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**Datasheet for the decision
of 15 September 2025**

Case Number: T 1012/23 - 3.3.08

Application Number: 08878030.9

Publication Number: 2356213

IPC: C12N5/00, C12N5/02

Language of the proceedings: EN

Title of invention:

Stem cell aggregate suspension compositions and methods for differentiation thereof

Patent Proprietor:

ViaCyte, Inc.

Opponent:

Zwicker Schnappauf & Partner Patentanwälte PartG mbB

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Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked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
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Case Number: T 1012/23 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 15 September 2025

Appellant: Zwicker Schnappauf & Partner
(Opponent) Patentanwälte PartG mbB
Hansastr. 32
80686 München (DE)

Representative: Gaentzsch, Peer Christian
Zwicker Schnappauf & Partner
Patentanwälte Part mbB
Hansastraße 32
80686 München (DE)

Respondent: ViaCyte, Inc.
(Patent Proprietor) 5580 Morehouse Dr, Suite 100
San Diego, CA 92121 (US)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
6 April 2023 concerning maintenance of the
European Patent No. 2356213 in amended form

Composition of the Board:

Chairwoman T. Sommerfeld
Members: A. Schmitt
L. Bühler

Summary of Facts and Submissions

- I. The opponent's appeal is against the opposition division's interlocutory decision concerning the maintenance of European patent No. 2 356 213 (the patent) in amended form based on auxiliary request 1 filed on 8 February 2023.
- II. In the statement of grounds of appeal, the opponent requested that the decision under appeal be set aside and that the patent be revoked.
- III. In reply to the appeal, the patent proprietor requested that the patent be maintained in amended form on the basis of the set of claims of the main request or, in the alternative, on the basis of the set of claims of one of auxiliary requests 1 to 23, all submitted with the reply to the appeal.
- IV. The board issued a summons to oral proceedings and a communication pursuant to Article 15(1) RPBA, in which it provided its preliminary appreciation of some matters concerning the appeal.
- V. In a submission dated 4 September 2025, the patent proprietor stated that they no longer approved the text of the patent as granted or previously amended, that they withdrew all requests pending in the appeal proceedings, that they did not intend to file any other text for amendment of the patent, and that they requested that the patent be revoked.
- 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, 11th edition 2025, 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:



L. Stridde

T. Sommerfeld

Decision electronically authenticated