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**Datasheet for the decision
of 19 September 2024**

Case Number: T 0755/22 - 3.3.08

Application Number: 13834427.0

Publication Number: 2893040

IPC: C12Q1/68

Language of the proceedings: EN

Title of invention:

Methods to detect rare mutations and copy number variation

Patent Proprietor:

Guardant Health, Inc.

Opponents:

STRAWMAN LIMITED
Grünecker Patent- und Rechtsanwälte PartG mbB

Headword:

Methods to detect rare mutations/GUARDANT HEALTH

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Basis of decision - text or agreement to text withdrawn by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

Catchword:

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Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0755/22 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 19 September 2024

Appellant I:
(Opponent 2)
STRAWMAN LIMITED
Orchard Lea
Horns Lane
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Witney, Oxfordshire OX29 8NH (GB)

Representative:
Mewburn Ellis LLP
Aurora Building
Counterslip
Bristol BS1 6BX (GB)

Appellant II:
(Opponent 3)
Grünecker Patent- und Rechtsanwälte
PartG mbB
Leopoldstrasse 4
80802 München (DE)

Respondent:
(Patent Proprietor)
Guardant Health, Inc.
3100 Hanover Street
Palo Alto, CA 94304 (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
18 February 2022 concerning maintenance of the
European Patent No. 2893040 in amended form

Composition of the Board:

Chair T. Sommerfeld
Members: B. Claes
R. Romandini

Summary of Facts and Submissions

- I. The appeals lodged by opponent 2 (appellant I) and opponent 3 (appellant II) lie from the opposition division's interlocutory decision that European patent No. 2 893 040 (the patent) in the version of the main request and the invention to which it relates meet the requirements of the EPC.
- II. Both appellants requested that the decision under appeal be set aside and that the patent be revoked.
- III. With the reply to the appeals, the patent proprietor (respondent) filed sets of claims of a main request and auxiliary requests.
- IV. The parties were summoned to oral proceedings and the board expressed its preliminary opinion on some matters concerning the appeals in a communication under Article 15(1) RPBA.
- V. During the oral proceedings, the patent proprietor withdrew their consent to the text of the patent as granted, withdrew all the requests on file, and announced that they would not file further requests.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO examines, and decides upon, the European patent only in the text submitted to it, or agreed by the patent proprietor.

2. Such an agreement cannot be considered to exist if, as in the present case, the patent proprietor expressly withdraws consent to the granted text of the patent and withdraws all (auxiliary) requests on file (see section V.).

3. In such circumstances, there is no text of the patent on the basis of which the board can consider the appeals. Without an approved text, the patent must 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; see also 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