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

Case Number: T 0679/23 - 3.3.04

Application Number: 17171169.0

Publication Number: 3254695

IPC: A61K39/395, C07K16/30,
A61K45/06

Language of the proceedings: EN

Title of invention:

Combination therapy involving antibodies against Claudin 18.2
for treatment of cancer

Patent Proprietors:

Astellas Pharma Inc.
TRON - Translationale Onkologie an der
Universitätsmedizin der Johannes Gutenberg-
Universität Mainz gemeinnützige GmbH

Opponent:

Dr. H. Ulrich Dörries

Headword:

anti-CLD18.2 combination therapy/ASTELLAS PHARMA

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Basis of decision - text or agreement to text withdrawn by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

Boards of Appeal of the
European Patent Office
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Case Number: T 0679/23 - 3.3.04

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

Appellant:

(Opponent)

Dr. H. Ulrich Dörries
Fünf Höfe, Theatinerstraße 16
80333 München (DE)

Representative:

Dörries, Hans Ulrich
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Fünf Höfe
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Respondents:

(Patent Proprietors)

Astellas Pharma Inc.
5-1, Nihonbashi-Honcho 2-Chome
Chuo-ku
Tokyo 103-8411 (JP)

and

TRON - Translationale Onkologie an der
Universitätsmedizin der Johannes Gutenberg-
Universität Mainz gemeinnützige GmbH
Freiligrathstraße 12
55131 Mainz (DE)

Representative:

Wilk, Thomas
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80686 München (DE)

Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted on
7 February 2023 concerning maintenance of the
European Patent No. 3 254 695 in amended form

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal lodged by the opponent (appellant) lies from the interlocutory decision of the opposition division that European patent No. 3 254 695 as amended in the form of the main request fulfilled the requirements of the EPC.
- 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 the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and the patent be revoked.
- IV. With their reply to the appeal the respondents requested that the appeal be dismissed, implying that the patent be maintained in the amended form considered allowable by the opposition division. Alternatively, they requested that the patent be maintained in amended form on the basis of one of the sets of claims of auxiliary requests 1 to 3 as filed with the reply to the appeal.
- 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 4 February 2025, the respondents withdrew the approval to the text of the patent as

granted and all requests, and stated that they would not submit any amended text of the patent.

VII. 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 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 proprietors - as in the present case - expressly declare 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 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 appellant (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