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**Datasheet for the decision
of 14 July 2015**

Case Number: T 1825/11 - 3.3.04

Application Number: 06805884.1

Publication Number: 1931711

IPC: C07K16/26

Language of the proceedings: EN

Title of invention:

Antibodies against 25-Hydroxyvitamin D

Patent Proprietor:

Roche Diagnostics GmbH
F.Hoffmann-La Roche AG

Opponents:

BioMérieux
Immunodiagnostic Systems Limited
Abbott Laboratories
Immundiagnostik AG

Headword:

Relevant legal provisions:

EPC R. 84(1), 100(1)

Keyword:

Lapse of patent in all designated states - termination of
appeal proceedings

Decisions cited:

T 0329/88, T 0749/01, T 0708/01, T 0520/10

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1825/11 - 3.3.04

**D E C I S I O N
of Technical Board of Appeal 3.3.04
of 14 July 2015**

Appellant: Roche Diagnostics GmbH
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68305 Mannheim (DE)

Appellant: F.Hoffmann-La Roche AG
(Patent Proprietor 2) Grenzacherstrasse 124
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Respondent: BioMérieux
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 22 June 2011
revoking European patent No. 1931711 pursuant to
Article 101(3)(b) EPC.**

Composition of the Board:

Chairwoman G. Alt
Members: A. Chakravarty
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. 1 931 711.
- II. The patent was opposed by four parties, opponents 1 to 4, now respondents I to IV.
- III. In a communication pursuant to Rules 84(1) and 100(1) EPC dated 20 April 2015, the board drew the parties' attention to the fact that the patent had lapsed in all designated Contracting States and the parties were asked to inform the board, within a two-month time limit, whether any of them requested a continuation of the appeal proceedings. The parties were informed that if no request for continuation of proceedings was received in due time, the appeal proceedings would be discontinued.
- IV. No party requested a continuation of the appeal proceedings in response to the communication of the board.

Reasons for the Decision

1. If a European patent has lapsed in all of the designated Contracting States, the opposition proceedings may be continued at the request of the opponent, filed within two months of a communication of the European Patent Office informing it of the lapse (Rule 84(1) EPC). According to Rule 100(1) EPC, this also applies in appeal proceedings following opposition proceedings (see e.g. decision T 329/88 of 22 June 1993, points 1 and 2 of the reasons, and decision

749/01 of 23 August 2002, points 2 and 3 of the reasons).

2. However, in the present case, given the status of the patent proprietors as appellant, it would not be appropriate for the opponents alone to decide whether the appeal proceedings, filed against an decision adverse to the appellant, are to be continued. For this reason, the board considers that Rule 84(1) EPC is to be applied *mutatis mutandis* in such opposition appeal proceedings, so that the patent proprietor also can request that the appeal proceedings be continued (see e.g. decision T 708/01 of 17 March 2005 and decision T 520/10 of 11 June 2013, both point 1 of the reasons).
3. As no party has, within the time limit set, requested the continuation of the appeal proceedings, 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