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**Datasheet for the decision
of 26 January 2022**

Case Number: T 0408/17 - 3.3.04

Application Number: 05766644.8

Publication Number: 1776383

IPC: C07K16/00, A01K67/027, C12N5/10

Language of the proceedings: EN

Title of invention:
Binding molecules

Patent Proprietors:
Erasmus University Medical Center Rotterdam
Craig, Roger Kingdon

Opponents:
Regeneron Pharmaceuticals, Inc.
Ablynx N.V.
Crescendo Biologics Limited (opposition withdrawn)

Headword:
Method for producing a soluble, antigen-specific VH binding
domain/ERASMUS UNIVERSITY and CRAIG ROGER

Relevant legal provisions:
EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84



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Case Number: T 0408/17 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 26 January 2022

Appellant: Regeneron Pharmaceuticals, Inc.
(Opponent 1) 777 Old Saw Mill River Road
Tarrytown NY 10591 (US)

Representative: J A Kemp LLP
80 Turnmill Street
London EC1M 5QU (GB)

Respondents: Erasmus University Medical Center Rotterdam
(Joint patent proprietors) Department of Cell Biology and Genetics,
P.O.Box 1738
3000 DR Rotterdam (NL)

Craig, Roger Kingdon
Jubilee House Farm, Spen Moss, Smallwood
Sandbach, Cheshire CW11 2XB (GB)

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

Party as of right: Ablynx N.V.
(Opponent 2) Technologiepark 21
9052 Ghent-Zwijnaarde (BE)

Representative: Sanofi
54, rue La Boétie
75008 Paris (FR)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on
22 December 2016 rejecting the opposition filed
against European patent No. 1776383 pursuant to
Article 101(2) EPC.**

Composition of the Board:

Chair M. Blasi
Members: R. Morawetz
 A. Schmitt

Summary of Facts and Submissions

- I. The appeal by opponent 1 (appellant) lies from the opposition division's decision rejecting the oppositions against the patent.
- II. Three oppositions were filed. The patent was opposed under Article 100(a) EPC on the ground of lack of inventive step (Article 56 EPC), and under Article 100(b) and (c) EPC. Opponent 3 withdrew the opposition during the opposition proceedings and ceased to be a party. The patent proprietors are the respondents in these appeal proceedings and opponent 2 is a party as of right.
- III. In its statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that the patent be revoked. Oral proceedings were requested in the event that the board intended any outcome other than revocation of the patent.
- IV. In reply to the statement of grounds of appeal the respondents submitted sets of claims of auxiliary requests 1 to 7 and requested that the appeal be dismissed (i.e. that the patent be maintained as granted) and oral proceedings if the board cannot grant this request. As auxiliary requests, the respondents requested that the patent be maintained in amended form on the basis of one of the set of claims of auxiliary requests 1 to 7.
- V. The board appointed oral proceedings as requested by the parties and, in a subsequent communication pursuant to Article 15(1) RPBA, provided its preliminary

appreciation of some matters concerning the appeal.

VI. In a letter dated 21 January 2022, the respondents declared as follows

"The Proprietors hereby withdraw their approval under Rule 71 EPC of the text in which European Patent No. 1776383 was granted. The Proprietors will not be filing a replacement text. For the avoidance of doubt, the Proprietors also withdraw all requests pending in the appeal proceedings.

In the absence of a text agreed by the Proprietors, the opposition proceedings relating to this patent are terminated following Article 113(2) EPC, and the patent must be revoked."

VII. The board thereafter cancelled the oral proceedings.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is admissible.
2. Pursuant to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine, and 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 joint patent proprietors - as in the present case - expressly declare that they withdraw the consent to the text of the patent in the form as granted, withdraw all claim requests on file and declare that they will not be filing a replacement text (see section VI.).

4. There is therefore no text of the patent on the basis of which the board can consider the appeal. In these circumstances, the patent is to be revoked, without assessing issues relating to patentability (see decision T 73/84, OJ EPO 1985, 241, and Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, IV.D.2).

5. Revocation of the patent is equally the main request of the appellant. There are also no remaining issues that need to be dealt with by the board in the present appeal case. The decision in the present appeal case can therefore be taken without holding oral proceedings.

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:



I. Aperribay

M. Blasi

Decision electronically authenticated