

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 27 October 2022**

Case Number: T 1511/18 - 3.3.04

Application Number: 09729337.7

Publication Number: 2275443

IPC: C07K16/28, C12N15/10,
G01N33/68, A61K39/00, C07K16/24

Language of the proceedings: EN

Title of invention:

Antigen-binding molecule capable of binding to two or more antigen molecules repeatedly

Patent Proprietor:

Chugai Seiyaku Kabushiki Kaisha

Opponents:

James Poole Limited
Glaxo Group Limited
Strawman Limited
Ablynx N.V.
Alexion Pharmaceuticals, Inc.

Headword:

Antigen-binding molecule/CHUGAI

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Basis of decision - text or agreement to text withdrawn by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, T 0237/86, T 0186/84, T 0459/88, T 0789/89,
T 0655/01, T 1526/06, T 1960/12, T 1467/16



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 1511/18 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 27 October 2022

Appellant I: James Poole Limited
(Opponent 1) One Southampton Row
London WC1B 5HA (GB)

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

Appellant II: Glaxo Group Limited
(Opponent 2) 980 Great West Road
Brentford Middlesex TW8 9GS (GB)

Representative: Wilson, Lynn Margaret
GlaxoSmithKline
Global Patents (CN925.1)
980 Great West Road
Brentford, Middlesex TW8 9GS (GB)

Appellant III: Ablynx N.V.
(Opponent 4) Technologiepark 21
9052 Ghent-Zwijnaarde (BE)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Respondent: Chugai Seiyaku Kabushiki Kaisha
(Patent Proprietor) 5-1, Ukima 5-chome
Kita-ku
Tokyo 115-8543 (JP)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 26 April 2018 rejecting the opposition filed against European patent No. 2275443 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman L. Bühler
Members: B. Rutz
 S. Albrecht

Summary of Facts and Submissions

- I. The appeals by opponents 1, 2, 4 and 5 (appellants I, II, III and IV) lie from the decision of the opposition division to reject the oppositions against European patent No. EP 2 275 443.
- II. The patent proprietor (respondent) replied to the appeals, re-filed auxiliary requests 1 and 4 to 14 which were identical to the respective auxiliary requests filed during opposition and filed corrected auxiliary requests 2 and 3.
- III. Appellant II (opponent 2) withdrew its request for oral proceedings and stated that it would not be represented at oral proceedings.
- IV. Opponent 3 withdrew its opposition and is no longer party to the appeal proceedings as regards the substantive issues (T 789/89, OJ 1994, 482).
- V. Appellant IV (opponent 5) withdrew its opposition and is no longer party to the appeal proceedings as regards the substantive issues.
- VI. The board appointed oral proceedings and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- VII. Appellants I, II and III request that the decision under appeal be set aside and the patent be revoked.
- VIII. During oral proceedings on 27 October 2022, the patent proprietor declared that it no longer approved the text

in which the patent was granted, and that it withdrew all other requests.

Reasons for the Decision

1. The appeals of appellants I, II and III (opponents 1, 2 and 4) comply with Articles 106 to 108 and Rule 99 EPC and are admissible.
2. Pursuant to 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 is deemed not to exist if the patent proprietor - as in the present case - expressly declares that it no longer approves the text in which the patent was granted, and that it no longer approves the amended text of the patent contained in any of the requests filed during the opposition/appeal proceedings (see section VIII.).
4. There is therefore no text of the patent on the basis of which the board can decide. In these circumstances, the patent is to be revoked, without assessing issues relating to patentability (see decision T 1467/16 and earlier decisions T 73/84, T 186/84, T 237/86, T 459/88, T 655/01, T 1526/06 and T 1960/12 cited therein). The board has no reason to deviate from this approach of the boards of appeal.

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:



I. Aperribay

L. Bühler

Decision electronically authenticated