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**Datasheet for the decision  
of 17 September 2024**

**Case Number:** T 2226/21 - 3.3.08

**Application Number:** 14851841.8

**Publication Number:** 3055409

**IPC:** C12N5/02, C12N5/16

**Language of the proceedings:** EN

**Title of invention:**  
Metabolically optimized cell culture

**Patent Proprietor:**  
Regeneron Pharmaceuticals, Inc.

**Opponent:**  
Neuefeind, Regina

**Headword:**  
Optimized cell culture/REGENERON

**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Basis of decision - text or agreement to text withdrawn by  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



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 2226/21 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 17 September 2024**

**Appellant:** Neufeind, Regina  
(Opponent) Maiwald GmbH  
Elisenhof  
Elisenstraße 3  
80335 München (DE)

**Representative:** Maiwald GmbH  
Elisenhof  
Elisenstraße 3  
80335 München (DE)

**Respondent:** Regeneron Pharmaceuticals, Inc.  
(Patent Proprietor) 777 Old Saw Mill River Road  
Tarrytown, NY 10591 (US)

**Representative:** Carpmaels & Ransford LLP  
One Southampton Row  
London WC1B 5HA (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
4 October 2021 concerning maintenance of the  
European Patent No. 3055409 in amended form**

**Composition of the Board:**

**Chair** T. Sommerfeld  
**Members:** A. Schmitt  
L. Bühler

## **Summary of Facts and Submissions**

- I. The appeal lodged by the opponent (appellant) lies from the opposition division's interlocutory decision according to which European patent No. 3 055 409 (the patent), as amended in the form of auxiliary request 6, and the invention to which it relates, meet the requirements of the EPC.
- II. The appellant requested that the decision under appeal be set aside and that the patent be revoked.
- III. With the reply to the appeal, the patent proprietor (respondent) filed sets of claims of a main request and auxiliary requests.
- IV. The parties were summoned to oral proceedings. In a communication under Article 15(1) RPBA, the board expressed its preliminary opinion on some matters concerning the appeal.
- V. During the oral proceedings, the patent proprietor withdrew their approval to the text of the patent as granted and as maintained by the opposition division in amended form, withdrew all auxiliary claim requests on file, and indicated that they did not intend to file any further claim requests.

## **Reasons for the Decision**

1. Under 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.

2. Such an agreement cannot be deemed to exist 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 withdraws all auxiliary requests on file (see section V.).
  
3. There is therefore no text of the patent on the basis of which the board can consider the appeal. In these circumstances, as there is no approved text, the patent is to be revoked without assessing issues relating to patentability (see e.g. decisions T 73/84 (OJ EPO 1985, 241) and T 186/84 (OJ EPO 1986, 79), 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).

## 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:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated