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**Datasheet for the decision
of 1 August 2023**

Case Number: T 1951/19 - 3.3.08

Application Number: 13733496.7

Publication Number: 2864471

IPC: C12N5/00

Language of the proceedings: EN

Title of invention:

Methods for inactivation of viruses and bacteria in cell culture media

Patent Proprietor:

F. Hoffmann-La Roche AG

Opponents:

Bayer Intellectual Property GmbH /
Bayer Aktiengesellschaft
Blodig, Wolfgang

Headword:

Methods for inactivation of viruses/F. HOFFMANN-LA ROCHE AG

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84, T 0454/15

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1951/19 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 1 August 2023

Appellant: F. Hoffmann-La Roche AG
(Patent Proprietor) Grenzacherstrasse 124
4070 Basel (CH)

Representative: Mewburn Ellis LLP
Aurora Building
Counterslip
Bristol BS1 6BX (GB)

Respondents: Bayer Intellectual Property GmbH
(Opponents 1) Alfred-Nobel-Straße 10
40789 Monheim (DE)

and

Bayer Aktiengesellschaft
Kaiser-Wilhelm-Allee 1
51373 Leverkusen (DE)

Representative: Driehaus, Johanna
Bayer Intellectual Property GmbH
Alfred-Nobel-Straße 10
40789 Monheim (DE)

Respondent: Blodig, Wolfgang
(Opponent 2, opposition c/o Wächtershäuser & Hartz
withdrawn) Weinstr. 8
80333 Munich (DE)

Representative: Dörries, Hans Ulrich
df-mp Dörries Frank-Molnia & Pohlman
Patentanwälte Rechtsanwälte PartG mbB
Theatinerstraße 16
80333 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 2 May 2019
revoking European patent No. 2864471 pursuant to
Article 101(3) (b) EPC**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: M. Montrone
 M. Blasi

Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the opposition division's decision revoking European patent EP 2 864 471 ("the patent").
- II. With its statement setting out the grounds of appeal, the appellant requested, *inter alia*, that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the set of claims of the main request, or alternatively of one of the auxiliary requests (auxiliary requests 1 to 3, 3a, 3b, 4, 4a, 4b, 5, 5a and 5b) filed with the statement of grounds of appeal.
- III. With their replies to the statement of grounds of appeal, opponent 1 and opponent 2 (respondents) requested, as understood by the board, that the appeal be dismissed. With a later letter, opponent 2 withdrew the opposition and ceased to be a party in the appeal proceedings.
- IV. Oral proceedings before the board were held as scheduled. At the oral proceedings the appellant declared that it no longer approved the text of the patent as granted, and that it withdrew all auxiliary requests.

Reasons for the Decision

1. 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.

2. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly stated that it no longer approved the text of the patent as granted, and withdrew all claim requests on file.

3. According to the case law of the boards of appeal, in these circumstances the proceedings are to be terminated by a decision ordering revocation of the patent under Article 101 EPC 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, III.B.3.3). In the case at hand, where the patent had already been revoked by the opposition division it cannot be revoked again (see also decision T 454/15, Reasons 6). As there are no remaining issues that need to be dealt with by the board in the present appeal case, the consequence of the appellant's declaration is that the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated