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**D E C I S I O N**  
of 29 November 1996

**Case Number:** T 0820/94 - 3.3.4

**Application Number:** 86905378.5

**Publication Number:** 0236416

**IPC:** C12P 21/02

**Language of the proceedings:** EN

**Title of invention:**  
Polypeptide production

**Patentee:**  
CELLTECH LIMITED

**Opponent:**  
Unigene Labs. Ltd.

**Headword:**  
Polypeptide production/Celltech Limited

**Relevant legal provisions:**  
EPC Art. 111(1)

**Keyword:**  
"Revocation of patent upon Proprietor's request"

**Decisions cited:**  
T 0186/94, T 0459/88, T 0677/90, T 0092/88, T 0322/91

**Catchword:**  
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Case Number: T 0820/94 - 3.3.4

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.4  
of 29 November 1996

**Appellant:** Unigene Labs. Ltd  
(Opponent) 110 Little Falls Rd.  
Fairfield NJ 07006 (US)

**Representative:** Perry, Robert Edward  
GILL JENNINGS & EVERY  
Broadgate House  
7 Eldon Street  
London EC2M 7LH (GB)

**Respondent:** CELLTECH LIMITED  
(Proprietor of the patent) 244-250 Bath Road  
Slough  
Berkshire SL1 4DY (GB)

**Representative:** Votier, Sidney David  
CARPMAELS & RANSFORD  
43, Bloomsbury Square  
London WC1A 2RA (GB)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office dated 10 August 1994  
rejecting the opposition filed against European  
patent No. 0 236 416 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**  
**Chairman:** U. M. Kinkeldey  
**Members:** F. L. Davison-Brunel  
J. Saisset

## Summary of Facts and Submissions

- I. European patent No. 0 236 416 with the title "Polypeptide production" was granted with ten claims based on European patent application No. 86 905 378.5.
- II. A notice of opposition was filed requesting the revocation of the patent under Article 100(a) EPC (lack of novelty and inventive step).
- III. By a decision dated 10 August 1994, the Opposition Division rejected the opposition according to Article 102(2) EPC.
- IV. The Appellant (Opponent) lodged an appeal against the decision of the Opposition Division, requesting that the decision under appeal be set aside and the patent be revoked. A statement of grounds of appeal was filed.
- V. With a letter dated 17 January 1996, the Respondent (Patentee) stated that "... the Proprietor hereby agrees to revocation of the above identified European patent."

## Reasons for the Decision

1. The appeal is admissible.
2. The Respondent (Patentee) has agreed to the revocation of the patent after notice of appeal has been

filed.

3. In case T 0186/84 (OJ EPO 1986, 79), the Board of appeal decided that the request made by a patent proprietor during the appeal stage of the opposition proceedings that his patent be revoked is equivalent to withdrawal of his agreement- required for the purpose of Article 113(2) EPC- to the text of the patent as granted and that on this basis the patent must be revoked without examination of the substantive grounds for opposition.
4. In T 0459/88 (OJ EPO 1990, 425), the Board further explained that " if, in proceedings before the EPO, the patent proprietor himself requests that his patent be revoked, there can scarcely be anymore cogent reason for revoking it since it cannot be in the public interest to maintain a patent against its proprietor's will."
5. Since these decisions were given, the Boards of Appeal have decided in a number of cases to revoke patents under Article 111(1) EPC at the request of their proprietors (e.g. T 0677/90 dated 17 May 1991, T 0092/88 dated 19 September 1991, T 0322/91 dated 14 October 1993).
6. In the present case, the Board interprets the Proprietor's agreement to the revocation of the patent as meaning that he no longer wishes his patent to be maintained and, thus, as a request for revocation.

7. The Board can, therefore, in the exercise of its power under Article 111(1) EPC decide to revoke the European patent.

**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:

L. McGarry

U. M. Kinkeldey