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**Datasheet for the decision
of 6 April 2022**

Case Number: T 2454/18 - 3.3.04

Application Number: 09705327.6

Publication Number: 2244722

IPC: A61K38/16, C07K14/31

Language of the proceedings: EN

Title of invention:

Treatment of microbial infections

Patent Proprietor:

The Provost, Fellows, Foundation Scholars, & the
other members of Board, of the College of the Holy
& Undiv. Trinity of Queen Elizabeth near Dublin

Opponent:

Pfizer Inc.

Headword:

Treatment of microbial infections/PFIZER

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Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2454/18 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 6 April 2022

Appellant: The Provost, Fellows, Foundation Scholars, & the
(Patent Proprietor) other members of Board, of the College of the
Holy & Undiv. Trinity of Queen Elizabeth near
Dublin
College Green
Dublin 2 (IE)

Representative: FRKelly
27 Clyde Road
Dublin D04 F838 (IE)

Appellant: Pfizer Inc.
(Opponent) 235 East 42nd Street
New York, NY 10017 (US)

Representative: Pfizer
European Patent Department
23-25 avenue du Docteur Lannelongue
75668 Paris Cedex 14 (FR)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
24 August 2018 concerning maintenance of the
European Patent No. 2244722 in amended form

Composition of the Board:

Chair M. Blasi
Members: A. Schmitt
B. Rutz

Summary of Facts and Submissions

- I. The appeals lodged by the patent proprietor (appellant I) and the sole opponent (appellant II) lie from the interlocutory decision of the opposition division that European patent No. 2 244 722 (patent), as amended in the form of auxiliary request 10, and the invention to which it relates meet the requirements of the EPC.
- II. In the statement of grounds of appeal the patent proprietor requested that the patent be maintained in amended form based on one of the sets of claims of a main request or of auxiliary requests 1 to 3, or, alternatively, in the form of auxiliary request 10 as considered allowable by the opposition division.
- III. With its statement of grounds of appeal the opponent requested that the decision under appeal be set aside and that the patent be revoked.
- IV. The board summoned to oral proceedings, as requested by both parties, and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- V. In a letter dated 4 April 2022, the patent proprietor stated that it no longer approved the text of the patent as granted or previously amended. It also informed the board that it would not be submitting an amended text and that it expected a revocation of the patent.
- VI. The board then cancelled the oral proceedings.

Reasons for the Decision

1. The appeals comply with Articles 106 to 108 and Rule 99 EPC and are 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 patent proprietor - as in the present case - expressly withdrew the consent to the text of the patent in the form as granted or previously amended, withdrew all claim requests on file and stated that no further amended text would be filed (see section V.).
4. There is therefore no text of the patent on the basis of which the board can consider the appeals. 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 also the main request of the opponent (see section III.). 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:



A. Chavinier Tomsic

M. Blasi

Decision electronically authenticated