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**Datasheet for the decision
of 13 September 2024**

Case Number: T 1978/21 - 3.3.08

Application Number: 14723561.8

Publication Number: 2970876

IPC: C12N5/00

Language of the proceedings: EN

Title of invention:
Serum-free cell culture medium

Patent Proprietor:
Regeneron Pharmaceuticals, Inc.

Opponents:
Withers & Rogers LLP
Maiwald Patentanwalts- und Rechtsanwalts-gesellschaft mbH

Headword:
Cell culture medium/REGENERON

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Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
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Case Number: T 1978/21 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 13 September 2024

Appellant: Withers & Rogers LLP
(Opponent 1) 4 More London Riverside
London SE1 2AU (GB)

Representative: Tombling, Adrian George
Withers & Rogers LLP
2 London Bridge
London SE1 9RA (GB)

Appellant: Maiwald GmbH
(Opponent 2) Elisenhof, Elisenstrasse 3
80335 München (DE)

Representative: Maiwald GmbH
Elisenhof
Elisenstraße 3
80335 München (DE)

Respondent: Regeneron Pharmaceuticals, Inc.
(Patent Proprietor) 777 Old Saw Mill River Road
Tarrytown, NY 10591 (US)

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

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 August 2021 concerning maintenance of the
European Patent No. 2970876 in amended form.**

Composition of the Board:

Chair B. Claes
Members: A. Schmitt
 A. Bacchin

Summary of Facts and Submissions

- I. The appeals lodged by opponent 1 (appellant I) and opponent 2 (appellant II) lie from the opposition division's interlocutory decision that European patent No. 2 970 876 (the patent) in the version of auxiliary request 1 and the invention to which it relates meet the requirements of the EPC.
- II. Both appellants requested that the decision under appeal be set aside and that the patent be revoked.
- III. With the reply to the appeals, the patent proprietor (respondent) filed sets of claims of a main request and auxiliary requests.
- IV. The parties were summoned to oral proceedings and the board expressed its preliminary opinion on some matters concerning the appeals in a communication under Article 15(1) RPBA.
- V. During the oral proceedings, the patent proprietor withdrew their approval to the text of the patent as maintained by the opposition division in amended form and withdrew all auxiliary claim requests on file and announced that they did not intend to file any further claim requests.

Reasons for the Decision

1. Pursuant to the principle of party disposition established by 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 patent proprietor.

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 and withdraws all auxiliary requests on file (see section V.).

3. There is therefore no text of the patent on the basis of which the board can consider the appeals. In these circumstances, as there is no approved text, the patent is to be revoked without assessing issues relating to patentability (see e.g. decisions T 73/84 (OJ EPO 1985, 241) and T 186/84, (OJ EPO 1986, 79) and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, sections III.B.3.3 and IV.D.2).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar:

The Chair:



C. Rodríguez Rodríguez

B. Claes

Decision electronically authenticated