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**Datasheet for the decision
of 18 September 2015**

Case Number: T 1589/10 - 3.3.08
Application Number: 01992795.3
Publication Number: 1330552
IPC: C12N15/54
Language of the proceedings: EN

Title of invention:

Marker assisted selection of bovine for improved milk production using diacylglycerol acyltransferase gene DGAT1

Patent Proprietors:

Georges, Michel Alphonse Julien
Coppieters, Wouter Herman Robert
Grisart, Bernard Marie-Josee Jean
Snell, Russell Grant
Reid, Suzanne Jean
Ford, Christine Ann
Spelman, Richard John

Opponent:

Greenpeace e.V.

Headword:

Improved milk production/GEORGES

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision -

patent proprietors no longer approve the text of the patent
as granted

Decisions cited:

T 0073/84, T 1526/06, T 1663/08, T 0902/08, T 2276/09

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1589/10 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 18 September 2015

Appellant: Greenpeace e.V.
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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 7 May 2010
rejecting the opposition filed against European
patent No. 1330552 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Wieser
Members: M. R. Vega Laso
D. Rogers
P. Julià
J. Geschwind

Summary of Facts and Submissions

- I. European patent No. 1 330 552 with the title "Marker assisted selection of bovine for improved milk production using diacylglycerol acyltransferase gene DGAT1" was granted on European patent application No. 01992795.3, which had been filed as international application under the PCT and published as WO 02/36824.
- II. The patent was opposed on the ground for opposition under Article 100(a) in conjunction with Article 53(a) and (b) and Article 56 EPC. By a decision posted on 7 May 2010, an opposition division of the European Patent Office found that none of the objections raised by the opponent prejudiced the maintenance of the patent as granted and rejected the opposition under Article 101(2) EPC.
- III. The opponent (appellant) filed a notice of appeal and a statement setting out the grounds of appeal. The appellant requested that the decision under appeal be set aside and the patent be revoked *in toto* or, subsidiarily, that claims 12 to 14 be revoked.
- IV. The patent proprietors (respondents) replied to the statement of grounds of appeal and requested that the appeal be dismissed and the patent be maintained as granted. As a subsidiary request, oral proceedings were requested.
- V. The parties were summoned to oral proceedings. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal, the board provided comments on procedural and substantive issues in order to help the parties to concentrate their submissions at the oral proceedings on the essential issues.

- VI. By letter dated 7 September 2015, the respondents informed the board that, since they had no interest in pursuing the patent, they withdrew their approval of the text of the patent in which the patent had been granted. An alternative text was not submitted.
- VII. On 8 September 2015, the appellant replied to the board's communication.

Reasons for the Decision

1. Under Article 113(2) EPC the European Patent Office shall consider and decide upon a European patent only in the text submitted to it, or agreed, by the proprietor of the patent. Since the text of a patent is at the disposition of the patent proprietor, a patent cannot be maintained against the proprietor's will. This principle applies in opposition and appeal proceedings.
2. Since in their letter dated 7 September 2015, the respondents (patent proprietors) withdrew their approval of the text of the patent as granted and did not submit any alternative text, there is no text on the basis of which the board can consider the appeal. Hence, following the jurisprudence developed by the Boards of Appeal the patent is to be revoked (see, *inter alia*, decisions T 73/84 (OJ EPO 1985, 241); T 1526/06 of 11 July 2008; T 1663/08 of 19 January 2012; T 902/08 of 24 April 2012 and T 2276/09 of 7 February 2013).
3. Under these circumstances, oral proceedings are not necessary.

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:



S. Sánchez Chiquero

M. Wieser

Decision electronically authenticated