

Internal distribution code:

- (A) ☐ Publication in OJ
- (B) ☐ To Chairmen and Members
- (C) ☐ To Chairmen
- (D) ☒ No distribution

**Datasheet for the decision
of 29 September 2025**

Case Number: T 1106/23 - 3.3.04

Application Number: 18155113.6

Publication Number: 3378486

IPC: A61K39/00, A61K9/08, A61K9/19,
A61K47/18, A61K47/26,
A61K39/395

Language of the proceedings: EN

Title of invention:

Stabilized antibody-containing liquid formulations

Patent Proprietor:

Chugai Seiyaku Kabushiki Kaisha

Opponents:

James Poole Limited
Strawman Limited
Wohlfahrt, Jan
Dr. H. Ulrich Dörries
Elkington and Fife LLP

Headword:

Antibody formulation/CHUGAI

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Termination of the appeal proceedings - 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text withdrawn by patent proprietor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



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1106/23 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 29 September 2025

Appellant: (Patent Proprietor)	Chugai Seiyaku Kabushiki Kaisha 5-1, Ukima 5-chome Kita-ku Tokyo 115-8543 (JP)
Representative:	Simmons & Simmons LLP (Munich) Lehel Carré Gewürzmühlstraße 11 80538 Munich (DE)
Respondent: (Opponent 1)	James Poole Limited One Southampton Row London WC1B 5HA (GB)
Representative:	Carpmaels & Ransford LLP One Southampton Row London WC1B 5HA (GB)
Respondent: (Opponent 2)	Strawman Limited Orchard Lea Horns Lane Combe Witney, Oxfordshire OX29 8NH (GB)
Representative:	Plasseraud IP 104 Rue de Richelieu CS92104 75080 Paris Cedex 02 (FR)
Respondent: (Opponent 3)	Wohlfahrt, Jan Keplerstrasse 3 71384 Weinstadt (DE)
Representative:	Wohlfahrt, Jan Günther Gleiss Große Schrell und Partner mbB Patentanwälte Rechtsanwälte

Leitzstraße 45
70469 Stuttgart (DE)

Respondent: Dr. H. Ulrich Dörries
(Opponent 4) Fünf Höfe, Theatinerstr. 16
80333 München (DE)

Representative: Dörries, Hans Ulrich
df-mp Patentanwälte Rechtsanwälte PartG mbB
Theatinerstraße 16
80333 München (DE)

Respondent: Elkington and Fife LLP
(Opponent 5) Prospect House
8 Pembroke Road
Sevenoaks Kent TN 13 1XR (GB)

Representative: Elkington and Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks, Kent TN13 1XR (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 April 2023
revoking European patent No. 3378486 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairwoman M. Pregetter
Members: O. Lechner
L. Bühler

Summary of Facts and Submissions

- I. The appeal of the patent proprietor (appellant) lies from the decision of the opposition division to revoke European patent number 3 378 486.
1. The patent is based on European patent application No. 18 155 113.6, which is a divisional application of European patent application No. 11 734 694.0.
- II. The board summoned the parties to oral proceedings as requested and informed them of its preliminary opinion in a communication pursuant to Article 15(1) RPBA.
- III. Oral proceedings before the board took place on 29 September 2025.

During the oral proceedings, the appellant

- withdrew its consent and agreement under Article 113(2) EPC to the text of the patent as granted, and
- also withdrew all its pending requests.

At the end of the oral proceedings, the Chairwoman announced the board's decision.

Reasons for the Decision

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

3. As the appellant withdrew its approval of any text for the maintenance of the patent under appeal, there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for opposition under Article 100 EPC prejudices the maintenance of the patent. 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; T 2434/18, point 4 of the Reasons).
4. In a situation such as the present one, where the patent proprietor has appealed a decision of the opposition division revoking the patent, and where the appeal becomes devoid of subject-matter for substantive examination following the withdrawal of the appellant'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 (T 728/11, point 3 of the Reasons; T 477/22, point 3 of the Reasons).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated