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**Datasheet for the decision
of 2 July 2026**

Case Number: T 0036/25 - 3.3.08

Application Number: 16794858.7

Publication Number: 3368688

IPC: C12Q1/6869, C12Q1/6806,
C12Q1/6827, C12N9/02

Language of the proceedings: EN

Title of invention:

Compositions and methods for determining modified cytosines by sequencing

Patent Proprietor:

New England Biolabs, Inc.

Opponent:

J A Kemp LLP

Headword:

determining modified cytosines by sequencing/NEW ENGLAND
BIOLABS

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Basis of decision - text or agreement to text withdrawn by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 0036/25 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 2 July 2026

Appellant: J A Kemp LLP
(Opponent) 80 Turnmill Street
London Greater London EC1M 5QU (GB)

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

Respondent: New England Biolabs, Inc.
(Patent Proprietor) 240 County Road
Ipswich, MA 01938 (US)

Representative: Griffin, Philippa Jane
Mathys & Squire
The Shard
32 London Bridge Street
London SE1 9SG (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 18 November 2024
concerning maintenance of the European Patent
No. 3368688 in amended form

Composition of the Board:

Chair T. Sommerfeld
Members: B. Claes
D. Rogers

Summary of Facts and Submissions

1. The appeal lodged by the opponent (appellant) lies from the interlocutory decision of the opposition division that European patent No. 3 368 688 granted on European patent application No. 16794858.1 with the set of claims of auxiliary request 1 and the invention to which it relates met the requirements of the EPC.
2. The appellant requested *inter alia* that the decision under appeal be set aside and amended such that the patent be revoked.
3. With its reply to the appeal, the respondent requested that the appeal be dismissed (main request) or alternatively, that the patent be maintained with the set of claims of one of 17 auxiliary requests.
4. The board summoned the parties to oral proceedings in accordance with their requests and subsequently issued a communication pursuant to Article 15(1) RPBA.
5. With a submission dated 30 June 2026 the respondent declared the following:

"[...], the patent proprietor no longer approves the text in which the patent was granted and also no longer approves the wording of any of the Auxiliary Requests on file.

Further, the patent proprietor withdraws the request for oral proceedings.

In accordance with Article 113(2) EPC, there is no text agreed by the patent proprietor on the basis of which

the Board of Appeal may reach a decision. Otherwise expressed, the patent proprietor hereby 'self-revokes' the patent."

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

Reasons for the Decision

7. 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.
8. 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.
9. 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, 2026 revision, 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.

10. 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