

# European Biotechnology

Science & Industry

# News



DPAG, PvsT-A 60711, Entgelt bezahlt  
BIOCOM AG, Straalsunder Str. 59, 13355 Berlin  
OS0269  
Patent Attorneys Huber & Schüßler  
Frau Dr. Andrea Schüßler  
Tuderingerstr. 246  
81825 München

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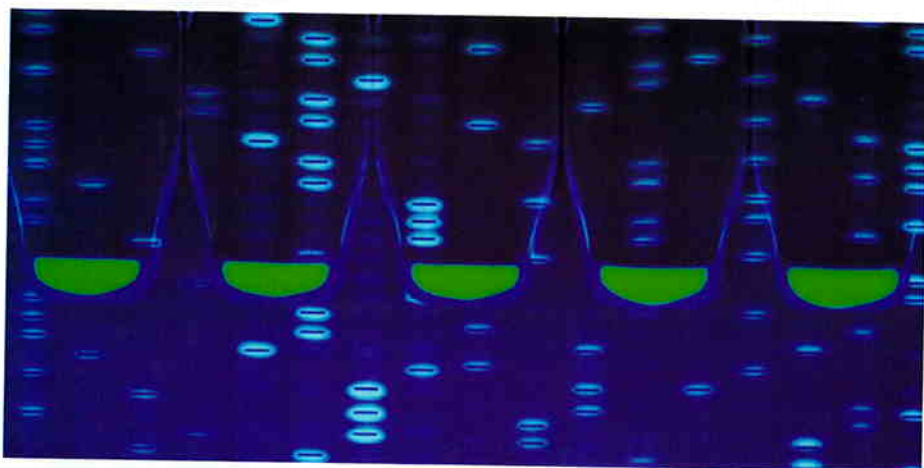
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## PATENTS

# Applera Loses PCR-Patents in Europe

► The twenty-year dispute about PCR patents has reached a preliminary climax: before the European Patent Office (EPO) five separate parties - among them Bio-Rad, MJ Research, Eppendorf and the UK Ministry of Defence - succeeded in preliminarily revoking a European PCR patent belonging to US Applera Inc.



Contrary to the situation in the US and in Japan Applera has lost its European patent on real-time PCR systems (EP 0872562). At the beginning of December last year EPO's Opposition Division decided in favour of an appeal registered against Applera's claim. Amongst the five separate appealing parties are Bio-Rad Laboratories, MJ Research distributor Biozym, Bibby Sterilin and the UK Ministry of Defence.

## Real-time PCR Instruments "no Novelty"

The dispute ignited on documents handed out in April 1991 to attendants of the workshop "Selection - Natural and Unnatural in Biotechnology" held at the Max Planck Institute for Biophysical Chemistry in Göttingen, Germany. The document describes the concept for an instrument to carry out

online PCR reactions - about two weeks before Applera filed a similar patent application in Germany. Distributing the document during the workshop meant that the subject matter central to the claimed patent was already known at the time of application. "Consequently the patent did not meet the essential criterion of novelty," commented patent lawyer Dr. Matthias Engelhard from Boehmert & Boehmert solicitors, who represented Bio-Rad during the appeal.

Applera complained that at the Göttingen workshop organized by Nobel Prize laureate Prof. Dr. Manfred Eigen only invited guests were present, which meant that the document has not been published. To clarify matters the Opposition Division called on Prof. Dr. Christof Biebricher, who was present at the workshop, to give evidence during the oral proceed-

ings. Biebricher testified before the panel that the scientists to whom the document was distributed were not asked to keep its contents confidential. Furthermore there have been journalists present at the workshop. This was pivotal for the panel to conclude that the document in question was indeed already "published" and that the subject matter of the patent was no longer a novelty at the time of its application. "We will certainly appeal against this decision," explained Dr. David Speechly for Applera to EUROBIOTECHNEWS. Like Eppendorf and Biozym he declined to give further details of the proceedings.

## US Patents Unaffected

The verdict is a preliminary climax to a whole range of patent disputes that keep rocking the €500 million-world market for PCR thermocyclers. Only in June 2004 Applera succeeded in a real-time PCR trial before a German district court. The court ruled that the systems distributed amongst others by Biozym, Bio-Rad and Eppendorf infringe Applera's patent rights. The opponents in the trial were barred from manufacturing and selling their real time-PCR instruments in Germany. They in turn appealed against the patent before the EPO, which now led to the preliminary revocation of Applera's patent. Patents issued in the US will not be affected by the European ruling. Even though the Göttingen documents found its ways before a US court, according to US law, neither the filing date nor the publication date, but the actual date of the invention of the technology are relevant. Since Applera could prove that the invention was made well before the date of the workshop at the Max Planck Institute it was granted the patent rights.

For PCR patents Europe was a difficult place during last year. Already on March 12, the EPO granted an injunction in favour of seven different opponents - amongst which Biometra, MWG and Biozym. The companies had appealed against yet another patent held by Applera (EPA 0236069) claiming a basic PCR instrument, thereby triggering the present surge in patent disputes. ◀