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**Datasheet for the decision
of 24 November 2022**

Case Number: T 0103/20 - 3.3.04

Application Number: 12722973.0

Publication Number: 2704742

IPC: A61K39/395, A61K47/12,
A61K47/14, A61K47/18,
A61K47/26, A61K9/00

Language of the proceedings: EN

Title of invention:

Formulation for anti- 4 7 antibody

Patent Proprietor:

Millennium Pharmaceuticals, Inc.

Opponents:

Dehmel & Bettenhausen
Gill Jennings & Every LLP

Headword:

Antibody formulation/MILLENIUUM

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Basis of decision - text or agreement to text withdrawn by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
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Chambres de recours

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Case Number: T 0103/20 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 24 November 2022

Appellant I: Millennium Pharmaceuticals, Inc.
(Patent Proprietor) 40 Landsdowne Street
Cambridge, MA 02139 (US)

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

Appellant II: Dehmel & Bettenhausen
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80331 Munich (DE)

Representative: Ruckerl, Florian
Dehmel & Bettenhausen
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80331 München (DE)

Party as of right: Gill Jennings & Every LLP
(Opponent 2) Broadgate Tower
20 Primrose Street
London EC2A2ES (GB)

Representative: Gill Jennings & Every LLP
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London EC2A 2ES (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
7 November 2019 concerning maintenance of the
European Patent No. 2704742 in amended form.**

Composition of the Board:

Chairman A. Chakravarty
Members: D. Luis Alves
 R. Romandini

Summary of Facts and Submissions

- I. Appeals were lodged by the patent proprietor (appellant I) and by opponent 1 (appellant II) against the interlocutory decision of the opposition division that European patent No. 2 704 742 in amended form and the invention to which it related, met the requirements of the EPC. The patent is entitled "*Formulation for anti-4 7 antibody*".
- II. Opponent 2 made no substantive submissions in the appeal proceedings.
- III. The board appointed oral proceedings and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of the appeals.
- IV. Oral proceedings were held on 24 November 2022, as scheduled. Opponent 2 was not represented, as announced beforehand.
- V. At the oral proceedings before the board, the patent proprietor stated that they no longer approved the text of the patent as granted or the text of the patent as maintained by the opposition division. Furthermore, they stated that they withdrew all the requests pending in the appeal proceedings and stated that they did not intend to submit any further amended text in the proceedings.
- VI. At the end of the oral proceedings the chair announced the decision of the board.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is admissible.
2. Under Article 113(2) EPC, the European Patent Office shall 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 is presently the case, declares that it withdraws the consent to the text of the patent as granted and as maintained by the opposition division, withdraws all auxiliary requests filed in the appeal proceedings and further declares that it does not intend to file any other request.
4. There is therefore no text of the patent on the basis of which the board can consider the appeal. According to the established case law of the boards of appeal, in these circumstances the proceedings are to be terminated by a decision ordering the revocation of the patent without examination as to patentability (see also decision T 73/84, OJ EPO 1985, 241 and the decisions mentioned in the Case Law of the Boards of Appeal of the EPO, 10th edition, 2022, IV.D.2). The present board has no reason to depart from the principles established in the above cited decisions. The patent must therefore be revoked, without a substantive examination first being carried out.

Order

For these reasons it is decided that:

1. The appeal of the patent proprietor is dismissed.
2. The decision under appeal is set aside.
3. The patent is revoked.

The Registrar:

The Chairman:



I. Aperribay

A. Chakravarty

Decision electronically authenticated