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**Datasheet for the decision
of 25 June 2026**

Case Number: T 0124/24 - 3.3.08

Application Number: 18718697.8

Publication Number: 3596464

IPC: G01N33/53, C07K16/18,
G01N33/58, G01N33/60, C07K16/42

Language of the proceedings: EN

Title of invention:
TARGET DETECTION USING A MONOVALENT ANTIBODY

Patent Proprietor:
NanoTag Biotechnologies GmbH

Opponents:
Wuesthoff & Wuesthoff Patentanwälte PartG mbB
STRAWMAN LIMITED

Headword:
Target detection/NANOTAG BIOTECHNOLOGIES

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0186/84, T 0646/08, T 0782/11, T 2434/18, T 0477/22,
T 1136/23

Catchword:

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Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0124/24 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 25 June 2026

Appellant: NanoTag Biotechnologies GmbH
(Patent Proprietor) Rudolf-Wissell-Str. 28
37079 Göttingen (DE)

Representative: Schiweck Weinzierl Koch
Patentanwälte Partnerschaft mbB
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Respondent: Wuesthoff & Wuesthoff Patentanwälte PartG mbB
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81541 Munich (DE)

Representative: Wichmann, Hendrik
Wuesthoff & Wuesthoff
Patentanwälte und Rechtsanwalt PartG mbB
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Respondent: STRAWMAN LIMITED
(Opponent 2) Orchard Lea
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Witney, Oxfordshire OX29 8NH (GB)

Representative: J A Kemp LLP
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London EC1M 5QU (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted/electronically
transmitted on 22 November 2023 revoking
European patent No. 3596464 pursuant to Article
101(3)(b) EPC**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal lodged by the patent proprietor (appellant) lies from the decision of the opposition division revoking European patent No. 3 596 464.
- II. The board summoned the parties to oral proceedings as requested and informed them of its preliminary opinion in a communication pursuant to Article 15(1) RPBA.
- III. With letter of 11 June 2026, the appellant informed the board that they were not going to attend the oral proceedings scheduled on 25 June 2026. They also declared to withdraw their approval to the text of the patent as granted and to withdraw the main request and all auxiliary requests and that they did not intend to submit any further amended claims. The appellant further requested partial reimbursement of the appeal fee according to Rule 103(4) (a) EPC.
- IV. Following the appellant's declaration of withdrawal of the consent to the text of the patent, the board cancelled the oral proceedings and informed the parties that it would issue a decision confirming revocation of the patent at stake and that no partial reimbursement of the appeal fee would be made (Rule 103 EPC).

Reasons for the Decision

Appeal proceedings terminated

1. According to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine and decide upon a European patent only in the

text submitted to it, or agreed upon, by the proprietor of the patent.

2. As the appellant withdrew its approval of any text for the maintenance of the patent under appeal, there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for opposition under Article 100 EPC prejudices the maintenance of the patent. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged impediments to patentability (see decision T 186/84, OJ EPO 1986, 79, point 5 of the Reasons; T 646/08, point 4 of the Reasons, and T 2434/18, point 4 of the Reasons).

3. In a situation such as the present one, where the patent proprietor has appealed a decision of the opposition division revoking the patent, and where the appeal becomes devoid of subject-matter for substantive examination following the withdrawal of the appellant's agreement to any text for the maintenance of the patent, the appeal proceedings are to be terminated, and the decision under appeal becomes final (see decisions T 728/11, point 3 of the Reasons, T 477/22, point 3 of the Reasons, and T 1136/23, point 3 of the Reasons).

Partial reimbursement of the appeal fee

4. Since the appellant did not withdraw the appeal, the provisions of Rule 103(4) (a) EPC, under which the appellant requested partial refund of the appeal fee, are not fulfilled. Moreover, none of the other provisions of Rule 103 EPC for refund of appeal fees apply either. Under these circumstances no partial

reimbursement of the appeal fee is made
(Rule 103(5) EPC).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



C. Rodríguez Rodríguez

T. Sommerfeld

Decision electronically authenticated