlaxoSmithKline Biologicals s.a.

Opponents:
Bock Wolfgang
Merck Sharp & Dohme Corporation (opposition withdrawn)
Sanofi Pasteur SA (opposition withdrawn)

Headword:
Influenza vaccine formulations/GLAXOSMITHKLINE

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by patent proprietor

Decisions cited:
T 0073/84

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 0458/15 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 5 February 2019

Appellant: (Opponent 1)	Bock Wolfgang Stuntzstrasse 33 81677 München (DE)
Representative:	Samson & Partner Patentanwälte mbB Widenmayerstraße 6 80538 München (DE)
Respondent: (Patent Proprietor)	GlaxoSmithKline Biologicals s.a. rue de l'Institut 89 1330 Rixensart (BE)
Representative:	Dalton, Marcus Jonathan William GlaxoSmithKline Global Patents (CN925.1) 980 Great West Road Brentford, Middlesex TW8 9GS (GB)

Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted on 23 December 2014 concerning maintenance of the European Patent No. 1361890 in amended form.**

Composition of the Board:

Chair G. Alt
Members: R. Morawetz
L. Bühler

Summary of Facts and Submissions

I. This decision concerns the appeal filed by the (sole remaining) opponent (appellant) against the decision of the opposition division holding that European patent No. 1 361 890 could be maintained in amended form.

II. The appellant requested that the decision under appeal be set aside and that the patent be revoked. Oral proceedings were requested on an auxiliary basis.

III. The patent proprietor (respondent) filed observations on the appeal and requested that the appeal be dismissed or, alternatively, that the patent be maintained on the basis of the sets of claims of one of eight auxiliary requests. Oral proceedings were requested on an auxiliary basis.

IV. By letter dated 7 January 2019 the respondent informed the board that:

"*The Patentee no longer approves the text in any form, including the text in which the patent was maintained by the opposition division and any amended text submitted as an auxiliary request.*

The patent may be revoked and oral proceedings are no longer required".

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is therefore admissible.

Disapproval of the text of the patent by the patent proprietor

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

3. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly states that it "*no longer approves the text of the patent in any form*" and that "[*t*]*he patent may be revoked*" (see section IV).

4. There is therefore no text of the patent on the basis of which the board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see decision T 73/84, OJ EPO, 1985, 241 and Case Law of the Boards of Appeal of the EPO, 8th edition, 2016, IV.C.5.2, page 979).

5. The statement contained in the letter of the respondent that "*oral proceedings are no longer required*" (see section V) can only be interpreted as a withdrawal of its earlier request for oral proceedings. The present decision could thus be taken without holding oral proceedings because it is in line with appellant's main request (see section II).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chair:

S. Lichtenvort G. Alt

Decision electronically authenticated