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**Datasheet for the decision  
of 1 September 2025**

**Case Number:** T 0746/23 - 3.3.08

**Application Number:** 10016073.8

**Publication Number:** 2325645

**IPC:** G01N33/569, C12Q1/68,  
C07H21/04, C12Q1/689

**Language of the proceedings:** EN

**Title of invention:**

Sequences for detection and identification of methicillin-resistant Staphylococcus Aureus (MRSA) of MREJ type xiii

**Patent Proprietor:**

Becton Dickinson Infusion Therapy Systems Inc.

**Opponents:**

HERTIN und Partner Rechts- und Patentanwälte  
PartG mbB  
Beckman Coulter, Inc.

**Headword:**

Methicillin-resistant staphylococcus aureus of MREJ type xiii/  
BECTON DICKINSON INFUSION THERAPY

**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Basis of decision - text or agreement to text withdrawn by  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 0655/01, T 1526/06, T 2405/12,  
T 1484/19

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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**Case Number:** T 0746/23 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 1 September 2025**

**Appellant:**  
(Opponent 2)

Beckman Coulter, Inc.  
250 S Kraemer Boulevard  
Brea CA 92821 (US)

**Representative:**

Spencer, Matthew Peter  
Boult Wade Tennant LLP  
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**Respondent:**  
(Patent Proprietor)

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Franklin Lakes, NJ 07417-1880 (US)

**Representative:**

Schlörb, Christian  
Vossius & Partner  
Patentanwälte Rechtsanwälte mbB  
Siebertstrasse 3  
81675 München (DE)

**Party as of right:**  
(Opponent 1)

HERTIN und Partner Rechts- und Patentanwälte  
PartG mbB  
Kurfürstendamm 54/55  
10707 Berlin (DE)

**Representative:**

Hertin und Partner  
Rechts- und Patentanwälte PartG mbB  
Kurfürstendamm 63  
10707 Berlin (DE)

**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
17 February 2023 concerning maintenance of the  
European Patent No. 2325645 in amended form**

**Composition of the Board:**

|                 |                |
|-----------------|----------------|
| <b>Chair</b>    | T. Sommerfeld  |
| <b>Members:</b> | D. Pilat       |
|                 | R. Winkelhofer |

## Summary of Facts and Submissions

- I. The appeal was filed by opponent 2 (the appellant) against the decision of the opposition division according to which the patent could be maintained on the basis of auxiliary request 4.
- II. The appellant requested that the decision under appeal be set aside and amended such that the patent be revoked. The patent proprietor (respondent) replied to the appeal, thereby requesting *inter alia* that the appeal be dismissed.
- III. The parties were summoned to oral proceedings and were informed of the board's provisional opinion on the issues of the case.
- IV. With submission of 6 August 2025, the patent proprietor stated the following:

*"On behalf of the Patent Proprietor, we herewith withdraw all claim requests on file and no longer approve the text with which the patent was granted and maintained after opposition proceedings. Moreover, it is not intended to submit an amended text or further claim requests in the present appeal proceedings.*

*Finally, we withdraw our request for oral proceedings."*
- V. In view of this declaration, the oral proceedings were cancelled.

## **Reasons for the Decision**

1. Article 113(2) EPC requires that the European Patent Office decides upon the European patent only in the text submitted to it, or agreed, by the proprietor(s) of the patent.
2. By disapproving the granted text of the patent, the patent proprietor has withdrawn their agreement with any text for maintenance of the patent. There is therefore no approved text of the patent on the basis of which the patent could be maintained.
3. In these circumstances, the patent is to be revoked without any further assessment of issues relating to patentability (see, for example, T 73/84 (OJ EPO 1985, 241), T 186/84 (OJ EPO 1986, 79), T 1484/19 of 29 November 2022, T 1995/21 and T 1549/22, and Case Law of the Boards of Appeal of the European Patent Office, 11th edition, 2025 ("Case Law"), sections III.B.3.3 and IV.D.2).

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



K. Boelicke

T. Sommerfeld

Decision electronically authenticated