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**Datasheet for the decision  
of 5 June 2025**

**Case Number:** T 1890/23 - 3.3.04

**Application Number:** 18160057.8

**Publication Number:** 3351261

**IPC:** A61K38/20, A61K39/395,  
A61K45/06, A61P35/00

**Language of the proceedings:** EN

**Title of invention:**

Combination medicament comprising IL-12 and an agent for  
blockade of T-cell inhibitory molecules for tumour therapy

**Patent Proprietor:**

Universität Zürich

**Opponents:**

JG Oppositions Limited  
Kraus & Lederer PartGmbB  
James Poole Limited  
Sanofi  
Weinzierl, Gerhard

**Headword:**

IL-12 combination therapy/UNIVERSITÄT ZÜRICH

**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Basis of decision - text or agreement to text withdrawn by  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 1890/23 - 3.3.04**

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 5 June 2025**

<b>Appellant I:</b> (Patent Proprietor)	Universität Zürich Rämistraße 71 8006 Zürich (CH)
<b>Representative:</b>	Maiwald GmbH Elisenhof Elisenstraße 3 80335 München (DE)
<b>Party as of right (former appellant II):</b> (Opponent 2)	Kraus & Lederer PartGmbH Thomas-Wimmer-Ring 15 80539 München (DE)
<b>Representative:</b>	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
<b>Appellant III:</b> (Opponent 3)	James Poole Limited One Southampton Row London WC1B 5HA (GB)
<b>Representative:</b>	Carpmaels & Ransford LLP One Southampton Row London WC1B 5HA (GB)
<b>Party as of right:</b> (Opponent 1)	JG Oppositions Limited Floor 15 The Shard 32 London Bridge Street London SE1 9SG (GB)
<b>Representative:</b>	Drywood, Rosalind Aeron Mathys & Squire The Shard 32 London Bridge Street London SE1 9SG (GB)

**Party as of right:** Weinzierl, Gerhard  
(Opponent 5) Schiweck Weinzierl Koch  
Patentanwälte Partnerschaft mbB  
Ganghoferstraße 68B  
80339 München (DE)

**Representative:** Schiweck Weinzierl Koch  
Patentanwälte Partnerschaft mbB  
Ganghoferstraße 68 B  
80339 München (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
31 August 2023 concerning maintenance of the  
European Patent No. 3 351 261 in amended form**

**Composition of the Board:**

**Chairwoman** M. Pregetter  
**Members:** B. Rutz  
L. Bühler

## **Summary of Facts and Submissions**

- I. The patent proprietor (appellant I) and opponents 2 and 3 (appellants II and III) filed appeals against the decision of the opposition division that European Patent No. 3 351 261 in amended form, based on auxiliary request 1 filed during oral proceedings, fulfilled the requirements of the EPC.
- II. The patent proprietor (appellant I) requested that the decision under appeal be set aside and the patent be maintained based on the claims of the main request (claims as granted), or, alternatively, on one of the sets of claims of auxiliary requests 1 to 39.
- III. Opponents 2 and 3 (appellants II and III) requested that the decision under appeal be set aside and the patent be revoked.
- IV. Opponents 1 and 5 did not appeal and are parties as of right to the appeal proceedings. They also did not reply to the appeal by the patent proprietor.
- V. Opponent 4 withdrew its opposition with a letter dated 12 January 2024.
- VI. Appellant II withdrew its appeal with a letter dated 25 April 2025. It remains party as of right to the appeal proceedings.
- VII. 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.

VIII. With a letter dated 2 June 2025 the patent proprietor (appellant I) withdrew its agreement to the text of the patent as granted according to Article 113(2) EPC and withdrew all requests pending in the present appeal proceedings.

IX. The board then cancelled the oral proceedings.

### **Reasons for the Decision**

1. 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.
2. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly declares that it withdraws the consent to the text of the patent in the form as granted and withdraws all claim requests on file (see section VIII. above).
3. 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).
4. There is also no ancillary matter remaining that needs to be dealt with by the board in the present appeal case. The decision 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