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**Datasheet for the decision
of 11 June 2013**

Case Number: T 0520/10 - 3.3.08

Application Number: 93917891.9

Publication Number: 651803

IPC: C12N 15/13

Language of the proceedings: EN

Title of invention:
Protein expression system

Patent Proprietor:
Celltech Therapeutics Limited

Opponents:
Genentech, Inc.
Monsanto Company
Novartis Vaccines and Diagnostics, Inc.

Headword:
Protein expression/CELLTECH

Relevant legal provisions:
EPC R. 84(1), 100(1)

Keyword:
"Lapse of patent in all designated states (yes)"
"Patent proprietor sole appellant"
"No request by patent proprietor to continue appeal proceedings"
"Termination of appeal proceedings"

Decisions cited:
T 0606/10, T 0708/01

Catchword:
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Case Number: T 0520/10 - 3.3.08

D E C I S I O N
of the Technical Board of Appeal 3.3.08
of 11 June 2013

Appellant: Celltech Therapeutics Limited
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Slough
Berkshire SL1 3WE (GB)

Representative: Mercer, Christopher Paul
Carpmaels & Ransford
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Respondent: Genentech, Inc.
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Representative: Armitage, Ian Michael
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Respondent: Monsanto Company
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Representative: Jaenichen, Hans-Rainer
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Respondent: Novartis Vaccines and Diagnostics, Inc.
(Opponent 3) 1209 Orange Street City of Wilmington
County of New Castle (US)

Representative: Woods, Geoffrey Corlett
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Gray's Inn
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted 23 December 2009
revoking European patent No. 651803 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman: M. Wieser
Members: T. J. H. Mennessier
 R. Moufang

Summary of Facts and Submissions

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division dated 23 December 2009, whereby European patent No. 0 651 803, which had been granted on European application No. 93917891.9, was revoked.
- II. By communication of the Board of 6 May 2013, the parties' attention was drawn to the fact that the patent had meanwhile lapsed in all designated Contracting States and the appellant was asked to inform the Board whether it requested a continuation of the appeal proceedings.
- III. In reply to the Board's communication, the appellant has notified the Board with letter of 28 May 2013 that it does not request a continuation of the appeal proceedings.

Reasons for the decision

1. If a European patent has lapsed in all designated Contracting States, opposition proceedings may be continued at the request of the opponent (see Rule 84(1) EPC). According to Rule 100(1) EPC, this also applies in appeal proceedings following opposition proceedings. However, if - as in the present case - the patent proprietor is the appellant, it would be inappropriate to allow the opponent(s) (respondent(s)) to decide whether the appeal proceedings shall be continued. For this reason, Rule 84(1) EPC has to be applied *mutatis mutandis* in such opposition appeal proceedings (see

also the case law cited in decision T 606/10 of 12 May 2011, point 1.3 of the reasons), so that it is the patent proprietor who can request that the appeal proceedings be continued (see decision T 708/01 of 17 March 2005, point 1 of the Reasons).

2. As the patent proprietor has explicitly indicated that it does not request a continuation of the appeal proceedings (see Section III, supra), the appeal proceedings are to be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar

The Chairman

A. Wolinski

M. Wieser