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**Datasheet for the decision
of 22 November 2022**

Case Number: T 1557/19 - 3.3.08

Application Number: 11728077.6

Publication Number: 2575835

IPC: A61K35/74, C12N1/00, C12Q1/02,
G01N33/50

Language of the proceedings: EN

Title of invention:

Composition for inducing proliferation or accumulation of
regulatory T cells

Patent Proprietor:

The University of Tokyo

Opponents:

Seres Therapeutics, Inc.
Manke, Lars (opposition withdrawn)
Strawman Limited
Grund, Martin, Dr.
Société des Produits Nestlé S.A.
Müller Fottner Steinecke Rechtsanwalts- und
Patentanwaltpartnerschaft mbB

Headword:

Composition for inducing regulatory T cells/THE UNIVERSITY OF
TOKYO

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Basis of decision - text or agreement to text withdrawn by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 0186/02



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1557/19 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 22 November 2022

Appellant I:
(Patent Proprietor)

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(Opponent 1)

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(Opponent 3)

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
25 March 2019 concerning maintenance of the
European Patent No. 2575835 in amended form**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: R. Morawetz
R. Romandini

Summary of Facts and Submissions

- I. The appeals of the patent proprietor, opponent 1, opponent 3 and opponent 5 are against the interlocutory decision of the opposition division maintaining European patent No. 2 575 835 (the patent) in amended form on the basis of auxiliary request 2. Opponents 4 and 6 are parties as of right. Opponent 2 withdrew its opposition with letter dated 3 January 2019 and never was a party to the appeal proceedings.

- II. With the statement of grounds of appeal, the patent proprietor requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request or one of auxiliary requests 1 to 23 and oral proceedings prior to any adverse decision by the board.

- III. With their statements of grounds of appeal, opponents 1, 3 and 5 requested that the decision under appeal be set aside and that the patent be revoked and oral proceedings in case the board was not minded to revoke the patent. Opponent 1 in addition requested that the board consider whether the opposition division's decision not to permit further submissions concerning document D101 at oral proceedings represented a substantial procedural violation of the opponents' right to be heard.

- IV. The board appointed oral proceedings to be held on 22, 23 and 24 November 2022.

V. In a letter dated 15 November 2022, the patent proprietor declared as follows:

"The patent proprietor no longer approves of the text with which the above-mentioned patent [European Patent 2 575 835] was granted. The proprietor likewise no longer approves of the text of the patent as maintained by the Opposition Division, and the same applies to all the proprietor's pending main and auxiliary claim requests in the present appeal proceedings. The proprietor does not intend to submit any further amended text in the present proceedings. All the proprietor's requests in the present proceedings that were pending prior to the filing of this letter are withdrawn."

VI. With a communication dated 17 November 2022, sent to the parties by email on 16 November 2022, the board informed the parties that in the oral proceedings it intended to hear the parties on opponent 1's request concerning a potential substantial procedural violation.

VII. By letter dated 17 November 2022, opponent 1 withdrew its request concerning a potential substantial procedural violation.

VIII. The board thereafter cancelled the oral proceedings.

Reasons for the Decision

1. 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.

2. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly declares that it withdraws the consent to the text of the patent in the form as granted, withdraws all claim requests on file and declares that it will not be filing a replacement text (see section V.).
3. 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 further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241, and Case Law of the Boards of Appeal of the European Patent Office, 10th Edition 2022, IV.D.2). The board has no reason to deviate from this case law.
4. Revocation of the patent is equally the request of opponent 1, opponent 3 and opponent 5, while there are no requests on file from the parties as of right, opponent 4 and opponent 6.
5. There are also no other issues that need to be decided upon by the board in the present appeal case. While the board may *ex officio* investigate the occurrence of a procedural violation even in the absence of a party's request (see e.g. T 0186/02), it does not see any reason to do so in the present case. The decision 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 Chairwoman:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated