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**Datasheet for the decision
of 25 June 2024**

Case Number: T 1134/21 - 3.3.04

Application Number: 11736812.6

Publication Number: 2530091

IPC: C07K16/30, A61K39/395,
A61P35/00, C12N15/02, C12Q1/02,
C12Q1/68, G01N33/50,
G01N33/574, G01N33/68

Language of the proceedings: EN

Title of invention:
Anti-DLL3 antibody

Patent Proprietor:
Chugai Seiyaku Kabushiki Kaisha
The University of Tokyo

Opponents:
Boehringer Ingelheim RCV GmbH & Co KG /
Boehringer Ingelheim International GmbH
Schiweck Weinzierl Koch Patentanwälte
Partnerschaft mbB
AbbVie Inc.

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0186/84, T 0646/08, T 0454/15, T 2434/18, T 2684/18,
T 0820/21



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Case Number: T 1134/21 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 25 June 2024

Appellant: Chugai Seiyaku Kabushiki Kaisha
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Appellant: The University of Tokyo
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 7 May 2021
revoking European patent No. 2530091 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairwoman M. Pregetter
Members: A. Chakravarty
A. Bacchin

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 2 530 091.
- II. The board appointed oral proceedings.
- III. In a letter dated 27 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 appellants' (patent proprietors) statement in their letter dated 27 April 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. See also Case Law of the Boards of

Appeal of the European Patent Office, 10th edition
2022, III.B.3.3 and IV.D.2).

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. Therefore a dismissal of the appeal is in line with this effect (see T 454/15, Reasons 6, T 2684/18, Reasons 4 and T 820/21, Reasons 3) and with the respondents' request.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated