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**Datasheet for the decision  
of 8 April 2015**

**Case Number:** T 0238/11 - 3.3.08

**Application Number:** 06724513.4

**Publication Number:** 1869171

**IPC:** C12N7/02

**Language of the proceedings:** EN

**Title of invention:**  
VIRUS PURIFICATION USING ULTRAFILTRATION

**Patent Proprietor:**  
Crucell Holland B.V.

**Opponent:**  
Ahrens, Gabriele

**Headword:**  
Recombinant adenovirus ultrafiltration back pressure/CRUCCELL

**Relevant legal provisions:**

**Keyword:**  
Main Request - requirements of the EPC met (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
Boards of Appeal  
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Case Number: T 0238/11 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 8 April 2015**

**Appellant:** Ahrens, Gabriele  
(Opponent) Jasperallee 1A  
38102 Braunschweig (DE)

**Representative:** Ahrens, Gabriele  
Patentanwälte Einsel & Kollegen  
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38102 Braunschweig (DE)

**Respondent:** Crucell Holland B.V.  
(Patent Proprietor) Archimedesweg 4  
2333 CN Leiden (NL)

**Representative:** Verhage, Richard Abraham  
Crucell Holland B.V.  
IP Department  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
1 December 2010 concerning maintenance of the  
European Patent No. 1869171 in amended form.**

**Composition of the Board:**

**Chairman** M. Wieser  
**Members:** P. Julià  
D. Rogers

## **Summary of Facts and Submissions**

- I. European patent No. 1 869 171, based on European patent application No. 06 724 513.4 and published as International patent application WO 2006/108707, was granted with 21 claims. Claim 1 read as follows:

"1. A method for the purification of a virus comprising a step of ultrafiltration wherein the retentate contains the virus, characterized in that back pressure of at least 5 kPa is applied on the permeate side."

Claims 2-13 were directed to preferred embodiments of claim 1, wherein in claim 7 the virus was defined as a recombinant adenovirus. Claims 14-15 were directed to methods for purification of a recombinant adenovirus comprising several steps, including an ultrafiltration step and, as a last step, the application of a back pressure of at least 5 kPa on the permeate side. Claims 16-20 were directed to preferred embodiments of claims 14-15. Claim 21 was directed to a method for increasing the recovery and/or the yield of recombinant adenovirus during a step of ultrafiltration wherein the retentate contained the recombinant adenovirus, wherein said method was characterized in that back pressure of at least 5 kPa was applied on the permeate side.

- II. An opposition was filed on the grounds set forth on Article 100(a) EPC in combination with Articles 54 and 56 EPC against claims 1-6 as granted. The opposition division decided to maintain the patent on the basis of a claim request filed on 2 March 2010 and consisting of 24 claims. Claims 1 and 21 of this request read as follows:

"1. A method for the purification of a recombinant adenovirus comprising a step of ultrafiltration wherein the retentate contains the virus, characterized in that back pressure of at least 5 kPa is applied on the permeate side."

"21. A method for the purification of a virus comprising a step of ultrafiltration wherein the retentate contains the virus, characterized in that back pressure of at least 5 kPa is applied on the permeate side, wherein the method comprises prior to said step of ultrafiltration the steps of:  
a) culturing cells that are infected with said virus,  
b) adding nuclease to the cell culture, and thereafter  
c) optionally lysing said cells to provide a lysate comprising the virus, and  
d) optionally clarification of the lysate, preferably by depth filtration followed by membrane filtration."

Claims 2-6 and 7-20 corresponded to claims 2-6 and 8-21 as granted with corrected claim dependencies. Claims 22-24 referred to preferred embodiments of claim 21.

III. An appeal was lodged by the opponent (appellant). In the statement setting out its Grounds of Appeal, the appellant argued that claims 21-24 of the set of claims upheld by the opposition division lacked an inventive step (Article 100(a) EPC; Article 56 EPC). The appellant requested that the patent was revoked insofar as it related to claims 21-24. New documentary evidence (documents D17-D18) was filed and oral proceedings were requested.

