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**Datasheet for the decision
of 27 November 2017**

Case Number: T 1561/17 - 3.3.08

Application Number: 10011278.8

Publication Number: 2272951

IPC: C12N9/04

Language of the proceedings: EN

Title of invention:

Vitamin K epoxide recycling polypeptide VKORC1, a therapeutic target of coumarin and their derivatives

Patent Proprietor:

Baxalta Incorporated
Baxalta GmbH

Opponents:

Emergent BioSolutions Inc.
Cangene Corporation

Headword:

Coumarin therapeutic target/BAXALTA

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

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

Decisions cited:

G 0009/92, T 0073/84, T 0186/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 1561/17 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 27 November 2017

Appellant: Cangene Corporation
(Opponent 2) 155 Innovation Drive,
Winnipeg MB R3T 5Y3 (CA)

Representative: Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2ES (GB)

Respondent: Baxalta Incorporated
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Respondent: Baxalta GmbH
(Patent Proprietor 2) Zählerweg 4
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Representative: Hoffmann Eitle
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81925 München (DE)

Party as of right: Emergent BioSolutions Inc.
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Gaithersburg, MD 20879 (US)

Representative: Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2ES (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
15 May 2017 concerning maintenance of the
European Patent No. 2272951 in amended form.

Composition of the Board:

Chairman B. Stolz
Members: M. R. Vega Laso
D. Rogers

Summary of Facts and Submissions

- I. European patent No. 2 272 951 with the title "Vitamin K epoxide recycling polypeptide VKORC1, a therapeutic target of coumarin and their derivatives" was granted on the European patent application No. 10 011 278.8.
- II. Two oppositions to the grant of the patent were filed. In an interlocutory decision under Articles 101(3)(a) and 106(2) EPC posted on 15 May 2017, an opposition division found that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, the patent and the invention to which it relates met the requirements of the EPC.
- III. The patent proprietors, who hereafter will be referred to in the singular, and opponent 02 filed appeals against the interlocutory decision.
- IV. Opponent 2 (appellant) submitted a statement setting out the grounds of appeal and requested that the decision under appeal be set aside and the patent be revoked.
- V. On 25 September 2017, the patent proprietor withdrew its appeal and became a respondent in this procedure.
- VI. Opponent 01 (party as of right) did not make any submissions.
- VII. By letter dated 17 October 2017, the patent proprietor informed the board that it no longer approved the text in which the patent was granted, and that it no longer approved the amended text of the patent according to any of the requests "*filed during the present opposition/appeal proceedings*".

Reasons for the Decision

1. Opponent 2 is the sole appellant against the interlocutory decision of the opposition division holding that the patent can be maintained in amended form. Thus, in appeal proceedings the respondent (patent proprietor) is primarily restricted to defending the patent in the amended form (G 9/92, OJ EPO 1994, 875).
2. 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.
3. 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 VII above).
4. 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, followed by numerous decisions cited in Case Law of the Boards of Appeal of the EPO, 8th edition, 2016, IV.C.5.2, page 979).

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