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**Datasheet for the decision  
of 14 February 2025**

**Case Number:** T 2643/22 - 3.3.04

**Application Number:** 14809289.3

**Publication Number:** 3062798

**IPC:** A61K31/7105, C12N15/117

**Language of the proceedings:** EN

**Title of invention:**

Modified RNA with decreased immunostimulatory properties

**Patent Proprietor:**

CureVac SE

**Opponents:**

Weickmann & Weickmann PartmbB  
Weinzierl, Gerhard

**Headword:**

Modified RNA/CUREVAC

**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Basis of decision - text or agreement to text withdrawn by  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**  
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**Chambres de recours**

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Case Number: T 2643/22 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 14 February 2025**

**Appellant I:** Weickmann & Weickmann PartmbB  
(Opponent 1) P.O. Box 860 820  
81635 München (DE)

**Appellant II:** Weinzierl, Gerhard  
(Opponent 2) Schiweck Weinzierl Koch  
Patentanwälte Partnerschaft mbB  
Ganghoferstraße 68 B  
80339 München (DE)

**Representative:** Schiweck Weinzierl Koch  
Patentanwälte Partnerschaft mbB  
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**Respondent:** CureVac SE  
(Patent Proprietor) Friedrich-Miescher-Straße 15  
72076 Tübingen (DE)

**Representative:** Graf von Stosch, Andreas  
Graf von Stosch  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on  
10 November 2022 rejecting the oppositions filed  
against European patent No. 3 062 798 pursuant  
to Article 101(2) EPC**

**Composition of the Board:**

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

## **Summary of Facts and Submissions**

- I. The appeals lodged by opponent 1 and 2 (appellants I and II) lie from the decision of the opposition division to reject the oppositions filed against European patent No. 3 062 798.
- 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 statements of grounds of appeal, the appellants requested that the decision under appeal be set aside and the patent be revoked.
- IV. With its reply to the appeals the respondent requested that the appeals be dismissed, implying that the decision to reject the oppositions be upheld. Alternatively, the respondent requested that the patent be maintained in amended form on the basis of one of the sets of claims of auxiliary requests 1 to 14a as filed on 5 August 2022 or of auxiliary requests 14b and 15 to 23 as filed on 20 September 2022.
- 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 case.
- VI. In a letter dated 27 January 2025, the respondent withdrew its agreement to the text of the patent as granted and all requests and stated that it would not file any replacement text.

VII. 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 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 it withdraws the consent to the text of the patent as granted, withdraws all claim requests and declares that no replacement text would be filed (see section VI.).
4. There is therefore no text of the patent on the basis of which the board can consider the appeals. In these circumstances, the patent is to be revoked, without assessing issues relating to patentability (see also decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, IV.D.2).
5. Revocation of the patent is also the main request of the appellants (see section III.). 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 Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated