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**Datasheet for the decision  
of 21 November 2023**

**Case Number:** T 0881/20 - 3.3.08

**Application Number:** 10782133.2

**Publication Number:** 2501822

**IPC:** C12N1/02, C12P21/02, C12P21/00,  
C12N5/00, C07K1/36, C07K16/00

**Language of the proceedings:** EN

**Title of invention:**  
Methods for enhanced protein production

**Patent Proprietor:**  
E. R. Squibb & Sons, L.L.C.

**Opponents:**  
Sartorius Stedim Biotech GmbH  
Pfizer Inc.

**Headword:**  
Process for enhanced protein production/E. R. SQUIBB & SONS

**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Basis of decision - text or agreement to text withdrawn by  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

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0881/20 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 21 November 2023**

**Appellant:** E. R. Squibb & Sons, L.L.C.  
(Patent Proprietor) Route 206 and Province Line Road  
Princeton, NJ 08540 (US)

**Representative:** Thomas Wolter and Daniel Yin  
Mewburn Ellis LLP  
Aurora Building  
Counterslip  
Bristol BS1 6BX (GB)

**Appellant:** Sartorius Stedim Biotech GmbH  
(Opponent 1) August-Spindler-Strasse 11  
37079 Göttingen (DE)

**Representative:** Hendrik Ehlich  
Müller-Boré & Partner  
Patentanwälte PartG mbB  
Friedenheimer Brücke 21  
80639 München (DE)

**Appellant:** Pfizer Inc.  
(Opponent 2) 235 East 42nd Street  
New York, NY 10017 (US)

**Representative:** Thomas Pringot and Marc Markus  
Pfizer  
European Patent Department  
23-25 avenue du Docteur Lannelongue  
75668 Paris Cedex 14 (FR)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
25 February 2020 concerning maintenance of the  
European Patent No. 2501822 in amended form**

**Composition of the Board:**

<b>Chairwoman</b>	T. Sommerfeld
<b>Members:</b>	M. Montrone
	A. Bacchin

## **Summary of Facts and Submissions**

- I. All parties to the proceedings (the patent proprietor and opponents 1 and 2 ("appellants I to III", respectively) lodged an appeal against the interlocutory decision of an opposition division according to which European patent No. 2 501 822 ("the patent") could be maintained in amended form.
- II. With their statement setting out the grounds of appeal, appellant I requested, *inter alia*, that the decision under appeal be set aside and that the patent be maintained as granted or alternatively on the basis of auxiliary request 1 filed with the statement of grounds of appeal, or alternatively that the patent be maintained on the basis of auxiliary requests 2 to 8 submitted during opposition proceedings.
- III. With their statements setting out the grounds of appeals, appellants II and III requested, *inter alia*, that the decision under appeal be set aside and the patent be revoked.
- IV. The board appointed oral proceedings and, in a subsequent communication pursuant to Article 15(1) RPBA 2020, provided its preliminary appreciation of some matters concerning the appeal.
- V. In reply, appellant I withdrew its main request and auxiliary requests 1 and 5. Furthermore, auxiliary request 2 was re-submitted as its new main request as well as new auxiliary requests 1 to 5 being identical, respectively, to the previous auxiliary requests 3, 4 and 6 to 8. In addition new auxiliary requests 6 to 11 were submitted.

VI. Oral proceedings before the board were held as scheduled. Appellant I declared that they no longer approved the text of the patent as granted and that they withdrew all requests on file.

### **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 states that it no longer approves the text of the patent as granted and withdraws all claim requests on file (see section VI.).
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).
4. There are no remaining issues that need to be dealt with by the board in the present appeal case.

### **Order**

**For these reasons it is decided that:**

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairwoman:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated