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**Datasheet for the decision
of 27 March 2025**

Case Number: T 0142/23 - 3.3.04

Application Number: 17001347.8

Publication Number: 3292873

IPC: A61K39/395, C07K16/28,
A61K39/39

Language of the proceedings: EN

Title of invention:

Combination of vaccination and inhibition of the PD-1 pathway

Patent Proprietor:

CureVac SE

Opponents:

Strawman Limited
Merck Patent GmbH
BioNTech SE
eTheRNA Immunotherapies NV
Pfizer Inc.
James Poole Limited

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0186/84, T 0646/08, T 0728/11, T 2434/18, T 0477/22



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Boards of Appeal
Chambres de recours

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Case Number: T 0142/23 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 27 March 2025

Appellant: CureVac SE
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Graf von Stosch
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Respondent: Strawman Limited
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Representative: Vossius & Partner
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Respondent: Merck Patent GmbH
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Respondent: BioNTech SE
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Respondent: James Poole Limited
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Representative: Carpmaels & Ransford LLP
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 22 December
2022 revoking European patent No. 3 292 873
pursuant to Article 101(3)(b) EPC**

Composition of the Board:

Chairwoman M. Pregetter
Members: B. Rutz
L. Bühler

Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the opposition division's decision revoking European patent No. 3 292 873 (the patent in suit).
- II. With their statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and that the patent be maintained based on the claims of the main request or, alternatively, on the set of claims of auxiliary requests 1 to 6.
- III. In their reply to the appellants' statement of grounds of appeal, opponents 1 and 3 (respondents) requested that the appeal be dismissed.
- IV. The board issued a summons to oral proceedings and a communication under Article 15(1) RPBA.
- V. With a letter dated 26 March 2025 the appellant withdrew the agreement with the text of the patent as granted according to Article 113(2) EPC, declared not to file a replacement text and withdrew all pending requests.

Reasons for the Decision

1. According to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine and decide on the European patent only in the text submitted to it or agreed upon by the proprietor of the patent.

2. In view of the appellant's (patent proprietor's) statement (see point V. above), there is no approved text on the basis of which the board could consider the appeal. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged impediments to patentability (T 186/84, OJ 1986, 79, point 5 of the Reasons; T 646/08, point 4 of the Reasons and T 2434/18, point 4 of the Reasons).

3. In a situation such as the present one, where the patent proprietor has appealed a decision of the opposition division revoking its patent and where the appeal becomes devoid of subject-matter for substantive examination following the withdrawal of the patent proprietor's agreement to any text for the maintenance of the patent, the appeal proceedings are to be terminated, and the decision under appeal becomes final (see T 728/11, point 3; T 477/22, point 3).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated