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**Datasheet for the decision
of 17 May 2023**

Case Number: T 0836/22 - 3.3.08

Application Number: 16162568.6

Publication Number: 3059337

IPC: C40B50/06, C12N5/078, C12Q1/68

Language of the proceedings: EN

Title of invention:
Adaptive immunity profiling and methods for generation of
monoclonal antibodies

Patent Proprietor:
Adaptive Biotechnologies Corporation

Opponent:
Ablynx N.V.

Headword:
Adaptive immunity profiling/ADAPTIVE BIOTECHNOLOGIES

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Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 0836/22 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 17 May 2023

Appellant: Ablynx N.V.
(Opponent) Technologiepark 21
9052 Zwijnaarde (BE)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Respondent: Adaptive Biotechnologies Corporation
(Patent Proprietor) 1551 Eastlake Avenue East
Suite 200
Seattle, Washington 98102 (US)

Representative: Boulton Wade Tennant LLP
Salisbury Square House
8 Salisbury Square
London EC4Y 8AP (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 27 January 2022
rejecting the opposition filed against European
patent No. 3059337 pursuant to
Article 101(2) EPC**

Composition of the Board:

Chair T. Sommerfeld
Members: A. Schmitt
D. Rogers

Summary of Facts and Submissions

- I. The appeal lodged by the opponent (appellant) lies from the opposition division's decision to reject the opposition against European patent No. EP 3 059 337.
- II. With the statement of grounds of appeal the appellant requested, *inter alia*, that the decision under appeal be set aside and the patent be revoked.
- III. With the reply to the statement of grounds of appeal the patent proprietor (respondent) filed sets of claims of auxiliary requests 1 to 15 and requested *inter alia* that the appeal be dismissed, i.e. that the patent be maintained as granted or, alternatively, that the patent be maintained in amended form based on the set of claims of one of auxiliary requests 1 to 15.
- IV. The board summoned the parties to oral proceedings in accordance with their requests and, in a communication pursuant to Article 15(1) RPBA, expressed its preliminary opinion on some matters concerning the appeal.
- V. Both parties were represented at the oral proceedings. During the oral proceedings, the patent proprietor withdrew its approval to the text of the patent. At the end of the oral proceedings, the Chair announced the board's decision.

Reasons for the Decision

1. Under 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 if the patent proprietor - as in the present case - expressly withdraws the consent to the text of the patent.
3. There is therefore no text of the patent on the basis of which the board can consider the appeal. In these circumstances, the patent is to be revoked, 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, IV.D.2).
4. Revocation of the patent is also the main request of the appellant (see section II.).

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