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**Datasheet for the decision
of 2 January 2025**

Case Number: T 2355/22 - 3.3.04

Application Number: 18164175.4

Publication Number: 3412687

IPC: C07K16/28, C07K16/46,
A61K39/395, A61P35/00

Language of the proceedings: EN

Title of invention:

Methods for treating DLBCL

Patent Proprietor:

Amgen Research (Munich) GmbH

Opponent:

James Poole Limited

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor
Reimbursement of appeal fee (no)

Decisions cited:

T 0073/84, T 0073/17, T 0191/17, T 2698/17



Beschwerdekammern

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Case Number: T 2355/22 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 2 January 2025

Appellant: Amgen Research (Munich) GmbH
(Patent Proprietor) Staffelseestraße 2
81477 München (DE)

Representative: Schiweck Weinzierl Koch
Patentanwälte Partnerschaft mbB
Ganghoferstraße 68 B
80339 München (DE)

Respondent: James Poole Limited
(Opponent) One Southampton Row
London WC1B 5HA (GB)

Representative: Carpmaels & Ransford LLP
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 23 August 2022
revoking European patent No. 3 412 687 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 by the patent proprietor lies from the decision of the opposition division to revoke European patent No. 3 412 687.
- 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 patent proprietor requested that the decision under appeal be set aside and the patent be maintained based on the set of claims of the main request or, alternatively, on one of the set of claims of auxiliary requests 1 to 3, all claim requests filed with the statement of grounds of appeal.
- IV. With its reply to the appeal, the opponent requested to dismiss the appeal and to uphold the decision of the opposition division 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 18 December 2024, the patent proprietor declared as follows:

"We write to inform the Board of Appeal, that the Proprietor (appellant) will not be attending the Oral Proceedings scheduled for 9 and 10 January 2025. We further inform the Board of Appeal that the Proprietor withdraws its approval of the text

of the European patent 3 412 687 B1. For the avoidance of doubt, the Proprietor also withdraws the Main Request and Auxiliary Requests 1-3. The Proprietor will not submit a new amended text or claims for this patent. It is our understanding that the patent is therefore revoked. The Proprietor further requests partial reimbursement of the Appeal fee according to Rule 103(4) (a) EPC".

VII. On behalf of the board the registrar contacted the patent proprietor on 19 December 2024 by phone in order to clarify the text of the above submission. The appellant confirmed the text as submitted. The appellant further mentioned that it considered this to be an indirect withdrawal of the appeal.

VIII. The board then cancelled the oral proceedings.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is 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 VI.).

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.

Partial reimbursement of the appeal fee

6. In the letter of 18 December 2024 the appellant informed the board that they will not attend the oral proceedings scheduled for 9 and 10 January 2025 and further requested partial reimbursement of the appeal fee according to Rule 103(4) (a) EPC.
7. Rule 103(4) (a) and (c) EPC provides that

*"The appeal fee shall be reimbursed at 25%
(a) if the appeal is withdrawn after expiry of the period under paragraph 3(a) but before the decision is announced at oral proceedings; [...]
(c) if any request for oral proceedings is withdrawn within one month of notification of the communication issued by the Board of Appeal in preparation for the oral proceedings, and no oral proceedings take place."*
8. The board considers that the requested partial reimbursement of the appeal fee cannot be granted,

since neither the appeal (Rule 103(4) (a) EPC) nor the request for oral proceedings (Rule 103(4) (c) EPC) were withdrawn.

9. The board construes Rule 103(4) (a) and (c) EPC in the sense that for the purposes of reimbursing the appeal fee an express and unconditional withdrawal of either the appeal or the request for oral proceedings is required. Neither an intended implicit withdrawal of the appeal, where the actual procedural declaration is directed to the withdrawal of the consent to the text of the patent, nor an implicit withdrawal of the request for oral proceedings, where a mere announcement of non-attendance to oral proceedings is actually given, is sufficient.
10. This is confirmed both by the express wording of Rule 103 EPC and by the preparatory work to the provision according to which "*...the appeal fee is reimbursed at a rate of 25% if, in spite of a prior request ... the applicant/appellant has withdrawn its request for oral proceedings or, in inter partes cases, if all parties have withdrawn their requests for oral proceedings.*" (see CA/80/19, of 4 October 2019, no. 85).
11. In this context the board concurs with the findings in T 73/17, T 191/17 and T 2698/17, amongst others. Although those decisions were concerned with the question whether the announcement not to attend oral proceedings could also give rise to a reimbursement of the appeal fee under, for instance, Rule 103(4) (c) EPC, this board considers that the principles equally apply to the case of reimbursement under Rule 103(4) (a) EPC. In all these cases it was confirmed that for the purpose of reimbursing the appeal fee

under Rule 103 EPC an explicit and clear statement of withdrawal is required.

12. Thus, the appellant's announcement of their intention not to attend the oral proceedings enables the board to take the decision without holding oral proceedings but does not allow for a reimbursement of the appeal fee pursuant to Rule 103(4)(a) EPC.

13. The request for a reimbursement of the appeal fee is thus rejected.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated