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**Datasheet for the decision
of 22 May 2024**

Case Number: T 1648/23 - 3.3.04

Application Number: 12805432.7

Publication Number: 2780375

IPC: C07K16/28, A61K39/395,
A61P35/02, A61P37/00

Language of the proceedings: EN

Title of invention:

Binding molecules for BCMA and CD3

Patent Proprietor:

Amgen Research (Munich) GmbH
Amgen Inc.

Opponents:

AbbVie Inc.
Janssen Biotech, Inc.
Regeneron Pharmaceuticals, Inc.
James Poole Limited
Mathys & Squire LLP
Sanofi

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Termination of the appeal proceedings - text or agreement to text withdrawn by patent proprietor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



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Chambres de recours

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Case Number: T 1648/23 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 22 May 2024

Appellant: Amgen Research (Munich) GmbH
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Appellant: Amgen Inc.
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Respondent: AbbVie Inc.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 5 July 2023
revoking European patent No. 2780375 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairwoman M. Pregetter
Members: A. Chakravarty
L. Bühler

Summary of Facts and Submissions

- I. The patent proprietors (appellants) filed an appeal against the decision by the opposition division to revoke European patent No 2 780 375.
- II. The board appointed oral proceedings, and in a subsequent communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- III. During the oral proceedings before the board, which took place on 22 May 2024, the appellants withdrew all requests on file, withdrew their consent and agreement under Article 113(2) EPC to the text of the patent as granted, and indicated that they would not be filing a replacement text.

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 proprietors' statement during the oral proceedings (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 proprietors have appealed a decision of the opposition division revoking their patent and where the appeal becomes devoid of subject-matter for substantive examination following the withdrawal of the patent proprietors' 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