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**Datasheet for the decision
of 19 January 2012**

Case Number: T 1663/08 - 3.3.08

Application Number: 98955392.0

Publication Number: 1032655

IPC: C12N 9/54

Language of the proceedings: EN

Title of invention:
Protease variants and compositions

Applicant:
Novozymes A/S

Opponents:
Henkel AG & Co. KGaA
Genencor International, Inc.

Headword:
Subtilisin/NOVOZYMES

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Basis of decision - patent proprietor (no longer approves the text of the patent)"

Decisions cited:
T 0073/84



Case Number: T 1663/08 - 3.3.08

DECISION
of the Technical Board of Appeal 3.3.08
of 19 January 2012

Appellant I: Henkel AG & Co. KGaA
(Opponent 01) Henkelstrasse 67
D-40589 Düsseldorf (DE)

Representative: M. Knödel
Henkel AG & Co. KGaA
VTP Patente
D-40191 Düsseldorf (DE)

Appellant II: Genencor International, Inc.
(Opponent 02) 925 Page Mill Road
Palo Alto
CA 94304-1013 (US)

Representative: C. S. Casley
Mewburn Ellis LLP
33 Gutter Lane
London EC2V 8AS (GB)

Respondent: Novozymes A/S
(Patent Proprietor) Krogshøjvej 36
DK-2880 Bagsvaerd (DK)

Representative: H. Wichmann
Wuesthoff & Wuesthoff
Schweigerstrasse 2
D-81541 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
2 July 2008 concerning maintenance of European
patent No. 1032655 in amended form.

Composition of the Board:

Chairman: M. Wieser
Members: B. Stolz
R. Moufang

Summary of Facts and Submissions

- I. Opponents 1 and 2 (appellants I and II, respectively) each filed an appeal against the interlocutory decision of the opposition division according to which the European Patent EP No. 1032655 could be maintained according to Article 101(3)(a) EPC.
- II. The opposition division, finding that the main request before it did not meet the requirements of Article 123(2) EPC, decided that auxiliary request 1, claims 1 to 28 filed on 23 April 2008, met all requirements of the EPC.
- III. The board issued a communication accompanied by a summons to oral proceedings with letter dated 8 July 2011. Oral proceedings were held on 19 January 2012.

At the oral proceedings, both appellants requested that the decision under appeal be set aside, and the patent be revoked.

At the onset of the oral proceedings, the patentee (respondent) requested that the patent be maintained in amended form on the basis of its main request (auxiliary request 1 filed with its response to the grounds of appeal), or in the alternative on the basis of auxiliary requests 2 (filed with the grounds of appeal), or 3 to 6 (filed with letter dated 5 December 2011).

In the course of the oral proceedings, the respondent declared that it no longer approved the text of the patent as granted and that it withdrew all pending requests.

Reasons for the Decision

1. Article 113(2) EPC states that the European Patent Office confines its considerations in proceedings to the text of the European patent application or the European patent "submitted to it, or agreed, by the applicant for or proprietor of the patent".
2. In the present case, as indicated in section III above, the respondent (patent proprietor) made it clear that it withdrew all its requests and that it no longer approved the text of the patent as granted.
3. It thus follows that there is no longer a text on the basis of which the board of appeal could consider compliance with the requirements of the EPC. Therefore, the patent must be revoked without any further substantive examination (see e.g. T 73/84, OJ EPO 1985, 241).

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:

A. Wolinski

M. Wieser