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**Datasheet for the decision
of 21 November 2024**

Case Number: T 0711/22 - 3.3.04

Application Number: 13795176.0

Publication Number: 2903636

IPC: A61K39/00, A61K39/02,
A61K39/05, A61K39/08,
A61K39/09, A61K39/13

Language of the proceedings: EN

Title of invention:
Immunogenic compositions

Patent Proprietor:
GlaxoSmithKline Biologicals S.A.

Opponent:
Pfizer Inc.

Headword:
Immunogenic Compositions/GSK

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Basis of decision - text or agreement to text withdrawn by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 0646/08, T 2424/18



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0711/22 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 21 November 2024

Appellant: GlaxoSmithKline Biologicals S.A.
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Representative: Racine, Sophie Christiane Carol
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Legal & Compliance - Global Patents
79 New Oxford Street
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Appellant: Pfizer Inc.
(Opponent) 66 Hudson Boulevard East
New York, NY 10001-2192 (US)

Representative: Pfizer
European Patent Department
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
31 January 2022 concerning maintenance of the
European Patent No. 2903636 in amended form.**

Composition of the Board:

Chairman L. Bühler
Members: A. Chakravarty
O. Lechner

Summary of Facts and Submissions

- I. Both the patent proprietor and the opponent filed appeals against the interlocutory decision of the opposition division that European patent EP 2 903 636, amended according to auxiliary request 2, met the requirements of the EPC.
- II. Both parties submitted statements of grounds of appeal and replies to the other party's statement of grounds of appeal.
- III. In its statement of grounds of appeal, the appellant-patent proprietor requested that the opposition division's decision be set aside and that the patent be maintained as granted (main request). Alternatively, the patent should be maintained on the basis of the set of claims of auxiliary requests 1 to 3 (filed as auxiliary requests 1A to 3A with the letter dated 25 October 2021) and refiled with the statement of grounds of appeal. Auxiliary request 3 is the same as the claim request held to meet the requirements of the EPC by the opposition division.
- IV. In its statement of grounds of appeal, the appellant-opponent requested that the opposition division's decision be set aside and that the patent be revoked in its entirety. It further requested that auxiliary request 1 and 2 not be admitted into the proceedings. and that the opposition division's decision to admit auxiliary request 3 be reversed.
- V. Both appellants also requested oral proceedings on an auxiliary basis.

- VI. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- VII. Oral proceedings duly were held on 21 November 2024. During these oral proceedings, the appellant-patent proprietor stated that they no longer approved the text of the patent as granted, that they withdrew the auxiliary requests, and that they would not propose any other amended text.

Reasons for the Decision

Disapproval of the text of the patent by the patent proprietor

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 proprietor's statement during the oral proceedings (point VII. above), there is no approved text on the basis of which the board could consider the appeals 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. According to the case law of the boards of appeal, in these circumstances the proceedings are to be terminated by a decision ordering revocation of the patent under Article 101 EPC without assessing issues

relating to patentability (see decision T 73/84, OJ EPO 1985, 241, and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, III.B.3.3).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



I. Aperribay

L. Bühler

Decision electronically authenticated