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**Datasheet for the decision  
of 22 November 2024**

**Case Number:** T 0085/22 - 3.3.08

**Application Number:** 15190426.5

**Publication Number:** 3002337

**IPC:** C12Q1/68, C12N15/11, C40B50/06

**Language of the proceedings:** EN

**Title of invention:**  
GENE EXPRESSION ANALYSIS IN SINGLE CELLS

**Patent Proprietor:**  
Illumina, Inc.

**Opponents:**  
Kilger, Christian  
Vossius & Partner  
Patentanwälte Rechtsanwälte mbB  
Strawman Limited

**Headword:**

**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Basis of decision - text or agreement to text withdrawn by  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 0655/01, T 1526/06, T 2405/12,  
T 1484/19

**Catchword:**



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

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European Patent Office  
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Case Number: T 0085/22 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 22 November 2024**

**Appellant:**  
(Opponent 2)

Vossius & Partner  
Patentanwälte Rechtsanwälte mbB  
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**Representative:**

Schlörb, Christian  
Vossius & Partner  
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**Appellant:**  
(Opponent 3)

Strawman Limited  
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**Representative:**

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**Respondent:**  
(Patent Proprietor)

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**Representative:**

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 5 November 2021  
rejecting the opposition filed against European**

patent No. 3002337 pursuant to Article 101(2)  
EPC

**Composition of the Board:**

**Chairwoman**            T. Sommerfeld

**Members:**             D. Pilat

                             D. Rogers

## Summary of Facts and Submissions

- I. The appeal was filed by both opponents 2 and 3 against the decision of the opposition division rejecting their opposition; both opponents requested that the decision under appeal be set aside and that the patent be revoked in its entirety. Opponent 3 later withdrew its appeal.
- II. In reply to the appeal, the patent proprietor (respondent) requested that the appeal be dismissed (main request) or alternatively that the patent be maintained on the basis of the claims of one of auxiliary requests 1 to 5.
- III. The parties were summoned to oral proceedings and were informed of the board's provisional opinion on the issues of the case.
- IV. With letter dated 21 November 2024, the patent proprietor (respondent) stated the following:  
  
*"In the present appeal proceedings, Patentee herewith (1) withdraws (1) the Main Request and all Auxiliary Requests on file, and (2) no longer approves the text upon which the patent was granted. Thus, revocation of the patent is requested (Part D, Chapter VIII, 1.2.5 of the Guidelines for Examination). (...)  
The request for oral proceedings is also explicitly withdrawn so that the oral proceedings on December 17, 2024 are void."*
- V. The board then cancelled the oral proceedings.

### **Reasons for the Decision**

1. Article 113(2) EPC requires that the European Patent Office decides upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. By disapproving the granted text of the patent in any form, the patent proprietor has withdrawn its approval of any text for maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. There is therefore no text of the patent on the basis of which the board can consider the appeals filed by the opponents.
3. In the case of T 73/84 (OJ EPO 1985, 241, Headnote and Reasons), the board decided that if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 655/01, T 1526/06, T 2405/12 and T 1484/19 of 29 November 2022.
4. In the circumstances of the present case, the board sees no reasons for deviating from the principles set out in the above-mentioned decisions. The patent must therefore be revoked.

### **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:



C. Rodríguez Rodríguez

T. Sommerfeld

Decision electronically authenticated