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**Datasheet for the decision  
of 26 April 2018**

**Case Number:** T 2021/14 - 3.3.04

**Application Number:** 07016960.2

**Publication Number:** 1869961

**IPC:** A01H1/04, A01C1/00, A01H5/10,  
C12Q1/68, C12N15/10

**Language of the proceedings:** EN

**Title of invention:**

Automated seed sampler and methods of sampling, testing and bulking seeds

**Patent Proprietor:**

Monsanto Technology, LLC

**Opponent:**

Syngenta Crop Protection AG

**Headword:**

Seed sampler/MONSANTO

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - revocation of the patent at request of the patent proprietor

**Decisions cited:**

T 0073/84

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 2021/14 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 26 April 2018**

**Appellant I:** Monsanto Technology, LLC  
(Patent Proprietor) 800 North Lindbergh Boulevard  
St. Louis, MO 63167 (US)

**Representative:** Cornish, Kristina Victoria Joy  
Kilburn & Strode LLP  
Lacon London  
84 Theobalds Road  
London WC1X 8NL (GB)

**Appellant II:** Syngenta Crop Protection AG  
(Opponent) Schwarzwaldallee 215  
4058 Basel (CH)

**Representative:** Syngenta International AG  
WRO B8-Z1-30  
Schwarzwaldallee 215  
4058 Basel (CH)

**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**28 July 2014 concerning maintenance of the**  
**European Patent No. 1869961 in amended form.**

**Composition of the Board:**

**Chairwoman** G. Alt  
**Members:** R. Morawetz  
P. de Heij

## **Summary of Facts and Submissions**

- I. The appeals of the patent proprietor (hereinafter "appellant I") and of the opponent (hereinafter "appellant II") lie against the interlocutory decision of the opposition division concerning maintenance of the European Patent No. 1 869 961 in amended form. The title of the patent is "*Automated seed sampler and methods of sampling, testing and bulking seeds.*"
- II. With its statement of grounds of appeal appellant I maintained the main request and auxiliary request I as filed before the opposition division and, accordingly, requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, alternatively, be maintained on the basis of the set of claims of auxiliary request 1. Oral proceedings were requested in the case that the main request was rejected.
- III. With its statement of grounds of appeal appellant II requested that the decision under appeal be set aside and that the patent be revoked. Oral proceedings were requested in the case that the board could not allow this request on the basis of the written submissions.
- IV. The board issued a summons to oral proceedings and sent a communication pursuant to Article 15(1) RPBA.
- V. By letter dated 21 February 2018 appellant II announced that it would not attend the oral proceedings scheduled to take place on 22 March 2018.

- VI. By letters dated 15 March 2018 appellant I declared that it no longer approved the text of the patent as granted, that it withdrew all pending claim requests and also its request for oral proceedings.
- VII. By a communication dated 21 March 2018 the board informed the parties that the oral proceedings were cancelled.

### **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon the European patent only in the text submitted to it, or agreed by the proprietor of the patent.
2. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted and withdraws all pending claim requests (see section VI, above). There is therefore no text of the patent on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent without substantive examination as to patentability (see decision T 73/84, OJ EPO, 1985, 241 and Case Law of the Boards of Appeal of the EPO, 8th edition 2016, IV.C.5.2). The board has no reason in the present case to deviate from this consistent approach of the boards of appeal.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



P. Cremona

G. Alt

Decision electronically authenticated