

Internal distribution code:

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

**Datasheet for the decision
of 10 March 2020**

Case Number: T 1548/15 - 3.3.01

Application Number: 09004768.9

Publication Number: 2098230

IPC: A61K31/335, A61L31/16,
A61P7/00, A61F2/06, A61K31/337,
A61K31/4035, A61K31/407,
A61L31/14, A61K31/04,
A61K31/131, A61K31/135,
A61K31/165, A61K31/17,
A61K31/365, A61K31/40,
A61K31/4025, A61K31/519,
A61K31/551, A61K31/704,
A61K47/48

Language of the proceedings: EN

Title of invention:

Implantable device comprising taxol in crystalline form for
the inhibition or prevention of restenosis

Patent Proprietor:

Boston Scientific Limited

Opponent:

Terumo Kabushiki Kaisha

Headword:

Crystalline taxol/BOSTON

Relevant legal provisions:

EPC R. 84(1), 100(1), 103(2)(a)

Keyword:

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



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 1548/15 - 3.3.01

D E C I S I O N
of Technical Board of Appeal 3.3.01
of 10 March 2020

Appellant: Boston Scientific Limited
(Patent Proprietor) Clarendon House
2 Church Street
Hamilton HM11 (BM)

Representative: Peterreins Schley
Patent- und Rechtsanwälte
Hermann-Sack-Strasse 3
80331 München (DE)

Respondent: Terumo Kabushiki Kaisha
(Opponent) 44-1, Hatagaya 2-Chome
Shibuya-ku
Tokyo 151-0072 (JP)

Representative: Prüfer & Partner mbB
Patentanwälte · Rechtsanwälte
Sohnckestraße 12
81479 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 30 June 2015
revoking European patent No. 2098230 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman A. Lindner
Members: J. Molina de Alba
L. Bühler

Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the decision of the opposition division taken at the oral proceedings of 20 April 2015 and posted on 30 June 2015 revoking European patent No. 2 098 230.
- II. The patent has meanwhile lapsed in all designated Contracting States.
- III. By a communication dated 19 February 2020, the board drew the parties' attention to Rule 84(1) EPC and invited the appellant to inform the board within two months from notification of the communication whether it requested that the appeal proceedings be continued. Otherwise, the board intended to terminate the appeal proceedings without a decision on the merits of the appeal.
- IV. With a letter dated 3 March 2020, the appellant stated that it did not request continuation of the appeal proceedings and that it agreed to the termination of the appeal proceedings. It also requested reimbursement of the appeal fee pursuant to Rule 103 EPC.

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 (Rule 84(1) EPC). It follows from Rule 100(1) EPC that 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 to determine whether or not the appeal proceedings are to be continued. For this reason, Rule 84(1) EPC has to be applied in such cases so that the patent proprietor can request that the appeal proceedings be continued (see Case Law of the Boards of Appeal, ninth edition, III.Q.1.2.2).
3. The patent proprietor has not requested continuation of the appeal proceedings and has explicitly agreed to the the termination of the appeal proceedings. The appeal proceedings are consequently terminated by this decision of the board.
4. Regarding the reimbursement of the appeal fee, the agreement by the proprietor to terminate the appeal proceedings is equivalent to a withdrawal of the appeal so that Rule 103 EPC is applicable. As the withdrawal of the appeal has occurred at least four weeks before the date set for oral proceedings, the appeal fee will be reimbursed at 50%, pursuant to Rule 103(2) (a) EPC.

Order

For these reasons it is decided that:

1. The appeal proceedings are terminated.
2. The appeal fee is to be reimbursed at 50%.

The Registrar:

The Chairman:



M. Schalow

A. Lindner

Decision electronically authenticated