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**Datasheet for the decision  
of 23 June 2026**

**Case Number:** T 0912/24 - 3.3.08

**Application Number:** 20216646.8

**Publication Number:** 3848454

**IPC:** C12N5/071

**Language of the proceedings:** EN

**Title of invention:**

Live cell constructs for production of cultured milk product  
and methods using the same

**Patent Proprietor:**

Biomilq, Inc.

**Opponent:**

Strawman Limited

**Headword:**

Method for producing a milk product/BIOMILQ

**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Basis of decision - text or agreement to text withdrawn by  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 1995/21

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 0912/24 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 23 June 2026**

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

**Representative:** CMS Cameron McKenna Nabarro  
Olswang LLP  
Cannon Place  
78 Cannon Street  
London EC4N 6AF (GB)

**Respondent:** Biomilq, Inc.  
(Patent Proprietor) 5 Laboratory Drive, Suite 2250  
Durham, NC 27709 (US)

**Representative:** HGF  
HGF Limited  
4th Floor, 1 City Square  
Leeds LS1 2ES (GB)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 13 May 2024  
rejecting the opposition filed against European  
patent No. 3848454 pursuant to Article 101(2)  
EPC**

**Composition of the Board:**

<b>Chair</b>	T. Sommerfeld
<b>Members:</b>	M. Montrone
	A. Bacchin

## **Summary of Facts and Submissions**

- I. The appeal lodged by the opponent (appellant) lies against the decision of an opposition division according to which the opposition against the European patent No. 3 848 454 was rejected.
- II. The patent proprietor (respondent) replied thereto and *inter alia* re-submitted auxiliary requests 1 to 7 already filed during the opposition proceedings.
- III. The board summoned the parties to oral proceedings and informed them of its preliminary opinion in a communication pursuant to Article 15(1) RPBA.
- IV. With a submission dated 18 June 2026 the patent proprietor declared the following:  
  

*"On behalf of the proprietor, Biomilq, Inc, I withdraw their approval under Rule 71 EPC of the text in which European Patent No. 3 848 454 was granted. A replacement text will not be filed and all requests pending in the appeal proceedings are withdrawn, including the request for oral proceedings".*
- V. In view of this declaration the oral proceedings were cancelled.

## **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC, the EPO examines and decides upon a 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 including all requests pending in the appeal proceedings. This includes 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), T 1182/17, T 774/20, T 1995/21 and Case Law of the Boards of Appeal of the European Patent Office, 11<sup>th</sup> 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 request of the opponent-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