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Troubling Trend of “Self” Revocation In the CRISPR Space Continues in Europe

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Less than two months after CVC made the surprising move to revoke two of its seminal European CRISPR patents, Sigma-Aldrich has done it too. While the facts that led to Sigma’s “self” revocation may be different than CVC’s, this en vogue trend of avoiding final decisions is troubling because it denies the public of the certainty it deserves.

The two Sigma patents involved are EP3138911 and EP3360964 (EP ’911 and EP ’964, respectively) directed to broad methods and compositions for modifying a chromosomal sequence in a eukaryotic cell by integrating a donor sequence using RNA-guided endonuclease, such as a CRISPR/Cas protein, with a nuclear localization signal.

Unlike CVC, Sigma’s patents were initially revoked by the Opposition Division for lack of inventive step over the June 2012 *Science* paper published by Nobel Laureates Emmanuelle Charpentier and Jennifer Doudna. On appeal, Sigma attempted to buttress its inventive arguments with additional submissions and auxiliary requests. The Boards of Appeal of the European Patent Office (the “Appeal Boards”) however refused to admit Sigma’s additional submissions and requests because of their late filing, affirming the lack of inventive step finding by the Opposition Division. Before the Appeal Boards had a chance to decide on other issues, Sigma moved to terminate the appeal proceedings, giving up its effort to overturn the Opposition Division’s revocation decisions of both EP ’911 and EP ’964 patents.

Like CVC, Sigma’s decision to withdraw the appeals was presumably to insulate other family members from a negative final decision and preserve its ability to get new patents in Europe. However, the fact Sigma’s patents were initially revoked by the Opposition Division would make it harder for this strategy to work for Sigma. Regardless, the back-to-back “self” revocation of dominant CRISPR patents in Europe by key IP holders is remarkable and concerning at the same time. This not only creates uncertainty in the CRISPR field but also an inefficient use of EPO resources. Some question whether the EPO should implement procedural changes to prevent this trend from continuing.

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