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**Datasheet for the decision
of 20 February 2018**

Case Number: T 0926/13 - 3.3.01

Application Number: 05777862.3

Publication Number: 1848441

IPC: A61K31/565, A61K31/57,
A61P15/18

Language of the proceedings: EN

Title of invention:

PHARMACEUTICAL COMPOSITION COMPRISING DROSPIRENONE AND
ETHYNYLESTRADIOL

Patent Proprietor:

Laboratorios Liconsa, S.A.

Opponents:

Bayer Pharma Aktiengesellschaft
Stilkenböhmer, Uwe

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 0708/01, T 2318/12, G 0002/91



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Case Number: T 0926/13 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 20 February 2018

Appellant: Bayer Pharma Aktiengesellschaft
(Opponent 1) Müllerstrasse 178
13353 Berlin (DE)

Representative: Plougmann Vingtoft a/s
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2300 Copenhagen S (DK)

Respondent: Laboratorios Liconsa, S.A.
(Patent Proprietor) Gran Via Carles III
98 Ed. Trade
08028 Barcelona (ES)

Representative: ZBM Patents - Zea, Barlocci & Markvardsen
Plaza Catalunya, 1
08002 Barcelona (ES)

Party as of right: Stilkenböhmer, Uwe
(Opponent 2) Parkallee 225c
28213 Bremen (DE)

Representative: Eisenführ Speiser
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
12 February 2013 concerning maintenance of the
European Patent No. 1848441 in amended form.

Composition of the Board:

Chairman A. Lindner
Members: R. Hauss
 P. de Heij

Summary of Facts and Submissions

- I. Two oppositions were filed against European patent No. 1 848 441 (the patent in suit).
- II. Opponent 1 (the appellant) lodged an appeal against the interlocutory decision of the opposition division, announced on 30 November 2012 and posted on 12 February 2013, concerning the maintenance of the patent in suit in amended form.
- III. In a communication dated 11 December 2017, the board drew the parties' attention to the fact that the patent in suit had lapsed with effect for all the designated contracting states. Pursuant to Rules 84(1) and 100(1) EPC, 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. The parties were advised that the appeal proceedings would be terminated if no request for continuation of the proceedings was received within the set time period and the state of the file gave no grounds for the proceedings to be continued by the board of its own motion.
- IV. With letter dated 15 December 2017, the appellant replied that it did not request a continuation of the appeal proceedings.

Reasons for the Decision

1. Rule 84(1) EPC 2000 (corresponding to Rule 60(1) EPC 1973) provides that "if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States, the opposition

proceedings may be continued at the request of the opponent filed within two months of a communication from the European Patent Office informing him of the surrender or lapse".

2. According to Rule 100(1) EPC 2000 (corresponding to Rule 66(1) EPC 1973), "unless otherwise provided, the provisions relating to proceedings before the department which has taken the decision impugned shall apply to appeal proceedings".
3. The EPC contains no specific provision concerning the continuation of appeal proceedings if a European patent has been surrendered or has lapsed.
4. Hence, Rule 84(1) EPC also applies *mutatis mutandis* in opposition appeal proceedings, to the extent that the appeal proceedings may be continued at the request of the appellants (who may be opponents or patent proprietors, as the case may be).

If no request for continuation of the appeal proceedings is submitted in due time by an appellant, and the state of the file does not give occasion for the proceedings to be continued by the board of its own motion, the appeal proceedings are terminated (see, e.g., decisions T 0329/88 of 22 June 1993; T 0708/01 of 17 March 2005, Reasons: No. 1; T 2318/12 of 29 March 2017).

In that context, it may be added that it follows from generally recognised principles of procedural law that parties to proceedings under Article 107, second sentence, EPC have no independent right of their own to continue appeal proceedings if the appellants decide not to pursue their appeals (see also decision G2/91

of the Enlarged Board of Appeal, OJ EPO 5/1992, 106, Headnote: I, Reasons: No. 6.1).

5. In the present case, opponent 1, who is the sole appellant, declared in reply to the notification of the lapse within the meaning of Rule 84(1) EPC that it did not request continuation of the appeal proceedings. Furthermore, the board is not aware of any reason for continuation of the proceedings arising from the state of the file.
6. Hence, the appeal proceedings are to be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



M. Schalow

A. Lindner

Decision electronically authenticated