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**Datasheet for the decision
of 8 August 2024**

Case Number: T 1388/22 - 3.3.04

Application Number: 11801741.7

Publication Number: 2654789

IPC: A61K39/395, A61P35/00,
C07K16/30, C07K16/28

Language of the proceedings: EN

Title of invention:

Antibodies against human CD39 and use thereof

Patent Proprietors:

Orega Biotech
INSERM - Institut National de la Santé et de la
Recherche Médicale

Opponents:

AbbVie Inc.
Tizona Therapeutics
D Young & Co LLP
Boult Wade Tennant LLP

Relevant legal provisions:

EPC R. 84(1), 100(1)

Keyword:

Lapse of patent in all designated states - continuation of
appeal proceedings (no)

Decisions cited:

T 0708/01, T 0520/10, T 0606/10



Beschwerdekammern

Boards of Appeal

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Case Number: T 1388/22 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 8 August 2024

Appellants:

(Patent Proprietors)

Orega Biotech
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69130 Ecully (FR)

and

INSERM - Institut National de la Santé et de la
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Representative:

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Respondent 1:

(Opponent 1)

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Respondent 2:

(Opponent 2)

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London EC4Y 8AP (GB)

Representative: Boulton Wade Tennant LLP
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 1 April 2022
revoking European patent No. 2 654 789 pursuant
to Article 101(3) (b) EPC**

Composition of the Board:

Chairwoman M. Pregetter
Members: B. Rutz
M. Blasi

Summary of Facts and Submissions

- I. The present appeal was lodged by the patent proprietors against the decision of the opposition division revoking the patent.
- II. As apparent from the entries in the European Patent Register, European patent EP 2 654 789 has lapsed with effect for all the designated Contracting States in the course of the present appeal proceedings.
- III. With a communication dated 27 February 2024 the board gave the patent proprietors the opportunity to request continuation of the appeal proceedings within two months from the notification of this communication.
- IV. No reply by the patent proprietors was received. The three-month period specified in Rule 133(1) EPC has also expired.

Reasons for the Decision

1. If a European patent has lapsed in all designated Contracting States, opposition proceedings may be continued at the request of the opponent (see Rule 84(1) EPC). According to Rule 100(1) EPC, this also applies in appeal proceedings following opposition proceedings. However, if - as in the present case - the patent proprietors are the appellants, it would be inappropriate to allow the opponent(s) (respondent(s)) to decide whether the appeal proceedings shall be continued. For this reason, Rule 84(1) EPC has to be applied *mutatis mutandis* in such opposition appeal proceedings (see also the case law cited in decision T 606/10 of 12 May 2011, point 1.3 of the Reasons), so

that it is the patent proprietors who can request that the appeal proceedings be continued (see also decision T 708/01 of 17 March 2005, point 1 of the Reasons and T 520/10 of 11 June 2013, point 1 of the Reasons).

2. As the patent proprietors have not replied within the given time limit to the communication by the board providing the opportunity to request continuation of the appeal proceedings (see Section III., supra), the appeal proceedings are to be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated