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**Datasheet for the decision  
of 16 May 2023**

**Case Number:** T 1765/18 - 3.3.08

**Application Number:** 10732172.1

**Publication Number:** 2387627

**IPC:** C40B50/06, C12N5/078, C12Q1/68

**Language of the proceedings:** EN

**Title of invention:**  
Adaptive immunity profiling and methods for generation of  
monoclonal antibodies

**Patent Proprietor:**  
Adaptive Biotechnologies Corporation

**Opponent:**  
Ablynx N.V.

**Headword:**  
Adaptive immunity profiling/ADAPTIVE BIOTECHNOLOGIES

**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Basis of decision - text or agreement to text withdrawn by  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



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number: T 1765/18 - 3.3.08**

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 16 May 2023**

**Appellant:** Ablynx N.V.  
(Opponent) Technologiepark 21  
9052 Ghent-Zwijnaarde (BE)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Respondent:** Adaptive Biotechnologies Corporation  
(Patent Proprietor) 1551 Eastlake Avenue East  
Suite 200  
Seattle, Washington 98102 (US)

**Representative:** Boulton Wade Tennant LLP  
Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**15 June 2018 concerning maintenance of the**  
**European Patent No. 2387627 in amended form**

**Composition of the Board:**

**Chair** T. Sommerfeld  
**Members:** A. Schmitt  
D. Rogers

## **Summary of Facts and Submissions**

- I. The appeal lodged by the opponent (appellant) lies from the interlocutory decision of the opposition division that European patent No. EP 2 387 627 (hereinafter "the patent") as amended in the form of auxiliary request 1 filed on 3 May 2018, and the invention to which it relates, meet the requirements of the EPC.
- II. The patent proprietor did not appeal this decision and thus is respondent in the appeal proceedings.
- III. With the statement of grounds of appeal the appellant requested, *inter alia*, that the decision under appeal be set aside and the patent be revoked.
- IV. With the reply to the statement of grounds of appeal the respondent filed sets of claims of a main request and auxiliary requests 1 to 15 and requested, *inter alia*, that the appeal be dismissed and the patent be maintained based on the set of claims of the main request submitted with the reply to the statement of grounds of appeal which is identical to the set of claims of the auxiliary request considered by the opposition division), or, alternatively, the patent be maintained based on the set of claims of one of auxiliary requests 1 to 15, all submitted with the reply to the statement of grounds of appeal.
- V. In a communication under Article 15(1) RPBA, the board expressed its preliminary appreciation of some matters concerning the appeal.

VI. Both parties were represented at the oral proceedings. During the oral proceedings, the patent proprietor withdrew all its requests on file and its approval to the text of the patent as granted. At the end of the oral proceedings, the Chair announced the board's decision.

### **Reasons for the Decision**

1. Under the principle of party disposition established by 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 withdraws the consent to the text of the patent, and withdraws all claim requests on file.
3. There is therefore no text of the patent on the basis of which the board can consider the appeal. In these circumstances, the patent is to be revoked, without assessing issues relating 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, IV.D.2).
4. Revocation of the patent is also the main request of the appellant (see section III.).

## 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

T. Sommerfeld

Decision electronically authenticated