

**Internal distribution code:**

- (A)  Publication in OJ  
(B)  To Chairmen and Members  
(C)  To Chairmen  
(D)  No distribution

**Datasheet for the decision  
of 26 September 2006**

**Case Number:** T 0904/05 - 3.3.08

**Application Number:** 97107368.9

**Publication Number:** 0806669

**IPC:** G01N 33/576

**Language of the proceedings:** EN

**Title of invention:**

Method for preparing a diagnostic reagent for hepatitis c  
virus infection

**Patentee:**

SYSMEX CORPORATION

**Opponent:**

Chiron Corporation

**Headword:**

Hepatitis/SYSMEX

**Relevant legal provisions:**

EPC Art. 111(1)

**Keyword:**

"Revocation of the patent upon patentee's request"

**Decisions cited:**

T 0186/84, T 0459/88, T 0612/01

**Catchword:**

-



Case Number: T 0904/05 - 3.3.08

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.08  
of 26 September 2006

**Appellant:** Chiron Corporation  
(Opponent) Intellectual Property-R440  
PO Box 8097  
Emeryville, CA 94662-809 (US)

**Representative:** Hallybone, Huw George  
Carpmaels and Ransford  
43 Bloomsbury Square  
London WC1A 2RA (GB)

**Respondent:** SYSMEX CORPORATION  
(Patent Proprietor) 5-1 Wakinohama-Kaigandori 1-chome  
Chuo-ku, Kobe-shi  
Hyogo (JP)

**Representative:** De Clercq, Ann G. Y.  
De Clercq, Brants & Partners c.v.  
Edgard Gevaertdreef 10a  
9830 Sint-Martens-Latem (BE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
28 April 2005 concerning maintenance of  
European patent No. 0806669 in amended form.

**Composition of the Board:**

**Chairman:** L. Galligani  
**Members:** T. J. H. Mennessier  
T. Karamanli

## Summary of Facts and Submissions

- I. The opponent (appellant) lodged an appeal against the interlocutory decision of the opposition division dated 28 April 2005, whereby European patent No. 0 806 669, which had been granted on European application No. 97 107 368.9, was maintained in an amended form (patent as granted with amended description page 4) on the basis of the first auxiliary request filed on 8 July 2004. The main request had been refused for lack of compliance with Article 123(2) EPC.
  
- II. The patent had been opposed on the grounds as set forth in Articles 100(a), (b) and (c) EPC that (i) the invention was neither new nor inventive (Articles 54 and 56 EPC), (ii) the invention was not sufficiently disclosed (Article 83 EPC) and (iii) the patent contained subject-matter which extended beyond the content of the application as filed (Article 123(2) EPC).
  
- III. The appellant filed a statement setting out the grounds of appeal to which the patentee (respondent) replied by filing observations.
  
- IV. The Board issued a communication under Article 11(1) of the Rules of Proceeding of the Boards of Appeal expressing provisional opinions, in reply to which both parties submitted further observations, the respondent also filing with a letter dated 25 August 2006 three claim requests, namely a main request which corresponded to the claims as granted and two auxiliary requests.

- V. Oral proceedings took place on 26 September 2006. The appellant (opponent) requested that the decision under appeal be set aside and the European patent No. 0 806 669 be revoked. The respondent (patentee) withdrew all its former requests and requested that the patent be revoked.

### **Reasons for the Decision**

1. The appeal is admissible.
2. According to established jurisprudence of the Boards of appeal (see e.g. decision T 186/84 (OJ EPO 1986, 79), T 459/88 (OJ EPO 1990, 425) and T 612/01 of 27 May 2005), the patent must be revoked since the patentee itself requests the revocation of the patent, meaning that it does not approve any text in which the patent could be maintained.
3. The Board can, therefore, in the exercise of its power under Article 111(1) EPC, decide to revoke the European 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 Chairman

G. Nachtigall

L. Galligani