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D E C I S I O N
of 5 March 2003

Case Number: T 0618/01 - 3.3.8

Application Number: 92902434.7

Publication Number: 0579607

IPC: G01N 33/574

Language of the proceedings: EN

Title of invention:

Prescreening of prostate cancer by serum prostatic specific antigen

Patentee:

ENDORECHERCHE INC.

Opponent:

Roche Diagnostics GmbH
Abbott Laboratories

Headword:

Prostate cancer/ENDORECHERCHE

Relevant legal provisions:

EPC Art. 111(1)

Keyword:

"Revocation at request of proprietor"

Decisions cited:

T 0459/98

Catchword:

-



Case Number: T 0618/01 - 3.3.8

D E C I S I O N
of the Technical Board of Appeal 3.3.8
of 5 March 2003

Appellant: ENDORECHERCHE INC.
(Proprietor of the patent) 2989 de la Promenade
Ste-Foy
Quebec G1W 2J6 (CA)

Representative: Dauster Hansjörg, Dipl.-Ing.
Beier, Dauster & Partner
Postfach 10 40 36
D-70035 Stuttgart (DE)

Respondent I: Roche Diagnostics GmbH
(Opponent 1) -Patentabteilung-
D-68298 Mannheim (DE)

Representative: Huber, Bernhard, Dipl.-Chem.
Weickmann & Weickmann
Patentanwälte
Postfach 86 08 20
D-81635 München (DE)

Respondent II: Abbott Laboratories
(Opponent 2) 100 Abbott Park Road, Abbott Park
Illinois 60064-6050 (US)

Representative: Vogelsang-Wenke, Heike, Dr
Grünecker, Kinkeldey, Stockmair & Schwanhäusser
Anwaltssozietät
Maximilianstrasse 58
D-80538 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 27 March 2001
revoking European patent No. 0 579 607 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: L. Galligani

Members: F. L. Davison-Brunel
C. Rennie-Smith

Summary of Facts and Submissions

- I. In a decision dated 27 March 2001, the Opposition Division revoked the European patent No. 0 579 607 with the title "Prescreening of prostate cancer by serum prostate specific antigen" for lack of novelty.
- II. With their letter dated 28 May 2001, the Appellants (Patentees) filed a notice of appeal. They paid the appeal fee and submitted a statement of grounds of appeal on 30 July 2001. They requested that the decision under appeal be set aside and that the patent be upheld in its granted form or with the auxiliary request dated 16 December 1998.
- III. Respondents I and II (Opponents 1 and 2) filed submissions in answer to the grounds of appeal on 7 August 2002 and 18 February 2002, respectively.
- IV. On 4 December 2002, the parties were summoned to oral proceedings to take place on 14 July 2003. The Board sent a communication pursuant to Article 11(2) of the Rules of procedure of the Boards of Appeal together with the summons.
- V. In their letter dated 20 February 2003, the Appellants requested that the patent be revoked.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and was admissible as filed.

2. Following the principle laid down in decision T 459/88 of 13 February 1989 that it cannot be in the public interest to maintain a patent against its proprietor's will, the Board decides to accept the Appellants' request and to revoke the European patent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

A. Wolinski

L. Galligani