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**Datasheet for the decision
of 13 November 2017**

Case Number: T 0816/12 - 3.3.02

Application Number: 99960450.7

Publication Number: 1135679

IPC: G01N33/52, B01L3/00

Language of the proceedings: EN

Title of invention:

MULTICHEMISTRY MEASURING DEVICE AND TEST STRIPS

Patent Proprietor:

ABBOTT LABORATORIES

Opponent:

Roche Diagnostics GmbH

Headword:

Measuring device/ABBOTT

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision
text or agreement to text withdrawn by patent proprietor -
patent revoked

Decisions cited:

Catchword:



Beschwerdekammern
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Chambres de recours

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Case Number: T 0816/12 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 13 November 2017

Appellant: Roche Diagnostics GmbH
(Opponent) Sandhofer Strasse 116
68305 Mannheim (DE)

Respondent: ABBOTT LABORATORIES
(Patent Proprietor) 100 Abbott Park Road
Abbott Park, IL 60064-3500 (US)

Representative: Duxbury, Stephen
Arnold & Siedsma
Bavariaring 17
80336 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 February 2012 concerning maintenance of the
European Patent No. 1135679 in amended form.

Composition of the Board:

Chairman A. Lindner
Members: T. Sommerfeld
P. de Heij

Summary of Facts and Submissions

- I. Appeal was lodged by the opponent (appellant) against the decision of the opposition division concerning maintenance of European patent No. 1 135 679 in amended form. With the statement of the grounds of appeal, the appellant requested that the decision be set aside and the patent revoked in its entirety.
- II. The patent proprietor (respondent) submitted a reply to the statement of the grounds of appeal, requesting that the appeal be dismissed for being inadmissible.
- III. The board issued summons for oral proceedings, which were scheduled for 14 November 2017, accompanied by a communication with a preliminary opinion of the board.
- IV. With letter dated 30 October 2017, the respondent filed the following declaration: "The Proprietor no longer approves the text on the basis of which the above referenced patent was granted. We look forward to receiving confirmation of the cancellation of the Oral Proceedings in due course". In reply to a request from the board to clarify its requests, the respondent submitted a further letter, dated 6 November 2017, with the following declaration: "(...) we confirm that the Proprietor hereby withdraws all their Requests on file and withdraws their approval of the text on the basis of which the patent was granted. According to EPO Legal Advice 11/82, the patent is to be revoked".
- V. The oral proceedings were thereafter cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC the European Patent Office must consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle is part of the common provisions governing the procedure and is therefore to be observed also in opposition appeal proceedings.
2. In the present case the respondent-patentee withdrew all requests on file as well as its approval of the text of the patent as granted, with the consequence that there is no text of the patent on the basis of which the Board can consider the case. With the same letter the respondent-patentee envisaged revocation of the patent as the consequence of this withdrawal.
3. While the procedure for revocation pursuant to Articles 105a to 105c EPC is not available during opposition and opposition appeal proceedings, it is the consistent jurisprudence of the boards of appeal that, if the patent proprietor states that he no longer approves the text in which the patent was granted, withdraws all pending requests and does not submit any amended text, the patent, as a consequence of Article 113(2) EPC, is to be revoked without substantive examination as to patentability, which becomes impossible in the absence of a valid text.
4. The Board has no reason in the present case to deviate from the consistent approach of the boards of appeal, with the consequence that the patent is to be revoked.

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:



M. Schalow

A. Lindner

Decision electronically authenticated