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**Datasheet for the decision
of 11 April 2013**

Case Number: T 2556/11 - 3.3.08

Application Number: 06022099.3

Publication Number: 1754794

IPC: C12Q 1/68

Language of the proceedings: EN

Title of invention:

Improvements in and relating to forensic identification

Applicant:

Qiagen GmbH

Headword:

Allelic ladder/QIAGEN

Relevant legal provisions:

EPC Art. 82

Keyword:

"Lack of unity of invention (no)"
"Remittal to the examining division"

Decisions cited:

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Catchword:

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Case Number: T 2556/11 - 3.3.08

D E C I S I O N
of the Technical Board of Appeal 3.3.08
of 11 April 2013

Appellant: Qiagen GmbH
(Applicant) Qiagen Str. 1
D-40724 Hilden (DE)

Representative: Kilger, C.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 13 July 2011
refusing European patent application
No. 06022099.3 pursuant to Article 97(2) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division dated 13 July 2011 whereby the European patent application No. 06 022 099.3 was refused. The examining division considered the Main Request filed on 21 May 2008 not to fulfil the requirements of Article 82 EPC. In a communication under Rule 71(3) EPC of 23 February 2011, the examining division had acknowledged that the Auxiliary Request 1 filed on 17 January 2011 fulfilled the requirements of the EPC.

The Main Request filed on 21 May 2008 contained 21 claims. Claim 1 read as follows:

"1. An allelic ladder mixture comprising an allelic ladder for locus D21S11 comprising one or more of alleles with a short tandem repeat sequence consisting of sequences:

(TCTA)₄(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₆TCGTCT;
 (TCTA)₅(TCTG)₆(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₉TCGTCT;
 (TCTA)₅(TCTG)₆(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₀TCGTCT;
 (TCTA)₄(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₈TCGTCT;
 (TCTA)₅(TCTG)₅(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₉TCGTCT;
 (TCTA)₄(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₀TCGTCT;
 (TCTA)₄(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₁TCGTCT;
 (TCTA)₆(TCTG)₅(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₁TCGTCT;
 (TCTA)₅(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₂TCGTCT;
 (TCTA)₅(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₁TATCTA TCGTCT;
 (TCTA)₅(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₂TATCTA TCGTCT;
 (TCTA)₅(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₃TATCTA TCGTCT;
 (TCTA)₅(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₄TATCTA TCGTCT;
 (TCTA)₁₀(TCTG)₅(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₂TCGTCT;
 (TCTA)₁₁(TCTG)₅(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₂TCGTCT;
 (TCTA)₁₁(TCTG)₅(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₃TCGTCT; or
 (TCTA)₁₃(TCTG)₅(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₁₂TCGTCT."

- II. The applicant (appellant) filed notice of appeal and the statement setting out the Grounds of Appeal. The appellant maintained the Main Request filed on 21 May 2008 and the Auxiliary Request filed on 17 January 2011.
- III. With the summons to oral proceedings, the board sent a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) informing the appellant of its preliminary, non-binding opinion on the substantive matters of the case.
- IV. The appellant replied to the communication of the board maintaining the Main Request and filing new Auxiliary Requests I and II.
- V. Oral proceedings took place on 11 April 2013. At these proceedings, the appellant withdrew all its previous requests and filed a new Main Request consisting of claims 1 to 16, description pages, sequence listings and drawings.
- VI. Claim 1 of the **Main Request** read as follows:
- "1. An allelic ladder mixture comprising an allelic ladder for locus D21S11 comprising an allele with a short tandem repeat sequence consisting of sequence:
- (TCTA)₄(TCTG)₆(TCTA)₃TA(TCTA)₃TCA(TCTA)₂TCCATA(TCTA)₆TCGTCT."
- VII. The appellant requested the board to set aside the decision under appeal and to grant a patent upon the basis of claims 1 to 16, the pages of the description, sequence listing and drawings of the Main Request filed

at the oral proceedings of 11 April 2013 before the board.

Reasons for the Decision

Admissibility of the Main Request

1. The Main Request is identical to the Auxiliary Request 1 filed on 17 January 2011 which the examining division in the communication under Rule 71(3) EPC of 23 February 2011 acknowledged to fulfil the requirements of the EPC. This Auxiliary Request was maintained by the appellant in the statement setting out its Grounds of Appeal. The Main Request is thus considered to be admissible.

Main Request

2. The sole issue discussed in the decision under appeal concerned Article 82 EPC. In view of the subject-matter of the Main Request, the board finds that the objection raised by the examining division regarding Article 82 EPC no longer applies. The decision of the examining division can thus be set aside and the case remitted to the first instance for further prosecution.
3. The board notes that the claims 1-16 of the Main Request are identical to the claims that were the subject of a positive opinion on the grant of a patent in a communication under Rule 71(3) EPC of 23 February 2011 and, additionally, draws the examining division's attention to the appellant's request for accelerated examination dated 9 October 2012.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside; and
2. The case is remitted to the department of first instance for further prosecution upon the basis of claims 1-16 and the pages of the description, sequence listing and drawings of the Main Request filed at the oral proceedings of 11 April 2013 before the board.

The Registrar:

The Chairman:

A. Wolinski

M. Wieser