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Datasheet for the decision of 7 September 2026

Case Number: T 1407/24 - 3.3.08

Application Number: 16750759.9

Publication Number: 3334828

IPC: C12N15/63

Language of the proceedings: EN

Title of invention:
METHOD OF INCREASING THE REPLICATION OF A CIRCULAR DNA MOLECULE

Patent Proprietor:
CureVac Manufacturing GmbH

Opponents:
Strawman Limited
Weickmann & Weickmann PartmbB

Headword:
Method of increasing the replication of a circular DNA molecule/CUREVAC REAL ESTATE

Relevant legal provisions:
EPC Art. 113(2)

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It can be changed at any time and without notic

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Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked

Decisions cited:
T 0073/84, T 0186/84, T 0655/01, T 1526/06, T 2405/12, T 1484/19

Catchword:

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Case Number: T 1407/24 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 7 September 2026

Appellant: (Patent Proprietor)	CureVac Manufacturing GmbH Friedrich-Miescher-Straße 15 72076 Tübingen (DE)
Representative:	Pinsent Masons LLP 30 Crown Place London EC2A 4ES (GB)
Respondent: (Opponent 1)	Strawman Limited Office 9, Dalton House 60 Windsor Avenue London SW19 2RR (GB)
Representative:	Carpmaels & Ransford LLP One Southampton Row London WC1B 5HA (GB)
Respondent: (Opponent 2)	Weickmann & Weickmann PartmbB Richard-Strauss-Straße 80 81679 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted/electronically transmitted on 8 October 2024 revoking European patent No. 3334828 pursuant to Article 101(3)(b) EPC**

Composition of the Board:

Chairwoman	T. Sommerfeld
Members:	D. Pilat
	D. Rogers

Summary of Facts and Submissions

I. The present appeal was lodged by the patent proprietor (appellant) against the opposition division's decision to revoke European patent EP 3334828 B1.

II. The appellant requested *inter alia* that the decision under appeal be set aside. In reply, the opponent (respondent) requested *inter alia* that the appeal be dismissed.

III. The parties were summoned to oral proceedings and a communication pursuant to Article 15(1) RPBA was issued, setting out the board's preliminary opinion on the case.

IV. With letter dated 1 September 2026, the appellant stated the following:

"The Patentee no longer intends to defend this Patent (EP3334828). I therefore withdraw approval of the text for this Patent.

I understand that in this light of this withdrawal of the text that the Patent will be revoked and the oral proceedings scheduled for the 15 September 2026 will be cancelled."

V. In view of this declaration, the board cancelled oral proceedings.

Reasons for the Decision

1. Article 113(2) EPC requires that the European Patent Office decides upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. By disapproving the text of the patent, the patent proprietor has withdrawn its approval of any text for maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. There is therefore no text of the patent on the basis of which the board can consider the appeal, nor is there any request from the appellant to set aside the decision. All parties in fact request revocation of the patent.

3. According to T 73/84 (OJ EPO 1985, 241, Headnote and Reasons), if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed *inter alia* by decisions T 186/84 (OJ EPO 1986, 79), T 655/01, T 1526/06, T 2405/12 and T 1484/19 of 29 November 2022.

4. In the circumstances of the present case, the board sees no reasons for deviating from the principles set out in the above-mentioned decisions. The patent must therefore remain revoked.

Order

For these reasons it is decided that:

The appeal proceedings are terminated. The patent remains revoked.

The Registrar: The Chairwoman:

C. Rodríguez Rodríguez T. Sommerfeld

Decision electronically authenticated