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D E C I S I O N
of 23 October 2003

Case Number: T 0005/01 - 3.3.4

Application Number: 91107661.0

Publication Number: 0460426

IPC: C07K 1/18

Language of the proceedings: EN

Title of invention:
Protein purification method

Patentee:
Bayer Corporation

Opponents:
Roche Diagnostics GmbH
Genentech, Inc.

Headword:
Protein purification/BAYER

Relevant legal provisions:
EPC Art. 111(1), 113(2)

Keyword:
"Text disapproved - revocation"

Decisions cited:
T 0073/84

Catchword:
-

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Case Number: T 0005/01 - 3.3.4

D E C I S I O N
of the Technical Board of Appeal 3.3.4
of 23 October 2003

Appellant I: (Opponent 1)
Roche Diagnostics GmbH
Sandhoferstr. 116
D-68305 Mannheim (DE)

Representative:
Schreiner, Siegfried, Dr.
Roche Diagnostics GmbH
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Appellant II: (Opponent 2)
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CA 94080-4990 (US)

Representative:
Bassett, Richard Simon
Eric Potter Clarkson
Park View House
58 The Ropewalk
Nottingham NG1 5DD (GB)

Respondent: (Proprietor of the patent)
Bayer Corporation
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Representative:
Kirchner, Dietrich, Dr.
Bayer AG
Konzernbereich RP
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Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 3 November 2000 concerning maintenance of European patent No. 0460426 in amended form.

Composition of the Board:

Chairman: U. M. Kinkeldey
Members: A. L. L. Marie
S. C. Perryman

Summary of Facts and Submissions

I. European patent No. 0 460 426 (application No. 91107661.0) having been opposed by two opponents was maintained in amended form by an interlocutory decision of 14 September 2000 of the Opposition Division, with written reasons posted 3 November 2000.

II. A Notice of Appeal against this decision was filed by appellant 01 (Opponent 01) on 19 December 2000 requesting that the decision under appeal be set aside and that the patent be fully revoked. The appeal fee was paid at the same time as filing the Notice of appeal, and a statement of grounds was filed on 25 January 2001.

III. A Notice of Appeal against this decision was also filed by appellant 02 (Opponent 02) on 27 December 2000 requesting that the decision under appeal be set aside and that the patent be revoked. The appeal fee was paid at the same time as filing the Notice of appeal, and a statement of grounds was filed on Monday 5 March 2001.

IV. Oral proceedings were appointed for 20 October 2003. By a letter dated 22 September 2003 the representative of the Respondent (Patentee) stated "Patentee does not agree any more to the Claims as maintained by the Opposition Division and does not intend to file a new set of claims.".

V. The appointed oral proceedings were cancelled.

Reasons for the Decision

1. The appeals are admissible.

2. The Respondent has indicated that it no longer agrees with the claims of the patent as maintained, and that it does not intend to file any alternative claims. Pursuant to Article 113(2) EPC a patent can only be maintained on the basis of a text submitted or agreed to by the patentee. If there is no such text for the claims, an essential part of any patent, the patent can only be revoked. Such a statement of non-consent to any claims is one of the recognized ways for a patentee to terminate his patent (cf decision T 73/84(OJ EPO 1985, 241)).

3. The Appellants request revocation. No other issues remain for decision. Accordingly the Board in the exercise of its powers under Article 111(1) EPC decides to revoke the patent.

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:

P. Cremona U. Kinkeldey