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**Datasheet for the decision
of 13 September 2024**

Case Number: T 0425/22 - 3.3.08

Application Number: 10016019.1

Publication Number: 2325646

IPC: C12Q1/689

Language of the proceedings: EN

Title of invention:

Sequences for detection and identification of methicillin-resistant staphylococcus aureus (MRSA) of MREJ type XVII

Patent Proprietor:

Becton Dickinson Infusion Therapy Systems Inc.

Opponent:

Beckman Coulter, Inc.

Headword:

methicillin-resistant staphylococcus aureus of MREJ type XVII/
BECKMAN COULTER

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Basis of decision - text or agreement to text withdrawn by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, T 0186/84, T 0655/01, T 1526/06, T 2405/12,
T 1484/19

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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European Patent Office
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Case Number: T 0425/22 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 13 September 2024

Appellant: Beckman Coulter, Inc.
(Opponent) 250 S. Kraemer Boulevard
Brea, CA 92821 (US)

Representative: Spencer, Matthew Peter
Ricketts, Thomas
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Respondent: Becton Dickinson Infusion Therapy Systems Inc.
(Patent Proprietor) 1 Becton Drive
Franklin Lakes, NJ 07417-1880 (US)

Representative: Schlörb, Christian
Vossius & Partner
Patentanwälte Rechtsanwälte mbB
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 9 December 2021
rejecting the opposition filed against European
patent No. 2325646 pursuant to Article 101(2)
EPC**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: D. Pilat
 D. Rogers

Summary of Facts and Submissions

- I. The appeal was filed by the opponent (appellant) against the decision of the opposition division rejecting its opposition.
- II. The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- III. The parties were summoned to oral proceedings and were informed of the board's provisional opinion on the issues of the case.
- IV. With its letter dated 10 September 2024, the patent proprietor (respondent) stated the following:

"On behalf of the Patent Proprietor, we herewith withdraw all claim requests on file and no longer approve the text with which the patent was granted and maintained after opposition proceedings. Moreover, it is not intended to submit an amended text or further claim requests in the present appeal proceedings.

Finally, we withdraw our request for oral proceedings."

- V. 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. By disapproving the granted text of the patent in any form, the patent proprietor has withdrawn its approval of any text for maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. There is therefore no text of the patent on the basis of which the board can consider the appeals filed by the opponents.

3. In the case of T 73/84 (OJ EPO 1985, 241, Headnote and Reasons), the board decided that if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 655/01, T 1526/06, T 2405/12 and T 1484/19 of 29 November 2022.

4. In the circumstances of the present case, the board sees no reasons for deviating from the principles set out in the above-mentioned decisions. The patent must therefore be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar:

The Chairwoman:



C. Rodríguez Rodríguez

T. Sommerfeld

Decision electronically authenticated