

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 8 January 2020**

Case Number: T 2332/14 - 3.3.01

Application Number: 02779771.1

Publication Number: 1459070

IPC: G01N33/574

Language of the proceedings: EN

Title of invention:

METHODS FOR DIAGNOSIS AND TREATMENT OF EPITHELIAL-DERIVED
CANCERS, SUCH AS COLORECTAL CANCERS AND KIDNEY CANCERS

Patent Proprietor:

UCB Pharma S.A.

Opponent:

Seattle Genetics, Inc.

Headword:

Diagnosis and treatment of epithelial-derived cancers/UCB
PHARMA

Relevant legal provisions:

EPC R. 84(1)

Keyword:

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

Decisions cited:

T 0165/95, T 0289/06, T 0926/13

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2332/14 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 8 January 2020

Appellant: Seattle Genetics, Inc.
(Opponent) 21823 30th Drive S.E.
Bothell, WA 98021 (US)

Representative: Mewburn Ellis LLP
City Tower
40 Basinghall Street
London EC2V 5DE (GB)

Respondent: UCB Pharma S.A.
(Patent Proprietor) Allée de la Recherche 60
1070 Brussels (BE)

Representative: Thompson, John
Celltech R&D Limited
Patent Department
208 Bath Road
Slough, Berkshire SL1 3WE (GB)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
20 October 2014 concerning maintenance of the
European Patent No. 1459070 in amended form

Composition of the Board:

Chairman A. Lindner
Members: T. Sommerfeld
M. Blasi

Summary of Facts and Submissions

- I. The present appeal was lodged by the opponent against the interlocutory decision of the opposition division, according to which European patent No. 1459070 could be maintained in amended form on the basis of the first auxiliary request (Articles 101(3)(a) and 106(2) EPC).

- II. A communication of the board dated 6 March 2019 was issued, drawing the parties' attention to the fact that according to the entries in the European Patent Register, the patent had lapsed with effect for all designated Contracting States. Pursuant to Rules 84(1) and 100(1) EPC, the appellant (opponent) was invited to inform the board, within two months from notification of the communication, whether they 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 might be discontinued.

- III. Acknowledgements of receipt dated 13 March 2019 and 12 March 2019 were returned to the EPO by the appellant and by the respondent, respectively.

- IV. No reply was received within the time period set in the board's communication.

Reasons for the Decision

1. Pursuant to Rule 84(1) EPC, 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. According to Rule 100(1) EPC, Rule 84(1) EPC also applies in opposition-appeal proceedings.

2. If no request for continuation of the proceedings is filed within the set time period and the state of the file gives no grounds for the proceedings to be continued by the board of its own motion, the appeal proceedings are terminated (see e.g. decisions T 165/95, T 289/06, T 926/13).

3. In the present case, the communication dated 6 March 2019 informing of the lapse within the meaning of Rule 84(1) EPC was deemed to be delivered to the appellant on 16 March 2019 (Rule 126(2) EPC). Thus, the period of two months for requesting continuation of the appeal proceedings ended on 16 May 2019 (Rule 131(2), (4) EPC). No request for continuation of the appeal proceedings was received within the set time period or within the period under Rule 133(1) EPC. Furthermore, the board sees no reason to continue the proceedings of its own motion. 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