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**Datasheet for the decision
of 10 February 2022**

Case Number: T 0564/17 - 3.3.08

Application Number: 07796784.2

Publication Number: 2041270

IPC: C12N5/00

Language of the proceedings: EN

Title of invention:
PRODUCTION OF GLYCOPROTEINS

Patent Proprietor:
Wyeth LLC

Opponents:
HGF Limited
Franke, Andreas
Breuer, Markus
STRAWMAN LIMITED
European Oppositions Limited
Generics [UK] Limited
Appelt, Christian W.

Headword:
Cell culture production glycoproteins/WYETH

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Basis of decision - text or agreement to text withdrawn by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 2080/13, T 1182/17

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 0564/17 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 10 February 2022

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
5 January 2017 concerning maintenance of the
European Patent No. 2041270 in amended form.**

Composition of the Board:

Chairman	M. Montrone
Members:	P. Julià
	D. Rogers

Summary of Facts and Submissions

- I. European patent no. 2 041 270 is based on European patent application no. 07 796 784.2, originally filed under the PCT and published as WO 2008/008360. The patent was granted with 21 claims.

- II. Several oppositions were filed on the grounds set forth in Articles 100(a), (b) and (c) EPC. The opposition division considered the main request and auxiliary requests 1 to 3 not to fulfil the requirements of Article 54 EPC and auxiliary request 4 not to fulfil those of Article 56 EPC. The patent was maintained in amended form on the basis of auxiliary request 5 and a description adapted thereto (auxiliary request 6). An auxiliary request 1 filed at the oral proceedings before the opposition division was not admitted into the proceedings.

- III. Appeals were lodged by the patent proprietor and opponents 04 and 06. Opponent 06 later withdrew its appeal. The patent proprietor and opponent 04 will be referred to as appellants I and II, respectively; when necessary, the other opponents will be referred to in this decision by their opponent numbers from the opposition proceedings, otherwise they will be referred to collectively as "the parties as of right".

- IV. With the statements setting out their respective grounds of appeal, appellant I filed a main request and auxiliary requests 1 to 17 and appellant II filed new documentary evidence. Both appellants replied to their respective grounds of appeal and filed new evidence.

- V. Opponents 05, 06 and 07 replied to the statement of grounds of appeal of appellant I. No submissions were filed by opponents 01 to 03.

- VI. Since both appellants requested oral proceedings as an auxiliary measure, the board summoned to oral proceedings and issued a communication pursuant to Article 17 Rules of Procedure of the Boards of Appeal (RPBA 2020) informing the parties of the board's provisional opinion on the issues of the case.

- VII. Both appellants replied to the board's communication; appellant I withdrew auxiliary requests 12 to 17.

- VIII. None of the parties as of right replied to the board's communication in substance but only to inform the board of their intention to attend or not to attend the scheduled oral proceedings.

- IX. Oral proceedings were held on 10 February 2022 in the presence of both appellants and opponents 03 and 05. At these proceedings, appellant I (patent proprietor) withdrew its approval of the text which the European patent was granted and did not file a replacement text or any further requests.

- X. Appellant II (opponent 04) requested that the decision under appeal be set aside and the patent be revoked.

- XI. The parties as of right (opponents 03 and 05 to 07) requested that appellant I's appeal be dismissed.

Reasons for the Decision

1. Article 113(2) EPC requires that the European Patent Office decides upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. The patent proprietor (appellant I) explicitly disapproved the text of the patent without filing any other amended text on which further prosecution could be based.

Thus, the appellant unequivocally expresses that they are no longer interested in the continuation of the appeal proceedings and a decision on the appeal under Article 111 EPC.

3. It is established case law of the Boards of Appeal that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see, *inter alia*, T 2080/13 of 8 September 2017; T 1182/17 of 22 October 2020 and the case law cited in point 4 of the Reasons of this decision).

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

M. Montrone

Decision electronically authenticated