

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 17 January 2025**

Case Number: T 1208/23 - 3.3.04

Application Number: 16862791.7

Publication Number: 3370770

IPC: A61K39/395, A61K31/4439,
A61K31/198, A61K31/573,
A61K31/69, C07K16/28, A61K9/10,
A61K47/12, A61K47/20,
A61K47/22, A61P35/00

Language of the proceedings: EN

Title of invention:
SUBCUTANEOUS FORMULATIONS OF ANTI-CD38 ANTIBODIES AND THEIR
USES

Patent Proprietor:
Janssen Biotech, Inc.

Opponents:
König Szynka Tilmann von Renesse
Patent Boutique LLP
Breuer, Markus

Headword:

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Termination of the appeal proceedings - text or agreement to text withdrawn by patent proprietor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

Catchword:



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 1208/23 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 17 January 2025

Appellant:
(Patent Proprietor)

Janssen Biotech, Inc.
800/850 Ridgeview Drive
Horsham, PA 19044 (US)

Representative:

Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Respondent I:
(Opponent 1)

König Szynka Tilmann von Renesse
Patentanwälte Partnerschaft mbB
Mönchenwerther Strasse 11
40545 Düsseldorf (DE)

Representative:

König Szynka Tilmann von Renesse
Patentanwälte Partnerschaft mbB Düsseldorf
Mönchenwerther Straße 11
40545 Düsseldorf (DE)

Respondent II:
(Opponent 2)

Patent Boutique LLP
10A Printing House Yard
Hackney Road
London, E2 7PR (GB)

Respondent III:
(Opponent 3)

Breuer, Markus
Brienner Straße 1
80333 München (DE)

Representative:

Dörries, Hans Ulrich
df-mp
Fünf Höfe
Theatinerstrasse 16
80333 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 20 April 2023
revoking European patent No. 3370770 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairwoman M. Pregetter
Members: D. Luis Alves
 L. Bühler

Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the decision of the opposition division to revoke European patent No 3 370 770.
- II. The board appointed oral proceedings.
- III. In a letter dated 30 December 2024, the appellant stated that it no longer approved the text of the patent as granted, that it withdrew all auxiliary requests on file, and that it would not be filing any replacement text.
- IV. The oral proceedings, appointed for 6 May 2025, were cancelled.

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 patent proprietor's statement in its letter dated 30 December 2024 (point III. above), there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for opposition 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 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