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**Datasheet for the decision  
of 27 November 2023**

**Case Number:** T 1436/22 - 3.3.07

**Application Number:** 16731640.5

**Publication Number:** 3240554

**IPC:** A61K35/74, C12N1/20, A61P1/00,  
A61P11/06, A61P29/00,  
A61P19/02, A61P25/28,  
A61K35/745

**Language of the proceedings:** EN

**Title of invention:**

BLAUTIA STERCOSIS AND WEXLERAE FOR USE IN TREATING  
INFLAMMATORY AND AUTOIMMUNE DISEASES

**Patent Proprietor:**

CJ Bioscience, Inc.

**Opponent:**

Hoffmann Eitle

**Headword:**

Blautia/CJBIOSCIENCE

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  
patent proprietor

**Decisions cited:**

T 0073/84



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1436/22 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 27 November 2023**

**Appellant:** Hoffmann Eitle  
(Opponent) Patent- und Rechtsanwälte PartmbB  
Arabellastrasse 30  
81925 München (DE)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
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**Respondent:** CJ Bioscience, Inc.  
(Patent Proprietor) 7F, B, 14, Sejong-daero  
Jung-gu  
Seoul 04527 (KR)

**Representative:** Bates, Philip Ian  
Reddie & Grose LLP  
The White Chapel Building  
10 Whitechapel High Street  
London E1 8QS (GB)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 4 April 2022  
rejecting the opposition filed against European  
patent No. 3240554 pursuant to Article 101(2)  
EPC**

**Composition of the Board:**

**Chair**                   A. Jimenez  
**Members:**             J. Molina de Alba  
                              J. Lécaillon

## **Summary of Facts and Submissions**

- I. The decision under appeal is the opposition division's decision rejecting the opposition filed against European patent No. 3 240 554.
- II. The opponent (appellant) filed an appeal against the decision.
- III. The proceedings were interrupted and resumed with a new patent proprietor (respondent).
- IV. The board scheduled oral proceedings in line with the parties' requests.
- V. In a letter dated 23 November 2023, the respondent wrote:

*"The patentee hereby withdraws their approval of the text approved for grant.*

*Further, the patentee hereby withdraws requests presently on file.*

*We understand this terminates the Appeal proceedings and we look forward to confirmation that the proceedings are terminated."*

## **Reasons for the Decision**

1. With the letter dated 23 November 2023, the respondent withdrew its agreement to the text of the patent approved for grant and "requests presently on file". The latter expression does not explicitly refer to all the requests on file. However, the respondent understands that its withdrawals terminate the appeal proceedings and requests confirmation that the proceedings are terminated. Therefore, it can only be understood that the respondent's intention is to withdraw all its requests on file.
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 its proprietor.
3. By disapproving the text of the granted patent and withdrawing all amended text versions submitted to the EPO, the patent proprietor withdrew its approval of any text for maintenance of the patent. Therefore, there is no approved text of the patent on the basis of which the board can decide on the appeal.
4. In these circumstances, it is established case law that the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, section IV.D.2). The board has no reason to deviate from this case law.

## Order

**For these reasons it is decided that:**

The patent is revoked.

The Registrar:

The Chair:



B. Atienza Vivancos

A. Jimenez

Decision electronically authenticated