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**Datasheet for the decision
of 15 June 2021**

Case Number: T 1407/19 - 3.3.04

Application Number: 11741348.4

Publication Number: 2590676

IPC: A61K39/155

Language of the proceedings: EN

Title of invention:

Virion-like delivery particles for self-replicating RNA molecules

Patent Proprietor:

GlaxoSmithKline Biologicals SA

Opponents:

Bayer Intellectual Property GmbH/Bayer Pharma
Aktiengesellschaft/Bayer Animal Health GmbH
Müller, Christian

Headword:

Virion-like delivery particles/GSK

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Basis of decision - text or agreement to text withdrawn by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

Boards of Appeal of the
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Case Number: T 1407/19 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 15 June 2021

Appellant: GlaxoSmithKline Biologicals SA
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Appellant: Bayer Intellectual Property GmbH/Bayer Pharma
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Representative: Cohausz & Florack
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Appellant: Müller, Christian
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 March 2019 concerning maintenance of the
European Patent No. 2590676 in amended form.**

Composition of the Board:

Chairman A. Chakravarty
Members: O. Lechner
 P. de Heij

Summary of Facts and Submissions

- I. European patent No. 2 590 676, entitled "*Virion-like delivery particles for self-replicating RNA molecules*" was opposed under Articles 100(a) to (c) EPC.
- II. By way of an interlocutory decision, the opposition division held that the patent on the basis of an auxiliary request 3 met the requirements of the European Patent Convention.
- III. The patent proprietor (appellant I) as well as opponent 1 (appellant II) and opponent 2 (appellant III) filed appeals against the decision.
- IV. In their statement of grounds of appeal, the patent proprietor requested, in so far as relevant to the present decision:
 - that the decision under appeal be set aside,
 - that the patent be maintained as granted (main request),
 - alternatively, that the patent be maintained on the basis of the set of claims of one of auxiliary requests 1 to 14.
- V. The opponents requested in their statements of grounds of appeal, in so far as relevant to the present decision,
 - that the decision under appeal be set aside and the patent be revoked.
- VI. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.

VII. In reply, the proprietor withdrew their approval of the text in which the European Patent was granted. They also withdrew all auxiliary requests and announced to not file a replacement text or any further request. The board understands that the patent proprietor's final request is that the proceedings be terminated by a decision ordering the revocation of the patent without reference to any of the substantive issues.

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 EPO shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
3. Such an agreement cannot be deemed to exist if the proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted and no alternative text is offered.
4. There is therefore no text of the patent on the basis of which the board can consider compliance thereof with the requirements of the EPC. It is established case law of the boards of appeal of the European Patent Office that in these circumstances the patent must be revoked without further substantive examination (see decision T 73/84 and further decisions cited in Case Law of the Boards of Appeal 9th edition, 2019, IV.D.2., paragraphs 2 and 3).

5. The board has no reason to deviate from this consistent approach of the Boards of Appeal.
6. There are no remaining issues that have to be dealt with by the board in the present appeal case. The decision can be taken without holding oral proceedings since the parties' requests for oral proceedings were conditional on the board not granting their main requests which, however, are allowed.

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:



C. Rodríguez Rodríguez

A. Chakravarty

Decision electronically authenticated