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**Datasheet for the decision  
of 2 February 2022**

**Case Number:** T 0774/20 - 3.3.08

**Application Number:** 10011226.7

**Publication Number:** 2298864

**IPC:** C12N5/00, A61P17/02

**Language of the proceedings:** EN

**Title of invention:**

MESENCHYMAL STEM CELLS AND USES THEREFOR

**Patent Proprietor:**

Mesoblast International Sàrl

**Opponent:**

Friedrich, Rainer

**Headword:**

Mesenchymal stem cells/MESOBLAST INTERNATIONAL

**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Basis of decision - text or agreement to text withdrawn by  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 1182/17

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 0774/20 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 2 February 2022**

**Appellant:** Friedrich, Rainer  
(Opponent) Breuer Friedrich Hahner Patentanwälte PartG mbB  
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**Respondent:** Mesoblast International Sàrl  
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**Representative:** Schnappauf, Georg  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
10 February 2020 concerning maintenance of the  
European Patent No. 2298864 in amended form.**

**Composition of the Board:**

**Chairman** B. Stolz  
**Members:** P. Julià  
R. Winkelhofer

## **Summary of Facts and Submissions**

- I. European patent no. 2 298 864 is based on European patent application no. 10 011 226.7, a divisional application of the European patent application no. 05 725 577.0 (EP 1 727 892), originally filed under the PCT and published as WO 2005/093044. The patent was granted with 13 claims.
- II. An opposition was filed on the grounds set forth in Articles 100(a), 100(b) and 100(c) EPC. The opposition division considered the main request filed on 11 November 2019 and the description filed during the oral proceedings on 13 January 2020 to meet the requirements of the EPC and decided to maintain the patent in amended form (Article 101(3)(a) EPC).
- III. An appeal was lodged by the opponent (appellant) who requested that the decision be set aside and that the patent be revoked.
- IV. The patent proprietor (respondent) requested that the appeal be dismissed.
- V. Since both parties requested oral proceedings as an auxiliary measure, the board summoned to oral proceedings and issued a communication under Article 17 of the Rules of Procedure of the Boards of Appeal (RPBA 2020) informing them of the board's provisional opinion on the issues of the case.
- VI. With submission dated 31 January 2022, the respondent declared the following:

"The proprietor hereby withdraws its approval of the text which the ... European patent was granted.

The proprietor also withdraws any and all auxiliary requests and will not be filing a replacement text or any further request.

Consequently, the proceedings are to be terminated by a decision ordering the revocation of the patent ..."

VII. In view of this declaration, the oral proceedings were cancelled.

### **Reasons for the Decision**

1. Article 113(2) EPC requires that the European Patent Office decides upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. The patent proprietor (respondent) explicitly disapproved the text of the patent without filing any other amended text on which further prosecution of the appeal could be based.
3. Since there is no alternative text of the patent which could be deemed to be approved by the patent proprietor, their above declaration implies that the request to hold oral proceedings is also withdrawn (i.e. there is no text to be discussed).
4. It is established case law of the Boards of Appeal that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see,

*inter alia*, T 1182/17 of 22 October 2020 and the case law cited in point 4 of the Reasons of this decision).

## 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

B. Stolz

Decision electronically authenticated