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

Case Number: T 2493/19 - 3.3.08

Application Number: 11772796.6

Publication Number: 2561065

IPC: C12N5/02, C12N1/38, C07K5/06,
C12N7/01, C12P21/02

Language of the proceedings: EN

Title of invention:
Cell culture medium comprising small peptides

Patent Proprietor:
Life Technologies Corporation

Opponents:
Wallinger Ricker Schlotter Tostmann
Strawman Limited
Boehringer Ingelheim International GmbH

Headword:
Cell culture medium comprising small peptides/LIFE
TECHNOLOGIES

Relevant legal provisions:
EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor

Decisions cited:

T 0073/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 2493/19 - 3.3.08

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

Appellant: Life Technologies Corporation
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Carlsbad, CA 92008 (US)

Representative: Nicols, James R.
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Appellant: Ricker, Mathias,
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Appellant: Strawman Limited
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Combe, Witney
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Representative: Vossius & Partner
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Appellant: Boehringer Ingelheim International GmbH
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Representative: Oetke, Cornelia
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
5 July 2019 concerning maintenance of the
European Patent No. 2561065 in amended form

Composition of the Board:

Chair T. Sommerfeld

Members: M. Montrone

D. Rogers

Summary of Facts and Submissions

- I. The patent proprietor (appellant I) and opponents 1 to 3 filed an appeal against the decision of an opposition division to maintain the European patent No. 2 561 065 in amended form. Since opponent 2 withdrew their appeal and opposition (see letter dated 15 October 2019), opponents 1 and 3 are appellants II and III, respectively, in this appeal.
- II. With its statement setting out the grounds of appeal, appellant I requested, *inter alia*, that the decision under appeal be set aside and the patent be maintained as granted (main request), or upon the basis of one of auxiliary requests 1 to 5 filed with the statement of grounds of appeal; with its letter of reply to the opponents' appeals, dated 7 April 2020, it submitted new auxiliary requests 3 to 8.
- III. With their statements setting out the grounds of appeal, appellants II and III requested, *inter alia*, that the decision under appeal be set aside and the patent be revoked.
- IV. The board appointed oral proceedings, as requested by the parties, and in a subsequent communication pursuant to Article 15(1) RPBA 2020, provided its preliminary appreciation of some matters concerning the appeal.
- V. In reply, appellant I withdrew in a letter dated 1 August 2023 its approval under Rule 71 EPC of the text in which the patent was granted and withdrew all requests pending in the appeal proceedings. They further declared that they looked forward to receiving

a decision ordering the revocation of the patent based on the absence of an agreed text.

VI. The board then cancelled oral proceedings.

Reasons for the Decision

1. Pursuant to 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 where - as in the present case - the patent proprietor expressly states that it no longer approves the text of the patent as granted and withdraws all claim requests on file.
3. According to the case law of the boards of appeal, in these circumstances the proceedings are to be terminated by a decision ordering revocation of the patent under Article 101 EPC 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, III.B.3.3).
4. There are no remaining issues that need to be dealt with by the board in the present appeal case.

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