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**D E C I S I O N**  
**of 17 November 2003**

**Case Number:** T 0648/02 - 3.2.2

**Application Number:** 95943204.8

**Publication Number:** 0800361

**IPC:** A61B 17/00

**Language of the proceedings:** EN

**Title of invention:**

Device for applying one or several fluids

**Patentee:**

OMRIX BIOPHARMACEUTICALS S.A.

**Opponent:**

Baxter Aktiengesellschaft  
Aventis Behring

**Headword:**

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**Relevant legal provisions:**

EPC R. 60(1)

**Keyword:**

-

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0648/02 - 3.2.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.2**  
**of 17 November 2003**

**Appellant:**  
(Opponent 01)

Baxter Aktiengesellschaft  
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**Representative:**

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**Party as of rights:**  
(Opponent 02)

Aventis Behring  
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**Representative:**

Lauppe, Hans Friedrich, Dr.  
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**Respondent:**  
(Proprietor of the patent)

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**Representative:**

Hilleringmann, Jochen, Dipl.-Ing.  
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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted 22 April 2002  
rejecting the opposition filed against European  
patent No. 0800361 pursuant to Article 102(2)  
EPC.**

**Composition of the Board:**

**Chairman:** W. D. Weiß  
**Members:** D. Valle  
R. T. Menapace

## **Summary of Facts and Submissions**

I. The Appellant (Opponent 01) lodged an appeal against the decision of the Opposition Division by which the oppositions against the European patent No. 0 800 361 were rejected.

II. In a letter dated 29 August 2003 the Respondent (Patentee) informed the Board that the European patent was no longer in force in all the designated States due to non-payment of the annuity fees and that he would not attend oral proceedings.

By a communication dated 15 September 2003, the Board notified the parties that European patent EP-B-0 800 361 had lapsed for all the designated States. With reference to Rule 60(1) EPC, the Board further informed the parties that the appeal proceedings would be terminated in the present case without decision in the substantive issues unless the Appellant requested continuation of the appeal proceedings within two months as from notification of lapse.

## **Reasons for the Decision**

As after lapse of the European patent for all the designated States and in the absence of a request for continuation of the proceedings, the latter are not continued (Rule 60(1) EPC in combination with Rule 66(1) EPC), and the proceedings are terminated ("special case" of closure of the opposition proceedings, see G 1/90, OJ EPO, 1991, 275, point 7, of the reasons; T 584/94, dated 4 November 1997, unpublished in OJ EPO).

## **Order**

**For these reasons it is decided that:**

The appeal proceedings are terminated.

The Registrar:

The Chairman:

V. Commare

W. D. Weiß