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**Datasheet for the decision
of 18 June 2018**

Case Number: T 0002/12 - 3.3.08

Application Number: 01996610.0

Publication Number: 1373510

IPC: C12N15/29

Language of the proceedings: EN

Title of invention:

MUTANT ALLERGENS

Patent Proprietor:

Alk-Abelló A/S

Opponent:

Merck Patent GmbH

Headword:

Mutant allergens/ALK-ABELLO

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 0949/09, T 0520/10, T 0480/13

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0002/12 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 18 June 2018

Appellant I: Alk-Abelló A/S
(Patent Proprietor) Bøge Allé 6-8
2970 Hørsholm (DK)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Appellant II: Merck Patent GmbH
(Opponent) Frankfurter Strasse 250
64293 Darmstadt (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
4 November 2011 concerning maintenance of the
European Patent No. 1373510 in amended form.

Composition of the Board:

Chairman B. Stolz
Members: M. R. Vega Laso
J. Geschwind

Summary of Facts and Submissions

- I. The appeals lie from an interlocutory decision of an opposition division under Article 101(3)(a) and 106(2) EPC posted on 4 November 2011, in which it was found that, account being taken of the amendments introduced into the claims according to the auxiliary request 2 and the description adapted thereto, the European patent No. 1 373 510 with the title "Novel mutant allergens" and the invention to which it relates meet the requirements of the EPC.
- II. By a communication pursuant to Rule 84(1) EPC dated 24 November 2017, the Registrar of the Board of Appeal informed appellant II (opponent) that the European patent had lapsed with effect for all the designated Contracting States. Further, appellant II was informed that the appeal proceedings could be continued at its request, provided that the request was filed within two months from notification of the communication.
- III. No request for continuation of the proceedings was received from appellant II.
- IV. By a further communication dated 26 February 2018, appellant I (patent proprietor) was informed that, by analogy to Rule 84(1) EPC in connection with Rule 100(1) EPC the appeal proceedings may be continued also upon its request, provided that the request was filed within two months from notification of the communication.
- V. No request for continuation of the proceedings was received from appellant I.

Reasons for the Decision

1. Pursuant to Rule 84(1) EPC in conjunction with Rule 100(1) EPC, appeal proceedings may be continued after the European patent has lapsed, if the opponent files a request to this effect within two months of a communication informing him of the lapse (see, *inter alia*, decisions T 329/88 of 22 June 1993; T 949/09 of 17 October 2012; and T 480/13 of 5 November 2014).
2. According to the jurisprudence of the Boards of Appeal (see, e.g., decision T 520/10 of 11 June 2013), when the patent proprietor has filed an appeal, by analogy to Rule 84(1) in connection with Rule 100(1) EPC the appeal proceedings may be continued also upon request of the patent proprietor.
3. Since no request for continuation of the appeal proceedings was received from either party in due time, the board decides to terminate the appeal proceedings.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



L. Malécot-Grob

B. Stolz

Decision electronically authenticated