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**Datasheet for the decision
of 16 February 2026**

Case Number: T 0543/24 - 3.3.08

Application Number: 18730279.9

Publication Number: 3631011

IPC: C12Q1/6851, C12Q1/6886

Language of the proceedings: EN

Title of invention:

Multiplex PCR detection of ALK, RET, and ROS fusions

Patent Proprietor:

Roche Diagnostics GmbH
F. Hoffmann-La Roche AG

Opponent:

Strawman Limited

Headword:

multiplex PCR detection/ROCHE DIAGNOSTICS

Relevant legal provisions:

EPC Art. 113(2), 116(1)

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Basis of decision - text or agreement to text withdrawn by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 1990/21

Catchword:

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Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0543/24 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 16 February 2026

Appellant: Strawman Limited
(Opponent) Orchard Lea
Horns Lane
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Oxfordshire OX29 8NH (GB)

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

Respondent: Roche Diagnostics GmbH
(Patent Proprietor 1) Sandhofer Straße 116
68305 Mannheim (DE)

Respondent: F. Hoffmann-La Roche AG
(Patent Proprietor 2) Grenzacherstrasse 124
4070 Basel (CH)

Representative: Simmons & Simmons LLP (Munich)
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80538 Munich (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 2 April 2024
rejecting the opposition filed against European
patent No. 3631011 pursuant to Article 101(2)
EPC**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal lodged by the opponent (appellant) lies from the decision of the opposition division rejecting the opposition against the European patent No. 3 631 011 granted for European patent application No. 18730279.9, which was filed as an international application under the PCT and published as WO 2018/220004.
- II. The appellant requested *inter alia* that the decision under appeal be set aside and amended such that the patent be revoked.
- III. With its reply to the appeal, the respondent (patent proprietor) 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 3, 4A, 4B, 5A, 5B, 6A, 6B and 7 to 10.
- IV. The board summoned the parties to oral proceedings in accordance with their requests and subsequently issued a communication pursuant to Article 15(1) RPBA.
- V. With a submission dated 11 February 2026 the respondent declared the following:

"Patentee herewith declares that they no longer approve the text in which the patent had been granted.

They also withdraw all auxiliary requests filed during appeal proceedings.

Furthermore, they will not submit any other text or requests for the maintenance of the patent."

VI. In view of this declaration the oral proceedings were cancelled.

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 their approval of the text of the patent as granted and all pending auxiliary requests. 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); decisions 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 complies with the request of the appellant. 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 Chair:



C. Rodríguez Rodríguez

T. Sommerfeld

Decision electronically authenticated