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**Datasheet for the decision
of 31 January 2025**

Case Number: T 0087/23 - 3.3.08

Application Number: 11831761.9

Publication Number: 2625320

IPC: C40B20/04, C07H21/04

Language of the proceedings: EN

Title of invention:

High-throughput single cell barcoding

Patent Proprietor:

President and Fellows of Harvard College

Opponent:

Kilger, Christian

Headword:

Single cell barcoding/President and Fellows of Harvard College

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Basis of decision - text or agreement to text withdrawn by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 0087/23 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 31 January 2025

Appellant: Kilger, Christian
(Opponent) Wachtelstr. 4
14195 Berlin (DE)

Representative: CH Kilger Anwaltspartnerschaft mbB
Fasanenstraße 29
10719 Berlin (DE)

Respondent: President and Fellows of Harvard College
(Patent Proprietor) 17 Quincy Street
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Representative: V.O.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 December 2022 concerning maintenance of the
European Patent No. 2625320 in amended form**

Composition of the Board:

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

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. 2 625 320 B1 ("the patent") with the set of claims of the main request, submitted by letter dated 29 July 2021, and the invention to which it relates met the requirements of the EPC.
- II. The appellant initially requested that the decision under appeal be set aside and that the patent be revoked in its entirety and, further, that the opposition division's decision regarding a different apportionment of costs be set aside and that each party bear its own costs. Reimbursement of the appeal fee was also requested.
- 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 to the statement 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 the auxiliary requests filed with the reply to the statement of grounds of appeal or with letter of 23 April 2024.
- IV. The board scheduled oral proceedings in accordance with the parties' requests and subsequently issued a communication under Article 15(1) RPBA.
- V. By letter dated 18 December 2024, the respondent stated that "[p]roprietor herewith indicates that he no longer approves of the text in which the patent was granted

nor any of the texts filed with our response to the Grounds of Appeal dated September 12, 2024. No further amended texts will be submitted."

- VI. The board drew the parties' attention to outstanding issues in a further communication.
- VII. By letter dated 9 January 2025, the respondent stated that "*[p]roprietor herewith confirms that he no longer approves of any of the texts currently in the appeal proceedings. No further amended texts will be submitted*". In addition, the respondent withdrew its request for apportionment of costs, thereby rendering moot the appellant's request that the opposition division's decision regarding a different apportionment of costs be set aside and each party bear its own costs.
- VIII. The board issued a further communication, drawing the parties' attention to the last outstanding issue, for which the request for oral proceedings was still effective.
- IX. By letter dated 31 January 2025, the appellant withdrew its request for reimbursement of the appeal fee.
- X. Oral proceedings were cancelled.

Reasons for the Decision

1. Pursuant to the principle of party's disposition, as codified in 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 sections V. and VII. 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. In view of the respondent's withdrawal of the request for a different apportionment of costs and of the appellant's withdrawal of the request for reimbursement of the appeal fee (see sections VII. and IX. above), 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:



C. Rodríguez Rodríguez

T. Sommerfeld

Decision electronically authenticated