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**Datasheet for the decision  
of 4 August 2022**

**Case Number:** T 1521/18 - 3.3.08

**Application Number:** 10181536.3

**Publication Number:** 2322661

**IPC:** C12Q1/689

**Language of the proceedings:** EN

**Title of invention:**

Methods and sequences for the detection and identification of methicillin-resistant Staphylococcus aureus MREJ type ix strains

**Patent Proprietor:**

Geneohm Sciences Canada, Inc.

**Opponents:**

Beckman Coulter, Inc.  
R-Biopharm AG

**Headword:**

Detection methicillin-resistant Staphylococcus aureus/GENE OHM SCIENCES CANADA

**Relevant legal provisions:**

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

**Keyword:**

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

**Decisions cited:**

T 1905/16

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1521/18 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 4 August 2022**

**Appellant I:** Geneohm Sciences Canada, Inc.  
(Patent Proprietor) 2555 Boul. du Parc Technologique  
Québec, QC G1P 4S5 (CA)

**Representative:** Vossius & Partner  
Patentanwälte Rechtsanwälte mbB  
Siebertstrasse 3  
81675 München (DE)

**Appellant II:** Beckman Coulter, Inc.  
(Opponent 1) 250 S. Kraemer Boulevard  
Brea, CA 92821 (US)

**Representative:** Boulton Wade Tennant LLP  
Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP (GB)

**Party as of right:** R-Biopharm AG  
(Opponent 2) An der neuen Bergstrasse 17  
64297 Darmstadt (DE)

**Representative:** Hertin und Partner  
Rechts- und Patentanwälte PartG mbB  
Kurfürstendamm 54/55  
10707 Berlin (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
19 April 2018 concerning maintenance of the  
European Patent No. 2322661 in amended form.**

**Composition of the Board:**

**Chairwoman**            T. Sommerfeld  
**Members:**             P. Julià  
                               D. Rogers

## **Summary of Facts and Submissions**

- I. European patent no. 2 322 661 is based on European patent application no. 10 181 536.3, a divisional application of the earlier European patent applications nos. 09 174 581.0 and 02 740 158.7 (published as EP 2 236 621 and EP 1 397 510, respectively), the latter application being originally filed under the PCT and published as International patent application WO 02/099034. The patent was granted with 14 claims.
- II. Two oppositions were filed on the grounds set forth in Articles 100(a), 100(b) and 100(c) EPC. The opposition division considered the main request and auxiliary request 1 to contravene Articles 76(1) and 123(2) EPC and auxiliary request 2 to fulfil all requirements of the EPC. The patent was thus maintained in amended form based on this auxiliary request 2.
- III. Appeals were lodged by the patent proprietor and the opponent 01 (appellants I and II, respectively). Both appellants replied to their respective statements of grounds of appeal and, as an auxiliary measure, requested oral proceedings. There were no submissions on file from opponent 02 (party as of right).
- IV. The board summoned the parties to oral proceedings scheduled for 13 December 2022.
- V. In a communication pursuant to Article 17 of the Rules of Procedure of the Boards of Appeal (RPBA 2020), the board informed the parties that, at the date of the scheduled oral proceedings, the patent in suit would have lapsed in all Contracting States and that, according to Rule 84(1) EPC - which was also applicable

in appeal proceedings against a decision of the opposition division (Rule 100(1) EPC), the opposition proceedings could be continued at the request of the opponents.

The parties were also informed that, according to the case law of the Boards of Appeal of the EPO, if - as in the present case - the patent proprietor was an appellant, Rule 84(1) EPC applied also *mutatis mutandis* to the patent proprietor (cf. "Case Law of the Boards of Appeal of the EPO", 9th edition 2019, III.Q.1.2, 887, in particular, III.Q.1.2.2, 888).

The parties were further informed that, unless a request for continuation of the proceedings was filed within two months from notification of the board's communication, the appeal proceedings would be discontinued, the scheduled oral proceedings for 13 December 2022 would be cancelled, and the board would take the decision to terminate the present appeal proceedings. In this context, reference was made to the decision T 1905/16 of 16 November 2020.

- VI. In reply, appellant II consented in the appeal being discontinued, withdrew the appeal and requested a 50% refund of the appeal fee (Rule 103(3)(b) EPC).
  
- VII. Appellant I neither replied to the board's communication nor made a request for a continuation of the appeal proceedings. No submissions were made by the party as of right.

## Reasons for the Decision

Since no request for continuation of the appeal proceedings has been received (Rules 84(1) and 100(1) EPC), the oral proceedings scheduled for 13 December 2022 are cancelled and the board decides to terminate the present appeal proceedings.

## Order

### For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated