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**Datasheet for the decision  
of 11 July 2016**

**Case Number:** T 1272/10 - 3.3.04

**Application Number:** 03007948.7

**Publication Number:** 1356821

**IPC:** A61K39/39, A61K9/00, C12N15/11,  
A61K39/00, A61K38/16,  
A61K39/02, A61K39/106

**Language of the proceedings:** EN

**Title of invention:**  
Use of skin penetration enhancers and barrier disruption  
agents to enhance transcutaneous immune response

**Patent Proprietor:**  
The Government of the United States, as  
represented by Secretary of the Army

**Opponent:**  
Sagittarius Intellectual Property Consultants Ltd

**Headword:**  
Skin penetration enhancers/US GOVERNMENT

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

**Keyword:**

Lapse of patent in all designated states - continuation of appeal proceedings (no)

**Decisions cited:**

T 1733/09, T 1313/10, T 1825/11

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1272/10 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 11 July 2016**

**Appellant:** The Government of the United States, as  
(Patent Proprietor) represented by Secretary of the Army  
c/o Medical Research & Materiel Command,  
504 Scott Street  
Fort Detrick, MD 21702 (US)

**Representative:** Vossius & Partner  
Patentanwälte Rechtsanwälte mbB  
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81675 München (DE)

**Respondent:** Sagittarius Intellectual Property Consultants  
(Opponent) Ltd  
Taylor House  
39 High Street  
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Buckinghamshire SL7 1AF (GB)

**Representative:** Teuten, Andrew John  
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Marlow, Buckinghamshire SL7 1HZ (GB)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 12 March 2010  
revoking European patent No. 1356821 pursuant to  
Article 101(3)(b) EPC.**

**Composition of the Board:**

**Chairwoman**            G. Alt  
**Members:**            M. Montrone  
                             M.-B. Tardo-Dino

## **Summary of Facts and Submissions**

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division to revoke European patent No. 1 356 821.
- II. By a communication of the board dated 25 April 2016, the parties' attention was drawn to the fact that the patent had lapsed in all designated Contracting States and the appellant was invited to inform the board within two months from notification of the communication whether it requested a continuation of the appeal proceedings.
- III. In reply to the board's communication the appellant notified the board with letter dated 27 June 2016 that it requested no 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.
2. 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 so that it is the patent proprietor as the appellant who can request that the appeal proceedings be continued (see for example decision T 1733/09, point 2 of the Reasons,

decision T 1313/10, point 1 of the Reasons, or decision T 1825/11, point 2 of the Reasons and the case law cited in these decisions).

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

## Order

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

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



P. Cremona

G. Alt

Decision electronically authenticated