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**Datasheet for the decision  
of 11 October 2022**

**Case Number:** T 1391/21 - 3.3.08

**Application Number:** 12830083.7

**Publication Number:** 2748357

**IPC:** C12N15/10, C40B50/14, C40B50/16

**Language of the proceedings:** EN

**Title of invention:**  
Methods for tagging dna-encoded libraries

**Patent Proprietor:**  
X-Chem, Inc.

**Opponent:**  
Nuevolution A/S

**Headword:**  
Methods for tagging dna-encoded libraries/NUEVOLUTION

**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Basis of decision - text or agreement to text withdrawn by  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 1110/10, T 1526/14, T 1182/17, T 1226/18, T 0774/20

**Catchword:**



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

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Case Number: T 1391/21 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 11 October 2022**

**Appellant:** Nuevolution A/S  
(Opponent) Rønnegade 8  
2100 Copenhagen (DK)

**Representative:** Aamand, Jesper L.  
Jesper Levin A/S  
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**Respondent:** X-Chem, Inc.  
(Patent Proprietor) 100 Beaver Street, Suite 101  
Waltham, Massachusetts 02453 (US)

**Representative:** Holland, David C.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 16 June 2021  
rejecting the opposition filed against European  
patent No. 2748357 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chair** M. Montrone  
**Members:** D. Pilat  
R. Winkelhofer

## **Summary of Facts and Submissions**

- I. European patent no. 2748357 was granted with effect of 4 April 2018.
- II. An opposition was timely filed. By decision of an Opposition Division of 2 June 2021, the opposition was rejected.
- III. The opponent appealed the decision, requesting that the patent be revoked. The patent proprietor (respondent) requested that the appeal be dismissed. Both parties conditionally requested oral proceedings.
- IV. On 30 September 2022, the respondent submitted the following:

"The patentee withdraws its approval of the text of EP 2748357 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 1110/10 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, and the jurisprudence cited by the patent proprietor).

## **Order**

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

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

The Registrar:

The Chair:



L. Malécot-Grob

M. Montrone

Decision electronically authenticated