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**Datasheet for the decision
of 26 April 2023**

Case Number: T 1995/21 - 3.3.08

Application Number: 15736432.4

Publication Number: 3140399

IPC: C12N15/09, C12N15/00

Language of the proceedings: EN

Title of invention:

SUBTILASE VARIANTS AND POLYNUCLEOTIDES ENCODING SAME

Patent Proprietor:

Novozymes A/S

Opponent:

Danisco US Inc.

Headword:

Subtilase variants/NOVOZYMES

Relevant legal provisions:

EPC Art. 113(1), 116(1)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84, T 1182/17, T 0774/20

Catchword:

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Beschwerdekammern

Boards of Appeal

Chambres de recours

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European Patent Office
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Case Number: T 1995/21 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 26 April 2023

Appellant: Danisco US Inc.
(Opponent) 925 Page Mill Road
Palo Alto CA 94304-1013 (US)

Representative: Mewburn Ellis LLP
Aurora Building
Counterslip
Bristol BS1 6BX (GB)

Respondent: Novozymes A/S
(Patent Proprietor) Krogshøjvej 36
2880 Bagsvaerd (DK)

Representative: Potter Clarkson
Chapel Quarter
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Nottingham NG1 6HQ (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
3 September 2021 concerning maintenance of the
European Patent No. 3140399 in amended form**

Composition of the Board:

Chair T. Sommerfeld
Members: B. Claes
R. Winkelhofer

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 3 140 399 (the patent), as amended in the form of the main request and the invention to which it relates meet the requirements of the EPC.

II. The appellant requested *inter alia* that the decision under appeal be set aside and the patent be revoked.

The respondent requested *inter alia* that the appeal be dismissed (main request) or, alternatively, that the patent be maintained with the set of claims of one of auxiliary requests 1 to 27, all filed with the reply to the appeal.

III. The board summoned the parties to oral proceedings in accordance with their requests and subsequently issued a communication pursuant to Article 15(1) RPBA.

IV. With a submission dated 14 April 2023 the respondent declared the following:

"The Patentee no longer approves the text of the Patent as granted, and will not be submitting any amended text.

For the avoidance of any doubt, the Patentee requests that the Patent is revoked.

We look forward to receiving confirmation that the Patent has been revoked."

- V. In view of this declaration the oral proceedings were cancelled.

Reasons for the Decision

1. 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.
2. Since the text of the patent is at the disposition of the patent proprietor, their patent cannot be maintained against their will. In the present case the patent proprietor withdrew their approval of the text of the patent as granted. Further, by declaring that they will not be submitting any amended text of the patent and requesting that the patent be revoked, they also unequivocally declared that all pending auxiliary requests were at the same time withdrawn. Consequently, there is no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC.
3. It is established case law that in the present circumstances the patent must be revoked without further substantive examination as to patentability (see, *inter alia*, decision T 73/84, OJ EPO 1985, 241; decisions T 1182/17 and T 774/20 and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, section IV.D.2). There is no reason to deviate from this consistent approach of the boards of

appeal, with the consequence that the patent is to be revoked.

4. Since there is no alternative text of the patent which could be deemed to be approved by the patent proprietor, their declaration implies that their request to hold oral proceedings is also withdrawn (i.e. there is no text to be discussed). Revocation of the patent also complies with the request of the appealing opponent. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC).

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:



B. Brückner

T. Sommerfeld

Decision electronically authenticated