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**Datasheet for the decision
of 6 July 2022**

Case Number: T 0412/19 - 3.3.02

Application Number: 10179052.5

Publication Number: 2336134

IPC: C07D493/04, C07D491/04,
C07D495/04, A61K31/34,
C12Q1/37, A61K31/445

Language of the proceedings: EN

Title of invention:

Fitness assay and methods for reducing resistance of HIV to therapy

Patent Proprietors:

The United States of America, represented by the Secretary,
Department of Health and Human Services
The Board of Trustees of the University of Illinois

Opponent:

Hexal AG

Relevant legal provisions:

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

Keyword:

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



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 0412/19 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 6 July 2022

Appellant:

(Opponent)

Hexal AG
Industriestrasse 25
83607 Holzkirchen (DE)

Representative:

Lederer & Keller Patentanwälte
Partnerschaft mbB
Unsöldstraße 2
80538 München (DE)

Respondent:

(Patent Proprietor 1)

The United States of America, represented by
the Secretary, Department of Health and Human
Services
National Institutes of Health
Office of Technology Transfer
Suite 325,
6011 Executive Boulevard
Rockville, MD 20852 (US)

Respondent:

(Patent Proprietor 2)

The Board of Trustees of the
University of Illinois
352 Henry Administration Building
506 South Wright Street
Urbana, IL 61801 (US)

Representative:

Becker Kurig & Partner
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Bavariastraße 7
80336 München (DE)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 7 December 2018
rejecting the opposition filed against European
patent No. 2336134 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. O. Müller
Members: A. Lenzen
 P. de Heij

Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the opponent (appellant) against the decision of the opposition division to reject the opposition against European patent no. 2 336 134 (patent).
- II. The parties were summoned to oral proceedings to be held on 27 May 2022.
- III. By letter dated 26 April 2022, the patent proprietors stated that the term of the patent had expired and that the patent had consequently lapsed in all designated contracting states.
- IV. On 3 May 2022, the board issued a communication inviting the appellant, pursuant to Rule 84(1) EPC, to indicate whether or not it requested continuation of the appeal proceedings.
- V. By letter dated 9 May 2022, the appellant stated that it did not request continuation of the appeal proceedings, that it agreed that the appeal proceedings be terminated and that it expected the oral proceedings to be cancelled.
- VI. The board then cancelled the summons to oral proceedings.

Reasons for the Decision

1. Rule 84(1) EPC which applies to appeal proceedings (Rule 100(1) EPC) provides that if the European patent has been surrendered or has lapsed in all designated

contracting states the proceedings may (only) be continued at the request of the opponent filed within two months of a communication from the European Patent office informing of the surrender or lapse.

2. In the case at hand, the appellant has not questioned the patent proprietors' statement that the patent has lapsed in all designated contracting states and the board sees no reason to doubt that the statement is correct either. Furthermore, since the appellant refrained from filing a request under Rule 84(1) EPC (see point V above), the appeal proceedings are terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



M. Schalow

M. O. Müller

Decision electronically authenticated