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**Datasheet for the decision
of 26 May 2025**

Case Number: T 1670/23 - 3.3.04

Application Number: 16179150.4

Publication Number: 3103469

IPC: A61K38/47, A61P25/00,
A61P25/28, A61K9/19, A61K9/00,
A61K38/46

Language of the proceedings: EN

Title of invention:
CNS delivery of therapeutic agents

Patent Proprietor:
Takeda Pharmaceutical Company Limited

Opponent:
Green Cross Corporation

Headword:
CNS delivery/TAKEDA

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84, T 0186/84, T 1995/21



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1670/23 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 26 May 2025

Appellant: Takeda Pharmaceutical Company Limited
(Patent Proprietor) 1-1, Doshomachi 4-chome
Chuo-ku
Osaka-shi, Osaka (JP)

Representative: Carpmiels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Respondent: Green Cross Corporation
(Opponent) 107 Ihyeon-ro 30-beongil
Giheung-gu, Yongin-si
Gyeonggi-do (KR)

Representative: HGF
HGF Limited
1 City Walk
Leeds LS11 9DX (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 7 July 2023
revoking European patent No. 3103469 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairwoman M. Pregetter
Members: O. Lechner
A. Bacchin

Summary of Facts and Submissions

- I. The appeal lodged by the patent proprietor (appellant) lies from the decision of the opposition division to revoke European patent number 3 103 469 ("patent").
- II. The patent is based on application number 16 179 150.4, which is a divisional application of European patent application number 11 799 035.8 which was filed as an international application under the PCT and published as WO 2011/163648. Under Article 76(1) EPC the present application is deemed to have been filed on 25 June 2011.
- III. With its statement of grounds of appeal, the appellant requested that the opposition division's decision to revoke the patent be set aside and the patent be maintained in amended form on the basis of the set of claims according to a main request (identical to the main request underlying the decision under appeal; initially filed as auxiliary request 4 on 5 April 2023), auxiliary requests 1 to 19 (initially filed as the main request and auxiliary requests 1 to 3 and 5 to 19 on 5 April 2023) and auxiliary request 20 to 31 (initially filed as main request and auxiliary request 1 to 11 on 3 February 2022), or one of auxiliary requests 32 to 37 filed with the statement of grounds of appeal.
- IV. The opponent (respondent) replied to the statement of grounds of appeal requesting that the appeal be dismissed and the patent be revoked.
- V. The board issued summons for oral proceedings to be held on 19 May 2025.

- VI. The board issued a preliminary opinion pursuant to Article 15(1) RPBA.
- VII. The respondent informed by letter dated 24 April 2025 to not attend the oral proceedings.
- VIII. By letter dated 12 May 2025 the appellant informed the board that it no longer approved the text of the patent under Rule 71 EPC, and withdrew all pending requests, including the request for oral proceedings. The appellant also indicated that it would not attend the oral proceedings scheduled for 19 May 2025.

In the absence of an approved text, the appeal proceedings were to be terminated.

- IX. The board cancelled the oral proceedings.

Reasons for the Decision

- 1. Pursuant to Article 113(2) EPC, the EPO will examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
- 2. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly withdraws the consent to the text of the patent in the form as granted, withdraws all claim requests on file and declares to not attend the oral proceedings scheduled for 19th May 2025 (see section VIII above).

3. There is therefore no approved 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, T 186/84, OJ EPO 1986, 79, T 1995/21 and Case Law of the Boards of Appeal, 10th ed., 2022, III.B.3.3 and IV.D.2).
4. Revocation of the patent is also the main request of the respondent (see section IV. above).

There are 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:

- The appeal is dismissed.

The Registrar:

The Chairwoman:



A. Vottner

M. Pregetter

Decision electronically authenticated