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**Datasheet for the decision
of 10 October 2024**

Case Number: T 2659/22 - 3.3.04

Application Number: 17196350.7

Publication Number: 3327026

IPC: C07K1/00, C07K14/00

Language of the proceedings: EN

Title of invention:

Prevention of disulfide bond reduction during recombinant production of polypeptides

Patent Proprietor:

Genentech, Inc.

Opponent:

Hexal AG

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Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked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 0073/84



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 2659/22 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 10 October 2024

Appellant: Hexal AG
(Opponent) Industriestrasse 25
83607 Holzkirchen (DE)

Representative: Maiwald GmbH
Elisenhof
Elisenstraße 3
80335 München (DE)

Respondent: Genentech, Inc.
(Patent Proprietor) 1 DNA Way
South San Francisco, CA 94080 (US)

Representative: Mewburn Ellis LLP
Aurora Building
Counterslip
Bristol BS1 6BX (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 25 October 2022
rejecting the opposition filed against European
patent No. 3 327 026 pursuant to Article 101(2)
EPC**

Composition of the Board:

Chairman L. Bühler
Members: B. Rutz
O. Lechner

Summary of Facts and Submissions

- I. The appeal lodged by the opponent (appellant) lies from the decision of the opposition division to reject the opposition against European patent No. 3 327 026.
- II. The patent was opposed under Article 100(a) EPC on the grounds of lack of inventive step (Article 56 EPC) and under Article 100(b) and (c) EPC.
- III. With their statement of grounds of appeal, the appellant requested to set the decision aside and to revoke the patent.
- IV. In its reply to the statement of grounds of appeal the patent proprietor (respondent) requested to dismiss the appeal, i.e. to maintain the patent as granted, or alternatively to maintain the patent in amended form based on the set of claims of auxiliary requests 1 to 12 filed therewith.
- V. Both parties requested oral proceedings as an auxiliary measure.
- VI. The board appointed oral proceedings, as requested by the parties.
- VII. In a letter dated 10 October 2024, the respondent declared as follows:
"The proprietor hereby withdraws its approval of the text of the patent in any form and withdraws all requests pending in the appeal proceedings."
- VIII. The board then cancelled the oral proceedings.

Reasons for the Decision

1. 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.
2. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly declares that it withdraws its approval of the text of the patent in any form and withdraws all requests pending in the appeal proceedings (see section VII.).
3. 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, 10th edition 2022, IV.D.2).
4. Revocation of the patent is also the main request of the opponent (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 Chairman:



I. Aperribay

L. Bühler

Decision electronically authenticated