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**Datasheet for the decision
of 16 September 2019**

Case Number: T 1738/16 - 3.3.04

Application Number: 06005128.1

Publication Number: 1834648

IPC: A61K39/36

Language of the proceedings: EN

Title of invention:

Process for producing an allergen extract

Patent Proprietor:

Alk-Abelló A/S

Opponent:

Merck Patent GmbH

Headword:

Allergen extract/ALK-ABELLÓ

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 1738/16 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 16 September 2019

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

Representative: Inspicos P/S
Kogle Allé 2
2970 Hørsholm (DK)

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

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 27 May 2016 revoking European patent No. 1834648 pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chair G. Alt
Members: D. Luis Alves
P. de Heij

Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the decision of the opposition division dated 27 May 2016 revoking European patent No. 1 834 648.
- II. In a communication of the board pursuant to Rules 84(1) and 100(1) EPC dated 28 June 2019, the board drew the parties' attention to the fact that according to the European Patent Register 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.

The opponent (respondent) was given the opportunity to file comments within the same time period.

- III. With letter dated 19 August 2019 the appellant informed the board that they did not wish to request continuation of the appeal proceedings.

The respondent filed no comments within the set time period.

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).
4. In the present case the appellant, in reply to the invitation by the board, stated that they do not request a continuation of the appeal proceedings.

5. The board sees no reason to continue the appeal proceedings of its own motion. Hence, the appeal proceedings are to 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