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**Datasheet for the decision
of 5 May 2025**

Case Number: T 0068/23 - 3.3.08

Application Number: 10714058.4

Publication Number: 2419144

IPC: C12N15/11, A61K47/42,
C07K14/705, C07K7/06,
C07K14/005, C07K14/435,
C12N15/113, A61K47/69,
A61K48/00

Language of the proceedings: EN

Title of invention:

Composition for delivery of genetic material

Patent Proprietor:

Oxford University Innovation Limited

Opponents:

Truscott, Glyn, John
Strawman Limited

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Basis of decision - text or agreement to text withdrawn by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 1995/21



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0068/23 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 5 May 2025

Appellant: Oxford University Innovation Limited
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3 West Way
Botley
Oxford OX2 0JB (GB)

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Appellant: Truscott, Glyn, John
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Representative: Elkington and Fife LLP
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Appellant: Strawman Limited
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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on

2 November 2022 concerning maintenance of the
European Patent No. 2419144 in amended form

Composition of the Board:

Chairwoman T. Sommerfeld

Members: A. Schmitt
 D. Rogers

Summary of Facts and Submissions

- I. The appeals of the patent proprietor (appellant I), opponent 1 (appellant II) and opponent 2 (appellant III) are against the opposition division's interlocutory decision concerning the maintenance of European patent No. 2 419 144 (the patent) in amended form based on auxiliary request 21.
- II. The opponents requested, *inter alia*, that the decision under appeal be set aside and the patent be revoked.
- III. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- IV. Opponents 1 and 2 both indicated in writing that they would not attend the oral proceedings scheduled for 19 and 20 May 2025.
- V. In a submission dated 29 April 2025, the patent proprietor stated the following:

"The Patentee hereby withdraws their approval under Rule 71 EPC of the text in which the patent was granted. For the avoidance of doubt, the Patentee also withdraws all requests pending in the appeal proceedings.

In the absence of an agreed text, pursuant to Article 113(2) EPC, we look forward to confirmation of termination of the proceedings by a decision ordering the revocation of the patent."
- VI. The board then cancelled the oral proceedings.

Reasons for the Decision

1. Pursuant to the principle of party disposition as codified in Article 113(2) EPC, the EPO will examine, and decide upon, a European patent only in the text submitted to it or agreed by the patent proprietor. Accordingly, a patent cannot be maintained against the patent proprietor's will.
2. There is no such agreement if the patent proprietor, as in the present case, expressly withdraws the consent to the text of the patent in the form as granted, and at the same time unequivocally withdraws all requests on file (see section V. above).
3. Since in the present case the patent proprietor withdrew their approval of the text of the patent as granted and declared that all pending auxiliary requests were at the same time withdrawn, there is no text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC and on the basis of which the patent could be maintained. In these circumstances, the patent is to be revoked without assessing issues relating to patentability (see e.g. decisions T 73/84 (OJ EPO 1985, 241), T 186/84, (OJ EPO 1986, 79), T 1995/21, Reasons 3, 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).
4. Revocation of the patent also complies with the request of the opponents (see section II. above). The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC).

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