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**Datasheet for the decision
of 11 October 2024**

Case Number: T 2044/22 - 3.3.08

Application Number: 11840796.4

Publication Number: 2640853

IPC: C12Q1/68, C07H21/04, A61K48/00,
C12N15/113

Language of the proceedings: EN

Title of invention:

Modulation of alpha synuclein expression

Patent Proprietor:

Ionis Pharmaceuticals, Inc.

Opponent:

Hoffmann Eitle Patent- und Rechtsanwälte
Partnerschaftsgesellschaft mbB

Headword:

synuclein expression/ IONIS PHARMACEUTICALS

Relevant legal provisions:

EPC 1973 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Basis of decision - text or agreement to text withdrawn by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

Catchword:

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Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 2044/22 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 11 October 2024

Appellant:I

(Patent Proprietor)

Ionis Pharmaceuticals, Inc.
2855 Gazelle Court
Carlsbad, CA 92010 (US)

Representative:

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

Appellant:II

(Opponent)

Hoffmann Eitle Patent- und Rechtsanwälte
Partnerschaftsgesellschaft mbB
Arabellastr. 30
81925 München (DE)

Representative:

Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
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81925 München (DE)

Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 June 2022 concerning maintenance of the
European Patent No. 2640853 in amended form**

Composition of the Board:

Chair

T. Sommerfeld

Members:

B. Claes

L. Bühler

Summary of Facts and Submissions

- I. The appeals lodged by the patent proprietor (appellant I) and the opponent (appellant II) lie from the interlocutory decision of the opposition division that European patent No. 2 640 853 granted on European patent application No. 11840796.4, which was filed as an international application under the PCT and published as WO 2012/068405 (application as filed) with the set of claims of auxiliary request 1 (filed as the thirty-ninth auxiliary request with the submission of 1 September 2021) and the invention to which it relates met the requirements of the EPC.
- II. Each party replied to the appeal of the other and subsequently filed rejoinders.
- III. Appellant II requested that the decision under appeal be set aside and the patent be revoked.
- 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. With a letter dated 10 October 2024 the patent proprietor informed the board as follows:

"The Proprietors hereby withdraw their approval under Rule 71 EPC of the text in which European Patent No. 2640853 was granted. The Proprietors will not be filing a replacement text. For the avoidance of doubt, the Proprietors also withdraw all requests pending in the appeal proceedings.

In the absence of a text agreed by the Proprietors, the opposition proceedings relating to this patent are terminated following Article 113(2) EPC, and the patent must be revoked. In such situations, the proceedings are terminated by a decision ordering the revocation of the patent without reference to any of the substantive issues (for example, see decision T 73/84 and Case Law of the Boards of Appeal of the EPO, 10th edition 2022, section IV.D.2)."

VI. The board cancelled oral proceedings.

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). The

board sees no reason to deviate from this consistent approach of the Boards of Appeal, with the consequence that the patent is to be revoked.

4. Revocation of the patent complies with the request of appellant II. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC and Article 12(8) RPBA 2020).

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:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated