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**Datasheet for the decision  
of 8 October 2024**

**Case Number:** T 1153/20 - 3.3.08

**Application Number:** 11715933.5

**Publication Number:** 2563906

**IPC:** C12N5/02

**Language of the proceedings:** EN

**Title of invention:**

Process for cultivation of CHO cells

**Patent Proprietor:**

Novartis AG

**Opponents:**

Dehns Ltd  
Strawman Limited  
Graf von Stosch, Andreas  
Weinzierl, Gerhard  
Neuefeind, Regina  
Maiwald GmbH  
F. Hoffmann-La Roche AG

**Headword:**

Process for cultivation of CHO cells/Novartis AG

**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Basis of decision - text or agreement to text withdrawn by  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, T 0186/84, T 0646/08, T 2434/18



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
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**Case Number: T 1153/20 - 3.3.08**

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 8 October 2024**

**Appellant I:**

(Opponent 1)

Dehns Ltd  
10 Salisbury Square  
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**Representative:**

Dehns  
10 Old Bailey  
London EC4M 7NG (GB)

**Appellant II:**

(Opponent 4)

Weinzierl, Gerhard  
Schiweck Weinzierl Koch  
Patentanwälte Partnerschaft mbB  
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**Representative:**

Schiweck Weinzierl Koch  
Patentanwälte Partnerschaft mbB  
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80339 München (DE)

**Appellant III:**

(Opponent 6)

Maiwald GmbH  
Elisenhof, Elisenstrasse 3  
80335 München (DE)

**Appellant IV:**

(Opponent 7)

F. Hoffmann-La Roche AG  
Grenzacherstr. 124  
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**Representative:**

Vossius & Partner  
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**Respondent:**

(Patent Proprietor)

Novartis AG  
Lichtstrasse 35  
4056 Basel (CH)

**Representative:** Breuer, Markus  
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**Party as of right:** Strawman Limited  
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**Party as of right:** Graf von Stosch, Andreas  
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**Representative:** Graf von Stosch, Andreas  
Graf von Stosch  
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**Party as of right:** Neuefeind, Regina  
(Opponent 5) Maiwald GmbH  
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Elisenstraße 3  
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**Representative:** Maiwald GmbH  
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Elisenstraße 3  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
20 March 2020 concerning maintenance of the  
European Patent No. 2563906 in amended form**

**Composition of the Board:**

**Chairwoman** T. Sommerfeld  
**Members:** R. Morawetz  
A. Bacchin

## **Summary of Facts and Submissions**

- I. The appeals lodged by opponent 1 (appellant I), opponent 4 (appellant II), opponent 6 (appellant III) and opponent 7 (appellant IV) lie from the interlocutory decision of the opposition division that European patent No. 2 563 906 (the patent) as amended with the set of claims of the main request (submitted as auxiliary request 1 on 1 March 2019) and the invention to which it relates meet the requirements of the EPC.
- II. The appellants requested as their main request that the decision under appeal be set aside and the patent be revoked in its entirety.
- III. The patent proprietor (respondent) initially requested that the opponents' appeals be dismissed and that the patent be maintained in amended form on the basis of the main request filed with the reply to the opponents' statements of grounds of appeal and being identical to the set of claims considered allowable by the opposition division, or alternatively, that the patent be maintained in amended form on the basis of the set of claims of one of auxiliary requests 1 to 5 submitted in reply to the opponents' statements of grounds of appeal.
- IV. The board scheduled oral proceedings in accordance with the parties' requests and subsequently issued a communication under Article 15(1) RPBA.
- V. With a letter dated 27 September 2024, the respondent informed the board as follows:

*"The proprietor hereby withdraws its approval of the text of the patent in any form.*

*The proprietor also withdraws its request for oral proceedings."*

VI. The board cancelled the oral proceedings.

### **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
2. Since the text of a patent is at the disposition of the patent proprietor(s), their patent cannot be maintained against their will. In the case at hand the patent proprietor withdrew its approval of the text of the patent in any form (see point V. above). It thus unequivocally withdrew its approval of the text of the patent as amended according to the main request and all auxiliary requests. Consequently, there is no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC, so that it is not possible to take a decision as to substance (see e.g. decisions T 186/84, OJ 1986, 79, Reasons 5; T 646/08, Reasons 4 and T 2434/18, Reasons 4).
3. It is established case law that in the present circumstances the decision under appeal must be set aside and the patent be revoked without further substantive examination as 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, sections III.B.3.3 and IV.D.2). The board has no reason to deviate from this established jurisprudence of the Boards of Appeal, with the consequence that the patent is to be revoked.

4. Revocation of the patent complies with the main request of the appellants. There are no remaining issues that need to be dealt with by the board in this appeal case, either. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC and Article 12(8) RPBA 2020).

## 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