IV. In reply to the appellant's Grounds of Appeal, the patentee (respondent) filed Auxiliary Requests 1 and 2.

The respondent requested, as its Main Request, to dismiss the appeal (maintenance of the patent on the basis of the claim request upheld by the opposition division) or, in the alternative, to maintain the patent on the basis of Auxiliary Requests 1 or 2. The respondent further requested not to admit new documentary evidence into the appeal proceedings and, as an auxiliary measure, oral proceedings to be held.

- V. The appellant replied to the respondent's submissions, filed new documentary evidence (documents D17A, D17B) and maintained all previous requests.
- VI. In a letter dated 26 June 2012, the appellant informed the board that it withdrew its request for oral proceedings and requested a decision of the board based on the written evidence on file. The appellant further announced its intention not to attend oral proceedings.
- VII. The board summoned the parties to oral proceedings. In a communication pursuant to Article 15(1) Rules of Procedure of the Boards of Appeal (RPBA), the parties were informed of the board's preliminary, non-binding opinion on the case. In particular, the board was of the opinion that neither the Main Request nor Auxiliary Request 1 fulfilled the requirements of Article 56 EPC. In the board's opinion, the patent could be maintained on the basis of Auxiliary Request 2.
- VIII. The respondent subsequently withdrew its Main Request and Auxiliary Request 1 and made its former Auxiliary Request 2 its new Main Request. The respondent filed a description of the patent adapted to its new Main Request and informed the board of its intention not to attend the oral proceedings. The respondent further noted that, since the appellant had also withdrawn its

request for oral proceedings, there was no request for oral proceedings on file and that, in the interest of procedural economy, the proceedings could be continued in writing.

IX. The board cancelled the oral proceedings.

## **Reasons for the Decision**

### Scope of the present appeal proceedings

1. Appellant's appeal was lodged against the claim request upheld by the opposition division and, in its statement of Grounds of Appeal, the appellant requested the board "*to revoke the patent insofar as it relates to claims 21 to 24*" (cf. page 1, point 1 of appellant's Grounds of Appeal; point III *supra*). In the statement setting out its Grounds of Appeal, the appellant argued exclusively with regard to a lack of inventive step of the subject-matter of claims 21-24 of the claim request upheld by the opposition division (Article 56 EPC; Article 100(a) EPC).
2. The scope of the present appeal proceedings is thus limited to assess whether the subject-matter of claims 21-24 of the claim request upheld by the opposition division fulfils the requirements of Article 56 EPC.

### Respondent's new Main Request

3. The respondent has withdrawn all its previous claim requests and made its former Auxiliary Request 2 its new Main Request (cf. points VII and VIII *supra*). The new Main Request consists of only 20 claims, claims 1-20 being identical to claims 1-20 of the claim request upheld by the opposition division. Claims 21-24

of the claim request upheld by the opposition division are not present in the new Main Request.

4. Since the appellant's appeal was not directed against the subject-matter of any of claims 1-20 of the new Main Request and as no objections had been raised against these claims, the board informed the parties in its communication pursuant to Article 15(1) RPBA that the patent could be maintained on the basis of such a claim request (cf. page 9, points 19-20 of the board's communication pursuant to Article 15(1) RPBA; point VII *supra*).
5. With its letter of 9 January 2015, the respondent filed pages 2, 3, 4, 5, 6, 8, and 15 of the description adapted to the new Main Request. No further submissions have been filed by the appellant.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent as amended in the following version:

#### Description:

pages 7, 9-14 and 16-17 of the patent specification as granted;

pages 2-6, 8 and 15 filed under cover of a letter dated 9 January 2015;

Claims:

claims 1 - 20 of the Main Request, filed as Auxiliary Request 2 under cover of a letter dated 9 January 2015,

Drawings:

Figures 1 - 18 of the patent as granted.

The Registrar:

The Chairman:



A. Wolinski

M. Wieser

Decision electronically authenticated