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**Datasheet for the decision
of 8 March 2022**

Case Number: T 1684/20 - 3.3.04

Application Number: 16183076.5

Publication Number: 3106176

IPC: A61K39/12, A61K39/39

Language of the proceedings: EN

Title of invention:

Aluminium compounds for use in therapeutics and vaccines

Patent Proprietor:

Valneva Austria GmbH

Opponent:

Sanofi Pasteur

Headword:

Aluminium compounds/VALNEVA

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Basis of decision - text or agreement to text withdrawn by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 1684/20 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 8 March 2022

Appellant: Valneva Austria GmbH
(Patent Proprietor) Campus Vienna Biocenter 3
1030 Vienna (AT)

Representative: Dempster, Robert Charles
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Appellant: Sanofi Pasteur
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Representative: Cabinet Beau de Loménie
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
29 May 2020 concerning maintenance of the
European Patent No. 3106176 in amended form**

Composition of the Board:

Chair A. Chakravarty
Members: A. Schmitt
P. de Heij

Summary of Facts and Submissions

- I. The appeals lodged by the patent proprietor and the opponent lie from the interlocutory decision of the opposition division that European patent No. 3 106 176, as amended in the form of auxiliary request 2, and the invention to which it relates meet the requirements of the EPC.
- 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 their statement of grounds of appeal, the proprietor requested that the decision under appeal be set aside and that the patent be maintained in amended form based on the set of claims of the main request submitted on 9 January 2020 or alternatively on the set of claims of auxiliary request 1 filed at the oral proceedings on 9 March 2020. Oral proceedings were requested as an auxiliary measure.
- IV. By letter dated 23 February 2021, the proprietor submitted sets of claims of auxiliary requests 2 to 45.
- V. With their statement of grounds of appeal, the opponent requested that the decision under appeal be set aside and the patent be revoked. Oral proceedings were requested as an auxiliary measure.
- VI. 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.

VII. In a letter dated 16 February 2022, the patent proprietor declared as follows

"The Proprietor, Valneva Austria GmbH, hereby withdraws approval under Rule 71 EPC of the text in which European patent No. 3106176 was granted. The Proprietor will not be filing a replacement text. For the avoidance of doubt, the Proprietor also withdraws all requests pending in the appeal proceedings, and/or on the present file. In the absence of a text agreed by the Proprietor, the appeal proceedings relating to this patent are terminated following Article 113(2) EPC, and the patent must be revoked without a decision on the substantive issues."

VIII. 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 declares that they withdraw the consent to the text of the patent in the form as granted, withdraw all claim requests on file and declare that they will not be filing a replacement text (see section VII.).

4. There is therefore no text of the patent on the basis of which the board can consider the appeal. 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 V.). 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:



I. Aperribay

A. Chakravarty

Decision electronically authenticated