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**Datasheet for the decision
of 8 March 2023**

Case Number: T 1856/18 - 3.3.08

Application Number: 07748459.0

Publication Number: 2010663

IPC: C12N15/87, A61K48/00

Language of the proceedings: EN

Title of invention:

Exosome transfer of nucleic acids to cells

Patent Proprietor:

Codiak BioSciences, Inc.

Opponents:

James Poole Limited
Dr. H. Ulrich Dörries

Headword:

Exosome transfer of nucleic acids/CODIAK

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Basis of decision - text or agreement to text withdrawn by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



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Case Number: T 1856/18 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 8 March 2023

Appellant: Codiak BioSciences, Inc.
(Patent Proprietor) 19 Presidential Way
Woburn, MA 01801 (US)

Representative: Zwicker, Jörk
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Appellant: James Poole Limited
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Representative: Elkington and Fife LLP
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Party as of right: Dr. H. Ulrich Dörries
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Representative: Dörries, Hans Ulrich
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
25 May 2018 concerning maintenance of the
European Patent No. 2010663 in amended form**

Composition of the Board:

Chair	M. Montrone
Members:	A. Schmitt
	D. Rogers

Summary of Facts and Submissions

- I. The appeals lodged by the patent proprietor (appellant I) and opponent 1 (appellant II) are against the interlocutory decision of the opposition division that European patent No. No. 2 010 663 (patent) as amended in the form of auxiliary request IV and the invention to which it relates meet the requirements of the EPC. Opponent 2 (party as of right) did not appeal the opposition division's decision.
- II. In the statement of grounds of appeal appellant I requested that the patent be maintained in amended form based on one of the sets of claims of a main request or of auxiliary requests I, II, IIb, III, IIIa, IIIb, IV, IVa and IVb, all submitted with the statement of grounds of appeal. The sets of claims of the main request and each of auxiliary requests II, III and IV were identical to the sets of claims of the main request and auxiliary requests II, IV and V filed on September 29, 2017.
- 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.
- IV. The board summoned to oral proceedings, as requested by both appellants, and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- V. In a letter dated 18 January 2023, the patent proprietor stated that it would not attend to the oral proceedings scheduled for 2 February 2023 and that it no longer approved the text of the patent as granted.

It also informed the board that it would not be submitting an amended text and that it withdrew all previously filed requests.

VI. The board then cancelled the oral proceedings.

Reasons for the Decision

1. The appeals are admissible.
2. Pursuant to the principle of party disposition established by 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. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly withdrew the consent to the text of the patent in the form as granted or previously amended, withdrew all claim requests on file and stated that no further amended text would be filed (see section V.).
4. There is therefore no text of the patent on the basis of which the board can consider the appeals. In these circumstances, the patent is to be revoked, without assessing issues relating to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, IV.D.2).
5. Revocation of the patent is also the main request of appellant II (see section III.). There are also no remaining issues that need to be dealt with by the board in the present appeal case. The decision in the

present appeal case can therefore be taken without holding oral proceedings.

Order

For these reasons it is decided that:

6. The decision under appeal is set aside.
7. The patent is revoked.

The Registrar:

The Chair:



L. Malécot-Grob

M. Montrone

Decision electronically authenticated