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**Datasheet for the decision
of 9 March 2023**

Case Number: T 0436/20 - 3.3.04

Application Number: 10180577.8

Publication Number: 2261230

IPC: C07K1/30, C07K16/06, C07K1/34,
C07K16/26, C07K16/28,
C07K16/30, C07K1/22

Language of the proceedings: EN

Title of invention:
Protein purification method

Patent Proprietor:
Chugai Seiyaku Kabushiki Kaisha

Opponents:
Glaxo Group Limited
Taormino, Joseph Paul
Hoffmann Eitle
Neuefeind, Regina
Eder, Michael
Baxalta GmbH
Dilg, Haeusler, Schindelmann
Patentanwalts-gesellschaft mbH

Headword:
Withdrawal of the appeal/CHUGAI

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Declaration of the appellant patent proprietor to no longer approve the text of the patent as granted and to withdraw all claim requests on file is equal to the withdrawal of the appeal

Decisions cited:

T 1244/08, T 1003/01, T 0018/92



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0436/20 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 9 March 2023

Appellant: Chugai Seiyaku Kabushiki Kaisha
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Respondent: Hoffmann Eitle
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 10 December
2019 revoking European patent No. 2261230
pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairwoman M. Pregetter
Members: B. Rutz
 A. Bacchin

Summary of Facts and Submissions

- I. The appeal lodged by the patent proprietor lies from the interlocutory decision of the opposition division to revoke European patent No. 2 261 230.
- II. The patent was opposed under Article 100(a) EPC on the grounds of lack of novelty (Article 54 EPC) and lack of inventive step (Article 56 EPC) and under Article 100(b) and (c) EPC.
- III. With its statement of grounds of appeal the appellant filed sets of claims of a new main request and of new auxiliary requests 1 to 7 and requested that the decision under appeal be set aside and the patent be maintained based on the claims of the main request, or, alternatively, on one of the sets of claims of auxiliary requests 1 to 7.
- IV. The respondents requested to dismiss the appeal and to revoke the patent.
- V. The board appointed oral proceedings, as requested by the parties, and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- VI. In a letter dated 15 February 2023, the patent proprietor declared as follows:
"Patentee herewith withdraws all claim requests on file (i.e., the Main Request as well as Auxiliary Requests 1 to 7 filed with our Grounds of Appeal on April 14, 2020). Moreover, Patentee does no longer approve to the text of the patent as granted. Finally, we herewith withdraw our previous request for oral proceedings."

VII. The board then cancelled the oral proceedings.

Reasons for the Decision

1. The statements of the patent proprietor (see point VI. above) to withdraw all claim requests on file and to no longer approve the text of the patent as granted, imply that the patent proprietor, in application of the principle of party disposition established by Article 113(2) EPC, unconditionally renounces its patent. Since in the present case the patent had already been revoked by the opposition division, the proprietor's declarations indicate that it has no longer interest in the appeal proceedings.
2. In accordance with the established jurisprudence of the Boards of Appeal, a declaration of an applicant or proprietor of a patent, which has been revoked in opposition proceedings, clearly and unambiguously indicating that it has no longer interest in pursuing the appeal proceedings has the same legal effects as a withdrawal of the appeal (see e.g. T 1244/08, reasons 4., T 1003/01, reasons 3., T 18/92, reasons 4.).
3. Therefore the patent proprietor's statements in the letter of 15 February 2023 are equal to a withdrawal of the appeal with the effect that the appeal proceedings are immediately terminated and the decision of the opposition division revoking the patent becomes final.
4. Revocation of the patent is also the main request of the opponents (see section IV.). There are no remaining issues that need to be dealt with by the board in the present appeal case. The decision can therefore be taken without holding oral proceedings.

Order

For these reasons it is decided that:

The appeal proceedings are terminated. The patent remains revoked, in accordance with the decision of the opposition division.

The Registrar:

The Chairwoman:



K. Boelicke

M. Pregetter

Decision electronically authenticated