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**Datasheet for the decision
of 12 December 2024**

Case Number: T 1773/23 - 3.3.08

Application Number: 17163865.3

Publication Number: 3211126

IPC: C40B40/08, C40B70/00

Language of the proceedings: EN

Title of invention:

METHODS OF CREATING AND SCREENING DNA-ENCODED LIBRARIES

Patent Proprietor:

X-Chem, Inc.

Opponent:

Nuevolution A/S

Headword:

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Basis of decision - text or agreement to text withdrawn by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 1773/23 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 12 December 2024

Appellant: X-Chem, Inc.
(Patent Proprietor) 100 Beaver Street, Suite 101
Waltham, Massachusetts 02453 (US)

Representative: Holland, David Christopher
Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Appellant: Nuevolution A/S
(Opponent) Rønnegade 8
2100 Copenhagen (DK)

Representative: Aamand, Jesper L.
Jesper Levin A/S
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
25 July 2023 concerning maintenance of the
European Patent No. 3211126 in amended form**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: D. Pilat
A. Bacchin

Summary of Facts and Submissions

- I. The appeal was filed both by the patent proprietor and the opponent against the interlocutory decision of the opposition division according to which the patent could be maintained in amended form.
- II. The patent proprietor (appellant I) requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request filed 4 May 2023. In reply to the opponent's appeal, appellant I submitted further claim requests and requested that, should the main request be found unallowable, a patent be maintained on the basis of one of these requests.
- III. The opponent (appellant II) requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- IV. The parties were summoned to oral proceedings.
- V. With letter dated 12 December 2024, appellant I stated the following:

"The patentee withdraws its approval of the text of EP 3211126 under Rule 71 EPC. The patentee withdraws all pending requests, and will not be filing any further requests."
- VI. 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 of the patent.
2. By disapproving the granted text of the patent in any form, the patent proprietor has withdrawn its approval of any text for maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. There is therefore no text of the patent on the basis of which the board can consider the appeals filed by the opponents.
3. In the case of T 73/84 (OJ EPO 1985, 241, Headnote and Reasons), the board decided that if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 655/01, T 1526/06, T 2405/12 and T 1484/19 of 29 November 2022.
4. In the circumstances of the present case, the board sees no reasons for deviating from the principles set out in the above-mentioned decisions. The patent must therefore be revoked.

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