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**Datasheet for the decision  
of 22 March 2021**

**Case Number:** T 1489/18 - 3.3.04

**Application Number:** 11185913.8

**Publication Number:** 2476705

**IPC:** C07K16/28, A61K39/395

**Language of the proceedings:** EN

**Title of invention:**

Monoclonal antibodies against NKG2A

**Patent Proprietor:**

Innate Pharma  
Universita di Genova

**Opponent:**

Merck Sharp & Dohme Corp.

**Headword:**

Anti-NKG2A antibodies/INNATE

**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Basis of decision - text or agreement to text withdrawn by  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

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1489/18 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 22 March 2021**

**Appellants I:**  
(Patent Proprietors)

Innate Pharma  
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Universita di Genova  
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16132 Genova (IT)

**Representative:**

Nederlandsch Octrooibureau  
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**Appellant II:**  
(Opponent)

Merck Sharp & Dohme Corp.  
126 East Lincoln Avenue  
Rahway, NJ 07065-0907 (US)

**Representative:**

Elena Böhles  
Merck Sharp & Dohme Corp.  
120 Moorgate  
London, EC2M 6UR (GB)

**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
18 April 2018 concerning maintenance of the  
European Patent No. 2476705 in amended form.**

**Composition of the Board:**

<b>Chair</b>	P. de Heij
<b>Members:</b>	O. Lechner
	R. Morawetz

## **Summary of Facts and Submissions**

- I. Appeals were lodged by the patent proprietors (appellants I) and the opponent (appellant II) against the opposition division's interlocutory decision according to which European patent No. 2 476 705 (the patent) as amended in the form of auxiliary request 2, and the invention to which it relates, were found to meet the requirements of the EPC.
- II. With their statement of grounds of appeal appellants I requested that the decision under appeal be set aside and the patent be maintained on the basis of the claims as granted (main request), or alternatively on the basis of one of auxiliary requests 1 to 6. Oral proceedings were requested on an auxiliary basis.
- III. In their statement of grounds of appeal appellant II requested that the decision under appeal be set aside and that the patent be revoked in its entirety for all designated states. Oral proceedings were requested on an auxiliary basis.
- IV. Both parties replied to each other's statement of grounds of appeal.
- V. The board summoned oral proceedings and issued a communication pursuant to Article 15(1) RPBA setting out its preliminary opinion.
- VI. Upon request of appellants I the oral proceedings were rescheduled to take place on 22 and 23 March 2021. In a further communication the board informed the parties that the oral proceedings would be held by videoconference.

- VII. With letter of 25 February 2021, appellant II informed the board that they would not attend the scheduled oral proceedings.
- VIII. With letter of 16 March 2021, appellants I stated that at the oral proceedings they intended to defend the patentability of the main request and auxiliary request 1. They also filed a new auxiliary request 7.
- IX. Oral proceedings before the board took place on 22 March 2021 in the absence of appellant II. At the end of the oral proceedings appellants I declared that they did no longer approve of the text of the patent in suit and of all claim requests on file. They also stated that no amended text would be submitted and requested that the patent be revoked.
- X. At the end of the oral proceedings, the Chair announced the board's decision.

### **Reasons for the Decision**

1. The appeals comply with Articles 106 to 108 and Rule 99 EPC and are therefore admissible.
2. Pursuant to Article 113(2) EPC the European Patent Office 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 patent proprietors - as in the present case - expressly state that they no longer approve the text of the patent as granted and withdraw all pending claim requests (see section IX. above).

4. There is therefore no text of the patent on the basis of which the board can consider the appeals and compliance with the requirements of the EPC. It is established case law that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and further decisions cited in Case Law of the Boards of Appeal of the European Patent Office, 9th Edition 2019, IV.D.2). The board has no reason in the present case to deviate from this consistent approach of the Boards of Appeal.
5. There are no remaining issues that need to be dealt with by the board in the present appeal case.

## 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

P. de Heij

Decision electronically authenticated