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**Datasheet for the decision
of 26 June 2024**

Case Number: T 0786/22 - 3.3.04

Application Number: 16166757.1

Publication Number: 3173092

IPC: A61K38/19, A61K31/7105,
C07K14/52, A61K38/20,
A61K39/00, C12N15/113,
C12N15/117, A61P35/00

Language of the proceedings: EN

Title of invention:
RNA Containing Composition for Treatment of Tumor Diseases

Patent Proprietor:
CureVac SE

Opponents:
eTheRNA Immunotherapies NV
Friedrich, Rainer
BioNTech RNA Pharmaceuticals GmbH
König Szynka Tilmann von Renesse
SANOFI

Headword:

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Basis of decision - text or agreement to text withdrawn by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 0186/84, T 0646/08, T 0728/11, T 2434/18, T 0477/22

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0786/22 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 26 June 2024

Appellant: CureVac SE
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 9 February 2022
revoking European patent No. 3173092 pursuant to
Article 101(3)(b) EPC.**

Composition of the Board:

Chairwoman M. Pregetter
Members: A. Chakravarty
L. Bühler

Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the decision by the opposition division to revoke European patent No 3 173 092.
- II. The board appointed oral proceedings.
- III. In a letter dated 25 June 2024, the appellant withdrew consent to the text of the patent as granted according to Article 113(2) EPC, declared that it would not file a replacement text and withdrew all pending all requests.
- IV. The oral proceedings, appointed for 9 September 2024, were cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office 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.
2. In view of the appellant's (patent proprietor's) statement in their letter dated 25 June 2024 (point III. above), there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for opposition prejudices the maintenance of the patent. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged impediments to patentability

(T 186/84, OJ 1986, 79, point 5 of the Reasons; T 646/08, point 4 of the Reasons and T 2434/18, point 4 of the Reasons. See also Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, III.B.3.3 and IV.D.2).

3. In a situation such as the present one, where the patent proprietor appealed against a decision of the opposition division revoking their patent and where the appeal becomes devoid of subject-matter for substantive examination following the withdrawal of the patent proprietor's agreement to any text for the maintenance of the patent, the appeal proceedings are to be terminated, and the opposition division's decision to revoke the patent becomes final (see T 728/11, point 3; T 477/22, point 3).

Order

For these reasons it is decided that:

The appeal proceedings are terminated

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated