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**Datasheet for the decision
of 21 February 2019**

Case Number: T 1882/15 - 3.2.04

Application Number: 10184375.3

Publication Number: 2279657

IPC: A01C1/00, A01H1/02, A01C1/02,
A01H4/00, C12Q1/68, G01N1/04,
A01H1/04

Language of the proceedings: EN

Title of invention:
Automated seed sampler and methods of sampling and testing
seeds

Patent Proprietor:
Monsanto Technology LLC

Opponent:
Syngenta Crop Protection AG

Headword:

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Basis of decision - text or agreement to text withdrawn by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

Boards of Appeal

Chambres de recours

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Case Number: T 1882/15 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 21 February 2019

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

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

Appellant: 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
13 July 2015 concerning maintenance of the
European Patent No. 2279657 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: J. Wright
W. Van der Eijk

Summary of Facts and Submissions

- I. The appellant-opponent lodged an appeal, received 23 September 2015, against the interlocutory decision of the Opposition Division posted on 13 July 2015 concerning maintenance of the European Patent No. 2279657 in amended form. They paid the appeal fees at the same time. The appellant-opponent's grounds of appeal were received on 23 November 2015.

The proprietor also lodged an appeal against the above decision. The appeal was subsequently withdrawn with letter received 23 November 2015.

- II. Opposition was filed against the patent as a whole and based on all opposition grounds. The division held that the patent as amended according to an auxiliary request met all the requirements of the EPC.

- III. Oral proceedings before the Board were duly held on 21 February 2019 in the absence of the appellant-opponent who had been duly summoned and who had informed the Board in a letter dated 3 January 2019 that they would not attend the oral proceedings.

During the course of the oral proceedings, the respondent-proprietor declared that they no longer approved the text in which the patent had been granted as they did not wish the Board to decide on any of their requests.

- IV. The appellant-opponent requests that the decision under appeal be set aside and the patent be revoked in its entirety.

Reasons for the Decision

1. The appeal is admissible.
2. 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.
3. The Board notes that by withdrawing their approval of the text of the granted patent with the express wish for the Board not to decide on their requests, the respondent-proprietor implicitly withdrew all their then pending claim requests.

Furthermore, an agreement according to Article 113(2) EPC cannot be deemed to exist where - as in the present case - the proprietor expressly states that it no longer approves the text of the patent as granted and withdraws all pending requests.

There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, IV.C.5.2).

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:



G. Magouliotis

A. de Vries

Decision electronically authenticated