

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 19 December 2024**

**Case Number:** T 2235/22 - 3.3.08

**Application Number:** 15758734.6

**Publication Number:** 3115457

**IPC:** C12N15/09, C07K19/00, C12N9/78

**Language of the proceedings:** EN

**Title of invention:**

Genomic sequence modification method for specifically converting nucleic acid bases of targeted DNA sequence, and molecular complex for use in same

**Patent Proprietor:**

National University Corporation Kobe University

**Opponent:**

James Poole Limited

**Headword:**

Genomic sequence modification method/National University Corporation Kobe University

**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Basis of decision - text or agreement to text withdrawn by  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  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0

Case Number: T 2235/22 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 19 December 2024**

**Appellant:** James Poole Limited  
(Opponent) One Southampton Row  
London WC1B 5HA (GB)

**Representative:** Carpmaels & Ransford LLP  
One Southampton Row  
London WC1B 5HA (GB)

**Respondent:** National University Corporation Kobe University  
(Patent Proprietor) 1-1 Rokkodai-cho  
Nada-ku  
Kobe-shi, Hyogo 657-8501 (JP)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
22 July 2022 concerning maintenance of the  
European Patent No. 3115457 in amended form**

**Composition of the Board:**

**Chairwoman** T. Sommerfeld  
**Members:** R. Morawetz  
D. Rogers

## **Summary of Facts and Submissions**

- I. The appeal lodged by the opponent (appellant) lies from the opposition division's interlocutory decision that European patent No. 3 115 457 B1 ("the patent") with the set of claims of the main request, submitted during oral proceedings on 28 April 2022, and the invention to which it relates met the requirements of the EPC.
- II. The appellant requested as its main request that the decision under appeal be set aside and the patent be revoked in its entirety.
- III. The respondent initially requested that the opponent's appeal be dismissed and that the patent be maintained in amended form on the basis of the main request filed with the reply 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 the auxiliary requests filed with the reply.
- IV. The board scheduled oral proceedings in accordance with the parties' requests and subsequently issued a communication under Article 15(1) RPBA.
- V. On 19 December 2024, oral proceedings were held before the board. During the oral proceedings the respondent stated that it withdrew all requests on file, that it no longer approved the text of the patent as granted nor as maintained by the opposition division, and that it would not file any further claim requests (see minutes of 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 all pending claim requests and its approval of the text of the patent as granted and as maintained by the opposition division (see point V. above). 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 no longer 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 consistent approach 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 appellant. There are no remaining issues that

need to be dealt with by the board in this appeal case, either.

## 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. Stridde

T. Sommerfeld

Decision electronically authenticated