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**Datasheet for the decision
of 11 June 2025**

Case Number: T 0098/23 - 3.3.08

Application Number: 13814362.3

Publication Number: 2931897

IPC: C12N15/63

Language of the proceedings: EN

Title of invention:

Delivery, engineering and optimization of systems, methods and compositions for sequence manipulation and therapeutic applications

Patent Proprietor:

The Broad Institute, Inc.
Massachusetts Institute of Technology
President and Fellows of Harvard College

Opponents:

Schlich, George William
Patent Boutique LLP
Cohausz & Florack Patent- und Rechtsanwälte
Partnerschaftsgesellschaft mbB
Caribou Biosciences, Inc.
Mathys & Squire LLP
CRISPR Therapeutics AG

Headword:

CRISPR/THE BROAD INSTITUTE, MASSACHUSETTS INSTITUTE OF
TECHNOLOGY, PRESIDENT AND FELLOWS OF HARVARD COLLEGE

Relevant legal provisions:

EPC Art. 87, 88, 89, 111(1)
RPBA 2020 Art. 11

Keyword:

Entitlement to priority - (yes)
Remittal to first instance - (yes)

Decisions cited:

G 0001/22, G 0002/22, T 0844/18, T 1975/19, T 2360/19,
T 2516/19, T 2698/19

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 0098/23 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 11 June 2025

Appellant:

(Patent Proprietor 1)

The Broad Institute, Inc.
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Appellant:

(Patent Proprietor 2)

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Appellant:

(Patent Proprietor 3)

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Respondent:

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Respondent:

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Respondent: (Opponent 3, opposition withdrawn)	Cohausz & Florack Patent- und Rechtsanwälte Partnerschaftsgesellschaft mbB Bleichstrasse 14 40211 Düsseldorf (DE)
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Respondent: (Opponent 4)	Caribou Biosciences, Inc. 2929 7th Street, Suite 105 Berkeley, CA 94710 (US)
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Respondent: (Opponent 5)	Mathys & Squire LLP The Shard 32 London Bridge Street London SE1 9SG (GB)
Representative:	Wilding, James Roger Mathys & Squire The Shard 32 London Bridge Street London SE1 9SG (GB)
Respondent: (Opponent 6)	CRISPR Therapeutics AG Baarerstrasse 14 6300 Zug (CH)
Representative:	Vossius & Partner Patentanwälte Rechtsanwälte mbB Siebertstrasse 3 81675 München (DE)
Decision under appeal:	Decision of the Opposition Division of the European Patent Office posted on 8 November 2022 revoking European patent No. 2931897 pursuant to Article 101(3) (b) EPC

Composition of the Board:

Chair	T. Sommerfeld
Members:	M. Montrone
	R. Winkelhofer

Summary of Facts and Submissions

I. This is an appeal by the patent proprietors ("the appellants") against the opposition division's decision of 12 July 2022 (issued in writing on 8 November 2022) to revoke European patent No. 2 931 897.

II. This patent relates to a CRISPR-Cas 9 composition for therapeutic use. It is based on European patent application No. 13 814 362.3 resulting from an international PCT application published as WO 2014/093622, and claims priority from thirteen earlier US provisional applications, including the following:

US 61/736,527 - ("P1")
US 61/748,427 - ("P2")
US 61/758,468 - ("P3")
US 61/791,409 - ("P5")
US 61/835,931 - ("P13")

(as referred to by the opposition division).

III. Six oppositions had been filed, based on all grounds for opposition (Article 100(a) to (c) EPC), with one opponent having subsequently withdrawn their opposition.

IV. In their decision to revoke the patent, the opposition division found that formal entitlement to priority from P1, P2, P5 and P13 had not been validly claimed, on the basis of the then prevailing jurisprudence of the Boards of Appeal. Thus, novelty and inventive step were examined based only on documents published before P3, in particular D10 (Mali, P. et al., Science, Vol. 339,

2013, 823-826 plus Supplementary materials). The subject-matter of claim 1 of the patent as granted (the appellants' main request) was found to lack novelty over the disclosure of document D10. None of the submitted auxiliary requests was either admitted or found to contain patentable subject-matter.

- V. With their statement setting out their grounds of appeal, the appellants submitted *inter alia* reasons why the opposition division erred in their assessment of entitlement to priority. In their replies, the opponents (respondents) submitted *inter alia* counter arguments thereto.
- VI. On 10 October 2023, the Enlarged Board of Appeal handed down a decision on consolidated cases G 1/22 and G 2/22. This decision departed significantly from the boards' previous jurisprudence on the assessment of priority rights, in particular by introducing a rebuttable presumption of the right to claim priority.
- VII. On 4 February 2025, the board in this case issued a communication setting out a preliminary opinion on the issues at stake, including that in view of G 1/22 and G 2/22 the claimed invention was formally entitled to priority.
- The board concluded that the consequence of this finding would be the setting aside of the decision under appeal, and the remittal of the case to the opposition division for further prosecution.
- VIII. All remaining requests for oral proceedings were then withdrawn by the parties on the condition that the case be remitted to the opposition division for further prosecution.

