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**Datasheet for the decision
of 15 March 2024**

Case Number: T 0451/21 - 3.3.08

Application Number: 14802772.5

Publication Number: 3066201

IPC: C12N15/63

Language of the proceedings: EN

Title of invention:

CRISPR-RELATED METHODS AND COMPOSITIONS WITH GOVERNING GRNAS

Patent Proprietor:

Editas Medicine, Inc.
The Broad Institute, Inc.
Massachusetts Institute of Technology
The University of Iowa Research Foundation

Opponents:

Grund, Dr., Martin
James Poole Limited

Headword:

Crispr-related methods/ETIDAS MEDICINE et al

Relevant legal provisions:

EPC 1973 Art. 113(2), 116(1)
RPBA 2020 Art. 12(8)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84

Catchword:

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Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0451/21 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 15 March 2024

Appellant I: Editas Medicine, Inc.
(Patent Proprietor 1) 11 Hurley Street
Cambridge, MA 02141 (US)

Appellant I: The Broad Institute, Inc.
(Patent Proprietor 2) 415 Main Street
Cambridge, MA 02142 (US)

Appellant I: Massachusetts Institute of Technology
(Patent Proprietor 3) 77 Massachusetts Avenue
Cambridge, MA 02139 (US)

Appellant I: The University of Iowa Research Foundation
(Patent Proprietor 4) 112 N. Capitol Street
6 Gilmore Hall
Iowa City IA 52242-5500 (US)

Representative: Pohlman, Sandra M.
df-mp Dörries Frank-Molnia & Pohlman
Patentanwälte Rechtsanwälte PartG mbB
Theatinerstrasse 16
80333 München (DE)

Appellant II: Grund, Dr., Martin
(Opponent 1) Steinsdorfstraße 2
80538 München (DE)

Appellant III: James Poole Limited
(Opponent 2) One Southampton Row
London WC1B 5HA (GB)

Representative: Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 February 2021 concerning maintenance of the
European Patent No. 3066201 in amended form**

Composition of the Board:

Chair T. Sommerfeld
Members: B. Claes
A. Bacchin

Summary of Facts and Submissions

- I. The appeals lodged by the patent proprietors (appellants I) and by both opponents 1 and 2 (appellants II and III, respectively) lie from the interlocutory decision of the opposition division that European patent No. 3 066 201, as amended in the form of auxiliary request 9, and the invention to which it relates meet the requirements of the EPC. The patent was granted on European patent application No. 14 802 772.5, filed as international application published as WO 2015/070083.
- II. Appellants I and appellants II and III reciprocally replied to the other appeal(s).
- III. Appellants I initially requested that the decision under appeal be set aside and the patent be maintained with the set of claims of the main request, or, alternatively, with the set of claims of one of auxiliary requests 1 to 10, or further alternatively that the appeals of the opponents be dismissed (auxiliary request 11).
- IV. Appellants II and III requested that the appeal of appellants I be held inadmissible, or alternatively, that it be dismissed. They further requested that the decision under appeal be set aside and the patent be revoked in its entirety. Appellant III further requested that auxiliary requests 9 and 10 not be admitted and considered in the appeal proceedings.
- V. The board summoned the parties to oral proceedings in accordance with their requests and annexed to the summons a communication pursuant to Article 15(1) RPBA.

VI. With a letter dated 15 March 2024 the patent proprietors informed the board as follows:

"For commercial reasons however the Proprietors do not intend to pursue the opposed patent any longer. Accordingly, for the sole purpose of terminating these appeal proceedings and without acquiescence in any of the opponents' arguments, on behalf of the Proprietors we hereby no longer approve of any text for the maintenance of the patent. Additionally, Proprietors hereby withdraw all of their requests filed with respect to the above appeal.

The appeal filed on April 27, 2021 is hereby withdrawn. Partial reimbursement of the appeal fee is requested."

VII. The board cancelled oral proceedings.

Reasons for the Decision

1. The board has taken note of the patent proprietors' withdrawal of their appeal.
2. The appeals of the opponents comply with the requirements of Articles 106 to 108 EPC and the further provisions referred to in Rule 101 EPC and are admissible.
3. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

4. Since the text of the patent is at the disposition of the patent proprietor(s), their patent cannot be maintained against their will. In the present case the patent proprietors withdrew their approval of the text of the patent as granted. By withdrawing all their requests, they also unequivocally withdrew their approval of the text of the patent as amended according to any of the auxiliary requests. Consequently, there is therefore no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC.

5. It is established case law that in the present circumstances the decision under appeal must be set aside and the patent be revoked without further substantive examination as 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, sections III.B.3.3 and IV.D.2). The board has no reason to deviate from this consistent approach of the Boards of Appeal, with the consequence that the patent is to be revoked.

6. Revocation of the patent complies with the request of the opponents. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC and Article 12(8) RPBA 2020).

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