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**Datasheet for the decision
of 8 June 2026**

Case Number: T 0271/24 - 3.3.08

Application Number: 18150361.6

Publication Number: 3363901

IPC: C12N15/10, C12N15/70,
C12N15/81, C12N15/85,
C12N15/86, C40B40/08, C40B50/06

Language of the proceedings: EN

Title of invention:

Compositions and methods for accurately identifying mutations

Patent Proprietor:

Fred Hutchinson Cancer Center

Opponents:

Grünecker Patent- und Rechtsanwälte PartG mbB
STRAWMAN LIMITED
James Poole Limited

Headword:

Methods for accurately identifying mutations/FRED HUTCHINSON
CANCER CENTER

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Basis of decision - text or agreement to text withdrawn by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 1182/17, T 0774/20, T 1995/21



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0271/24 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 8 June 2026

Appellant I: Grünecker Patent- und Rechtsanwälte PartG mbB
(Opponent 1) Leopoldstrasse 4
80802 München (DE)

Representative: Grünecker Patent- und Rechtsanwälte
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80802 München (DE)

Appellant II: STRAWMAN LIMITED
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Appellant III: James Poole Limited
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Representative: Carpmiels & Ransford LLP
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London WC1B 5HA (GB)

Respondent: Fred Hutchinson Cancer Center
(Patent Proprietor) 1100 Fairview Avenue North
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Representative: Murgitroyd & Company
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 21 December 2023
concerning maintenance of the European Patent
No. 3363901 in amended form

Composition of the Board:

Chairwoman T. Sommerfeld
Members: R. Morawetz
D. Rogers

Summary of Facts and Submissions

- I. The appeals lodged by opponent 1, opponent 2 and opponent 3 lie from the opposition division's interlocutory decision that European patent No. 3 363 901 B1 ("the patent") with the set of claims of auxiliary request 1, and the invention to which it relates met the requirements of the EPC. The patent proprietor is respondent to the appeals.
- II. As their main request, the opponents requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- III. In reply to the grounds of appeal, the patent proprietor re-submitted the set of claims of auxiliary request 1 considered in the decision under appeal as its main request and submitted sets of claims of new auxiliary requests 1 to 31.
- IV. The board appointed oral proceedings and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation on some matters concerning the appeal.
- V. In a letter dated 13 May 2026, the respondent stated that
"the Patent Proprietor (Respondent) ... withdraws:
 - i) its approval of the text of the patent as maintained in amended form by the Opposition Division (at the oral proceedings dated 8 November 2023);*
 - ii) its Main Request and all pending Auxiliary Requests; and*

iii) its request for oral proceedings.

In view of the above, the Patent Proprietor respectfully requests that the oral proceedings scheduled for 9 and 10 June 2026 be cancelled and that this matter be concluded."

VI. The board cancelled the oral proceedings.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO will examine, and decide upon the European patent only in the text submitted to it, or agreed by the applicant or patent proprietor.
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 its approval of the text of the patent as maintained by the opposition division, its main request and all pending auxiliary requests (section V. above). 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. In these circumstances, as there is no approved text, the patent is to be revoked without assessing issues relating to patentability (see e.g. decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79; T 1182/17; T 774/20; T 1995/21 and Case Law of the Boards of Appeal, 11th edition 2025, sections III.B.3.3 and 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. Revocation of the patent also complies with the main request of the opponents. There are no remaining issues that have to be dealt with by the board in the present appeal case, either. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC and Article 12(8) RPBA).

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