

Internal distribution code:

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

**Datasheet for the decision
of 17 April 2025**

Case Number: T 0173/23 - 3.3.08

Application Number: 14834665.3

Publication Number: 3030682

IPC: C12Q1/68

Language of the proceedings: EN

Title of invention:

De novo synthesized gene libraries

Patent Proprietor:

Twist Bioscience Corporation

Opponent:

Grund, Dr., Martin

Headword:

Gene libraries/TWIST

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Basis of decision - text or agreement to text withdrawn by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

Case Number: T 0173/23 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 17 April 2025

Appellant: Twist Bioscience Corporation
(Patent Proprietor) 681 Gateway Boulevard
South San Francisco, California 94080 (US)

Representative: Murray, Adrian D'Coligny
Brand Murray Fuller LLP
50 Eastcastle Street
London W1W 8EA (GB)

Respondent: Grund, Dr., Martin
(Opponent) Steinsdorfstraße 2
80538 München (DE)

Representative: Grund, Martin
Grund Intellectual Property Group
Patentanwälte und Solicitor PartG mbB
Steinsdorfstraße 2
80538 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 29 November
2022 revoking European patent No. 3030682
pursuant to Article 101(3)(b) EPC**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: A. Schmitt
A. Bacchin

Summary of Facts and Submissions

- I. The patent proprietor's (appellant's) appeal is against the opposition division's decision to revoke European patent No. 3 030 682 (the patent), which was granted based on European patent application No. 14 834 665.3.
- II. The respondent (opponent) requested, *inter alia*, that the appeal be dismissed.
- III. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA.
- IV. In a submission dated 7 April 2025, the patent proprietor stated the following:

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

In the absence of an agreed text, pursuant to Article 113(2) EPC, we look forward to receiving confirmation of the termination of the proceedings."
- V. 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 IV. 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 opponent (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:



I. Aperribay

T. Sommerfeld

Decision electronically authenticated