- IX. The board cancelled the scheduled oral proceedings.
- X. The parties' submissions, insofar as relevant to the present decision, are dealt with in the Reasons part of this decision.
- XI. The appellants in their appeal request, *inter alia*, that the decision under appeal be set aside and amended such that the oppositions be rejected or, alternatively, that the case be remitted to the opposition division for further prosecution.
- XII. The respondents request, *inter alia*, that the appeal be dismissed. All respondents except opponent 5 auxiliary requested that, if the appeal is allowed, the case be remitted to the opposition division for further prosecution.

Reasons for the Decision

Main request

Entitlement to priority

1. The presumption of validity/entitlement to claim priority/the right to claim the priority date for a subsequent European patent application, as set out in G 1/22, applies to the present case. Any reference to Enlarged Board of Appeal decision G 1/22 (published in OJ 2024, 50) is to be taken as also being a reference to G 2/22.

2. The issue here is, like in T 844/18, T 2360/19, T 2516/19 and T 2698/19, whether Mr Marraffini as one of the claimed inventors or The Rockefeller University as his successor in title gave their consent to the subsequent filing of the patent application in question (decision under appeal, item 50, with reference to T 844/18). A further issue is whether The President and Fellows of Harvard College gave their consent to the subsequent filing of the patent application in question. The presumption, following G 1/22, is that they did. This presumption may be rebutted (G 1/22, Reasons 101 to 112, 117, 126, 128 and 131).
3. According to G 1/22 (Reasons 107 and 125), the presumption of priority entitlement, by way of an implicit (implied/informal or tacit) agreement on the transfer of the right to claim priority "*under almost any circumstances*" (Reasons 99), applies to any case where the subsequent applicant is not identical with the priority applicant. Also *ex-post* (retroactive, *nunc pro tunc*, *ex tunc*) transfers concluded after the filing of the subsequent application are valid (Reasons 100 and 114).
4. The presumption of an implied agreement is rebuttable. To question the implied agreement, evidence is thus needed that such agreement has not been reached or is fundamentally flawed (G 1/22, Reasons 110 and 126).
5. There is no evidence that rebuts this presumption in the present case, rather there is evidence on file that supports the presumption.
6. The inventorship dispute between Mr Marraffini/The Rockefeller University and Mr Zhang/The Broad Institute Inc/Massachusetts Institute of Technology has been

settled in 2018 by decision of an arbitrator (*inter alia* D256, The Broad Institute press release dated 15 January 2018, 1-3). Applying G 1/22, the settlement by arbitration contains (and confirms that there is), at least, an implicit agreement *nunc pro tunc*. Thus the presumption of entitlement to priority is on the earliest date on which priority was claimed, 12 December 2012 (US 61/736527, P1).

7. G 1/22 explicitly also states that "*the presumption of entitlement exists on the date on which the priority is claimed and the rebuttal of the presumption must also relate to this date*", and that "*later developments cannot affect the rebuttable presumption*" (Reasons 109). As being retroactive, the at least implicit transfer agreement by way of the settlement of the inventorship dispute relates to this date, and confirms the presumption on entitlement to exist on this date.
8. As regards the issue about the consent of The President and Fellows of Harvard College, no evidence has been filed by the opponents either establishing that the real priority right holder did not allow the subsequent applicants to rely on the priority (see also T 1975/19, Reasons 1.1.2).
9. The present case therefore does not belong to those wherein the presumption of a valid priority claim has been rebutted.
10. Consequently the entitlement to priority has been validly claimed in view of G 1/22, and thus the opposition division's decision can not stand.
11. In reply to the communication under Article 15(1) RPBA, none of the parties has challenged the board's

preliminary assessment that the claimed subject-matter was entitled to priority from P1. The board thus has no reason to deviate from its preliminary assessment.

Remittal

12. All parties, except for opponent 5 (who has withdrawn their request for oral proceedings), have requested remittal in case the board overturned the opposition division's decision on the formal right to priority entitlement.
13. In view of the considerations set out above, the case is to be remitted to the opposition division (Article 111(1) EPC and Article 11 RPBA) for a fresh assessment of the patentability requirements of the main request (the patent as granted), based on a valid priority entitlement to P1. No further questions arise at this stage of the proceedings.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division for further prosecution.

The Registrar:

The Chair:



C. Rodríguez Rodríguez

T. Sommerfeld

Decision electronically authenticated