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**Datasheet for the decision
of 1 March 2016**

Case Number: T 1599/11 - 3.3.02

Application Number: 05002888.5

Publication Number: 1538155

IPC: C07H21/04, C11D3/386, C12N1/21,
C12N9/28, C12N9/32, C12N15/09,
C12N15/56, C12P21/02

Language of the proceedings: EN

Title of invention:
Amylase variants

Patent Proprietor:
Novozymes A/S

Opponent:
Danisco US Inc.

Headword:
Amylase variants/NOVOZYMES

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text or agreement to text withdrawn by patent proprietor -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

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1599/11 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 1 March 2016

Appellant:
(Patent Proprietor)

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Appellant:
(Opponent)

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Representative:

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 May 2011 concerning maintenance of the
European Patent No. 1538155 in amended form.**

Composition of the Board:

Chairman U. Oswald
Members: T. Sommerfeld
L. Bühler

Summary of Facts and Submissions

- I. The patent proprietor and the opponent have lodged appeals against the interlocutory decision of the opposition division maintaining European patent No. 1 538 155 in amended form.
- II. The parties were summoned to oral proceedings scheduled to take place on 16 February 2016.
- III. With letter dated 8 February 2016, the patent proprietor stated that it did no longer approve the text in which the patent had been granted and that it would not submit an amended text.
- IV. The board cancelled the oral proceedings.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon the European patent only in the text submitted to it, or agreed by the proprietor of the patent.
2. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted and declares that he will not be submitting an amended text. Rather, it has to be inferred from such statement, that the patent proprietor wishes to prevent any text whatever of the patent from being maintained.
3. It is established case law that in the present circumstances, the proceedings are to be terminated by

a decision ordering revocation of the patent, without going into the substantive issues (T 73/84, OJ EPO 1985, 241).

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:



N. Maslin

U. Oswald

Decision electronically authenticated