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**Datasheet for the decision
of 10 July 2019**

Case Number: T 0641/16 - 3.3.04

Application Number: 03784153.3

Publication Number: 1524993

IPC: A61K39/095

Language of the proceedings: EN

Title of invention:

Neisserial vaccine compositions comprising a combination of antigens

Patent Proprietor:

GlaxoSmithKline Biologicals s.a.

Opponent:

Novartis Vaccines and Diagnostics S.r.l. (opposition withdrawn)

Headword:

Neisserial vaccine/GLAXO

Relevant legal provisions:

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

Keyword:

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

Decisions cited:

T 0329/88, T 0708/01, T 0018/13

Catchword:



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Case Number: T 0641/16 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 10 July 2019

Appellant: GlaxoSmithKline Biologicals s.a.
(Patent Proprietor) rue de l'Institut 89
1330 Rixensart Brussels (BE)

Representative: Dalton, Marcus Jonathan William
GlaxoSmithKline
Global Patents (CN925.1)
980 Great West Road
Brentford, Middlesex TW8 9GS (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 29 October 2015
revoking European patent No. 1524993 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairwoman G. Alt
Members: D. Luis Alves
L. Bühler

Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the decision of the opposition division dated 29 October 2015 revoking European patent No. 1 524 993.
- II. The opposition had been withdrawn during opposition proceedings.
- III. In a communication of the board pursuant to Rules 84(1) and 100(1) EPC dated 21 March 2019, the appellant was informed that according to the European Patent Register and the national registers of the Contracting States BE, BG, ES and TR the European patent had lapsed with effect for all the designated Contracting States. The appellant was invited to indicate, within two months from notification of the communication, whether a continuation of the appeal proceedings was requested. The appeal proceedings would be terminated if no request for the continuation of the proceedings was filed and the state of the file gave no grounds for the procedure to be continued by the board of its own motion.
- IV. No reply from the appellant was received within the set time period. After an enquiry from the registrar of the board, the appellant confirmed with email of 18 June 2019 that the board's communication had been received.

Reasons for the Decision

1. Rule 84(1) EPC 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. Pursuant to Rule 100(1) EPC and in the absence of provisions stating otherwise, Rule 84(1) EPC also applies in appeal proceedings following opposition proceedings, i.e. the appeal proceedings may be continued at the request of an opponent-appellant. Furthermore, according to an interpretation *argumentum a contrario*, 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 will be terminated (see e.g. decisions T 329/88 and T 18/13).
3. However, if - as in the present case - the patent proprietor is the sole appellant, it would be inappropriate to allow an opponent-respondent to decide whether the appeal proceedings shall be continued. For this reason, Rule 84(1) EPC has to be applied *mutatis mutandis* in such opposition appeal proceedings so that it is the patent proprietor who can request that the appeal proceedings be continued (see, for example, decision T 708/01).

This reasoning applies equally to the present case, in which the opponent is no longer a party to the proceedings.

4. In the present case no request for continuation of the appeal proceedings was received in due time and the board sees no reason to continue the appeal proceedings of its own motion. Hence, the appeal proceedings can be terminated (see point 2 above).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chair:



S. Lichtenvort

G. Alt

Decision electronically authenticated