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**Datasheet for the decision
of 14 December 2022**

Case Number: T 2924/19 - 3.3.08

Application Number: 10741877.4

Publication Number: 2396459

IPC: C40B40/08, C40B70/00

Language of the proceedings: EN

Title of invention:

METHODS OF CREATING AND SCREENING DNA-ENCODED LIBRARIES

Patent Proprietor:

X-Chem, Inc.

Opponent:

Nuevolution A/S

Headword:

Methods of creating and screening DNA-encoded libraries/X-CHEM

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Basis of decision - text or agreement to text withdrawn by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 1111/10, T 1536/14, T 1182/17, T 1226/18, T 0774/20

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2924/19 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 14 December 2022

Appellant: X-Chem, Inc.
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Appellant: Nuevolution A/S
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Representative: Aamand, Jesper L.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 September 2019 concerning maintenance of the
European Patent No. 2396459 in amended form**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: D. Pilat
D. Rogers

Summary of Facts and Submissions

- I. Both the opponent and the patent proprietor appealed the decision of an opposition division to maintain the European Patent No. 2 396 459 in amended form.
- II. The patent proprietor first requested that the decision under appeal be set aside to the extent that it is adverse to the patent proprietor, whereas the opponent requested that the decision under appeal be set aside and the patent be revoked.
- III. With their letter dated 12 October 2022, the patent proprietor withdrew their appeal. With a further letter, dated 13 October 2022, the patent proprietor stated:

"The patentee withdraws its approval of the text of EP 2396459 under Rule 71 EPC. The patentee will not be filing any further requests. In the absence of a text agreed by the patentee, the proceedings relating to this patent are terminated following Article 113(2) EPC. In such situations, the proceedings are terminated by a decision ordering the revocation of the patent without reference to the substantive issues (see, e.g., decisions T 1111/10 and T 1536/14, cited in the Case Law of the Boards of Appeal of the EPO (9th Edition), section IV.D.2, and Guidelines for Examination in the EPO, D-VIII, 1.2.5)."

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted, or agreed, by the patent proprietor.

2. There is no such agreement if, as in the case at hand, the patent proprietor explicitly disapproves the text of the patent without filing any other amended text on which further pursuit of the appeal could be based.
3. Since there is no alternative text of the patent which could be deemed to be approved by the patent proprietor, their above declaration also implies that the request to hold oral proceedings is withdrawn (i.e. there is no text to be discussed).
4. Under these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into substantive issues (see, *inter alia*, T 1111/10 of 8 September 2010, T 1536/14 of 14 October 2015, T 1182/17 of 22 October 2020, T 774/20 of 2 February 2022; cf. also T 1226/18 of 7 February 2022).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated