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**Datasheet for the decision
of 29 March 2023**

Case Number: T 2648/19 - 3.3.02

Application Number: 09005942.9

Publication Number: 2119722

IPC: C07H19/06, C07H19/10,
C07H19/16, C07H19/20,
C07H21/00, C12Q1/68, G01N33/53

Language of the proceedings: EN

Title of invention:
Labelled nucleotides

Patent Proprietor:
Illumina Cambridge Limited

Opponent:
Hoffmann Eitle

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Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2648/19 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 29 March 2023

Appellant: Hoffmann Eitle
(Opponent) Patent- und Rechtsanwälte PartmbB
Arabellastrasse 30
81925 München (DE)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Respondent: Illumina Cambridge Limited
(Patent Proprietor) Chesterford Research Park
Little Chesterford
Saffron Walden
Essex CB10 1XL (GB)

Representative: Cooley (UK) LLP
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
12 July 2019 concerning maintenance of the
European Patent No. 2119722 in amended form.**

Composition of the Board:

Chairman M. O. Müller
Members: A. Lenzen
M. Blasi

Summary of Facts and Submissions

- I. This decision concerns the appeal duly filed by the opponent (appellant) against the decision of the opposition division (decision under appeal) according to which European patent No. 2 119 722 (patent) in amended form meets the requirements of the EPC.
- II. In preparation for the oral proceedings on 31 March 2023, which were arranged in accordance with the parties' requests, the board issued a communication pursuant to Article 15(1) RPBA 2020.
- III. In its letter of 24 March 2023, the patent proprietor (respondent) informed the board that it would not attend the scheduled oral proceedings and stated that it no longer approved the text of the patent that was granted, that no new text would be submitted and that all previous requests were withdrawn.
- IV. The scheduled oral proceedings were cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. The respondent withdrew its approval of the text of the granted patent. Furthermore, it withdrew all amended text versions. Consequently, there is no text of the patent submitted or agreed by the proprietor of the patent on the basis of which the board can consider compliance with the requirements of the EPC.

3. It is established case law of the Boards of Appeal since decision T 73/84 (OJ EPO 1985, 241) that under such circumstances, the patent is to be revoked without further substantive examination. Moreover, no other issues are remaining within the scope of the present appeal.

4. As revocation of the patent also complies with the appellant's request, the present decision can 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:



N. Maslin

M. O. Müller

Decision electronically authenticated