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**Datasheet for the decision
of 25 September 2024**

Case Number: T 2323/22 - 3.3.08

Application Number: 15198010.9

Publication Number: 3023500

IPC: C12N15/864, C07K14/015

Language of the proceedings: EN

Title of invention:

Insect cells for the production of AAV vectors

Patent Proprietor:

uniQure IP B.V.

Opponent:

Weickmann & Weickmann Patent- und Rechtsanwälte PartmbB

Headword:

Insect cells for the production of AAV vectors/uniQure IP B.V.

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Basis of decision - text or agreement to text withdrawn by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 0646/08, T 2434/18



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 2323/22 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 25 September 2024

Appellant I: uniQure IP B.V.
(Patent Proprietor) Paasheuvelweg 25
1105 BP Amsterdam (NL)

Representative: Nederlandsch Octrooibureau
P.O. Box 29720
2502 LS The Hague (NL)

Appellant II: Weickmann & Weickmann Patent- und
(Opponent) Rechtsanwälte PartmbB
P.O. Box 860 820
81635 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
24 August 2022 concerning maintenance of the
European Patent No. 3023500 in amended form

Composition of the Board:

Chairman B. Claes
Members: R. Morawetz
A. Bacchin

Summary of Facts and Submissions

- I. The appeals lodged by the patent proprietor (appellant I) and the opponent (appellant II) lie from the interlocutory decision of the opposition division that European patent No. 3 023 500 (the patent) as amended with the set of claims of auxiliary request 1 (submitted as auxiliary request 3 on 3 June 2022) and the invention to which it relates meet the requirements of the EPC.
- II. Appellant I initially requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the set of claims filed as auxiliary request 2 on 3 June 2022 (main request), or alternatively, that the patent be maintained in amended form on the basis of the set of claims of auxiliary request 1, filed as auxiliary request 3 on 3 June 2022 (i.e. that the opponent's appeal be dismissed); or further alternatively, that the patent be maintained in amended form on the basis of the set of claims of one of auxiliary requests 2 to 5, all filed in reply to the opponent's grounds of appeal.
- III. Appellant II requested as its main request that the decision under appeal be set aside and the patent be revoked in its entirety.
- IV. The board scheduled oral proceedings in accordance with the parties' requests and subsequently issued a communication under Article 15(1) RPBA.
- V. With a letter dated 12 August 2024, appellant I informed the board as follows:

"The proprietor withdraws its approval of the text of the European patent 3 023 500 as granted and as maintained, and does not propose, approve or agree to any other text for this patent.

The proprietor further withdraws its appeal and requests a partial refund of its appeal fee under the provisions of Rule 103(3) EPC.

The proprietor considers the instant appeal proceedings before the European Patent Office to be terminated. Hence, the proprietor will not be represented at the oral proceedings, if any."

VI. The board cancelled the oral proceedings.

Reasons for the Decision

1. Appellant I has withdrawn its appeal.
2. The appeal of appellant II complies with the requirements of Articles 106 to 108 EPC and the further provisions referred to in Rule 101 EPC and is admissible.
3. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
4. Since the text of a patent is at the disposition of the patent proprietor(s), their patent cannot be maintained against their will. In the case at hand the patent proprietor withdrew its approval of the text of the

patent as granted and as maintained (see point V. above). By disagreeing with any other text for the patent, it also unequivocally withdrew its approval of the text of the patent as amended according to the main request on appeal and any auxiliary request. Consequently, there is therefore no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC, so that it is no longer possible to take a decision as to substance (see e.g. decisions T 186/84, OJ 1986, 79, Reasons 5; T 646/08, Reasons 4 and T 2434/18, Reasons 4).

5. It is established case law that in the present circumstances the decision under appeal must be set aside and the patent be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 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). The board has no reason to deviate from this consistent approach of the Boards of Appeal, with the consequence that the patent is to be revoked.

6. Revocation of the patent complies with the main request of appellant II. There are no remaining issues that need to be dealt with by the board in this appeal case, either. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC and Article 12(8) RPBA 2020).

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

B. Claes

Decision electronically authenticated