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**Datasheet for the decision
of 15 November 2021**

Case Number: T 1302/16 - 3.3.08

Application Number: 08801378.4

Publication Number: 2205737

IPC: C12N15/113

Language of the proceedings: EN

Title of invention:

Micromirs

Patent Proprietor:

Roche Innovation Center Copenhagen A/S

Opponents:

Mirx Therapeutics A/S/Querdenker ApS
Exiqon A/S
Chapman, Desmond Mark

Headword:

Anti-microRNA oligomers/ROCHE

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 1302/16 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 15 November 2021

Appellant: Chapman, Desmond Mark
(Opponent 03)
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Representative: Chapman, Desmond Mark
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Respondent: Roche Innovation Center Copenhagen A/S
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Representative: C.T. Harding
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Representative: Orsnes, Henrik Egede
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Party as of right: Exiqon A/S
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Representative: Grünecker Patent- und Rechtsanwälte
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
17 March 2016 concerning maintenance of the
European Patent No. 2205737 in amended form.**

Composition of the Board:

Chairman B. Stolz
Members: M. Montrone
 A. Bacchin

Summary of Facts and Submissions

- I. An appeal was lodged by opponent 03 against the interlocutory decision of an opposition division that European patent no. 2 205 737 met the requirements of the EPC in amended form and the invention to which it related.
- II. The appellant (opponent 03) requested that the decision under appeal be set aside and that the patent be revoked. The respondent (patent proprietor) requested that the appeal be dismissed and that the patent be maintained as amended by the opposition division or, alternatively, according to one of the auxiliary requests on file.
- III. The board issued a summons to oral proceedings to be held on 7 December 2021, followed by a communication pursuant to Article 17(2) RPBA 2020.
- IV. By letter dated 5 November 2021, the patent proprietor withdrew their approval of the text in which the patent had been granted and withdrew all pending requests. The patent proprietor further stated that they will not file a replacement text.
- V. The board subsequently cancelled the oral proceedings.

Reasons for the Decision

1. Article 113(2) EPC establishes the principle of party disposition, according to which the EPO may decide upon a European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle

equally applies in opposition and opposition-appeal proceedings.

2. As the patent proprietor withdrew their approval of any text for the maintenance of the patent in suit, without submitting an amended text, such an agreement cannot be deemed to exist.
3. There is therefore no valid text on the basis of which the board can consider the appeal.
4. In the circumstances described above, it is established case law that the appeal proceedings must be terminated by a decision ordering the revocation of the patent without going into the substantive issues (see, for instance, T 0073/84, OJ EPO 1985, 241). There are also no ancillary issues that would have to be dealt with by the board in the present appeal case. The decision can therefore be taken without holding oral proceedings.

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:



L. Malécot-Grob

B. Stolz

Decision electronically authenticated