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**Datasheet for the decision
of 22 January 2022**

Case Number: T 1942/16 - 3.3.08

Application Number: 03796327.9

Publication Number: 1545217

IPC: C12N1/12, C12N1/22, C12N9/42

Language of the proceedings: EN

Title of invention:
INDUCTION OF GENE EXPRESSION USING A HIGH CONCENTRATION SUGAR
MIXTURE

Patent Proprietor:
GENENCOR INTERNATIONAL, INC.

Opponent:
AB Enzymes GmbH

Headword:
Gene expression induced with high concentration sugar mixture/
GENENCOR

Relevant legal provisions:
EPC R. 84(1), 100(1)

Keyword:

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

Decisions cited:

T 0329/88, T 0949/09, T 0480/13, T 0520/10, T 0708/01,
T 1825/11

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1942/16 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 22 January 2022

Appellant: GENENCOR INTERNATIONAL, INC.
(Patent Proprietor) 925 Page Mill Road
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Representative: Andrews, Robert K.
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Respondent: AB Enzymes GmbH
(Opponent) Feldbergstrasse 78
64293 Darmstadt (DE)

Representative: Hiebl, Inge Elisabeth
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 10 June 2016
revoking European patent No. 1545217 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman B. Stolz
Members: D. Pilat
A. Bacchin

Summary of Facts and Submissions

- I. European patent No. 1 545 217 based on European patent application No. 03796327.9 (published as International patent application WO 2004/035070; hereinafter "the patent application") was opposed on the grounds of Articles 100(a), (b) and (c) EPC. The opposition division considered the main request and auxiliary requests 1 to 7 to contravene Article 123(2) EPC and revoked the patent.
- II. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division and submitted with its statement of grounds of appeal a main request and auxiliary requests 1 to 15.
- III. By a communication pursuant to Rules 84(1) and 100(1) EPC dated 11 November 2021, the board informed the appellant that, even though the European patent has lapsed with effect for all designated Contracting States, the appeal proceedings could be continued, provided the appellant (patent proprietor) filed a request within two months from notification of the communication (T 708/01 of 17 March 2005, reasons 1.2; T 520/10 of 11 June 2013, reasons 1 and T 1825/11 of 14 July 2015, reasons 2).
- IV. No request for continuation of the proceedings was received from the appellant.

Reasons for the Decision

1. Pursuant to Rule 84(1) EPC in conjunction with Rule 100(1) EPC, appeal proceedings may be continued after the European patent has lapsed in all the designated

Contracting States, if the opponent files a request to this effect within two months of a communication informing him of the lapse (see, *inter alia*, decisions T 329/88 of 22 June 1993; T 949/09 of 17 October 2012; and T 480/13 of 5 November 2014).

2. According to the jurisprudence of the Boards of Appeal (see, e.g., decision T 520/10 of 11 June 2013), when the patent proprietor has filed an appeal, Rule 84(1) in connection with Rule 100(1) EPC has to be applied *mutatis mutandis* so that it is the patent proprietor who can request that the appeal proceedings be continued.
3. Since no request for continuation of the appeal proceedings was received from the appellant in due time, the board decides to terminate the appeal proceedings.

Order

For these reasons it is decided that:

The appeal proceedings are terminated

The Registrar:

The Chairman:



L. Malécot-Grob

B. Stolz

Decision electronically authenticated