Datasheet for the decision
of 11 June 2013

Case Number: T 0520/10 - 3.3.08
Application Number: 93917891.9
Publication Number: 651803
IPC: C12N 15/13
Language of the proceedings: EN
Title of invention:
Protein expression system
Patent Proprietor:
Celltech Therapeutics Limited
Opponents:
Genentech, Inc.
Monsanto Company
Novartis Vaccines and Diagnostics, Inc.
Headword:
Protein expression/CELLTECH

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

Keyword:
"Lapse of patent in all designated states (yes)"
"Patent proprietor sole appellant"
"No request by patent proprietor to continue appeal proceedings"
"Termination of appeal proceedings"

Decisions cited:
T 0606/10, T 0708/01

Catchword:
DECISION
of the Technical Board of Appeal 3.3.08
of 11 June 2013

Appellant: Celltech Therapeutics Limited
(Patent Proprietor)
208 Bath Road
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Berkshire SL1 3WE (GB)

Representative: Mercer, Christopher Paul
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Respondent: Genentech, Inc.
(Opponent 1)
460 Point San Bruno Boulevard
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Representative: Armitage, Ian Michael
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Respondent: Monsanto Company
(Opponent 2)
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Representative: Jaenichen, Hans-Rainer
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Postfach 86 07 67
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Respondent: Novartis Vaccines and Diagnostics, Inc.
(Opponent 3)
1209 Orange Street City of Wilmington
County of New Castle (US)

Representative: Woods, Geoffrey Corlett
J A Kemp
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Gray's Inn
London WC1R 5JJ (GB)
Decision under appeal: Decision of the Opposition Division of the European Patent Office posted 23 December 2009 revoking European patent No. 651803 pursuant to Article 101(3)(b) EPC.

Composition of the Board:

Chairman: M. Wieser
Members: T. J. H. Mennessier
R. Moufang
Summary of Facts and Submissions

I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division dated 23 December 2009, whereby European patent No. 0 651 803, which had been granted on European application No. 93917891.9, was revoked.

II. By communication of the Board of 6 May 2013, the parties' attention was drawn to the fact that the patent had meanwhile lapsed in all designated Contracting States and the appellant was asked to inform the Board whether it requested a continuation of the appeal proceedings.

III. In reply to the Board's communication, the appellant has notified the Board with letter of 28 May 2013 that it does not request a continuation of the appeal proceedings.

Reasons for the decision

1. If a European patent has lapsed in all designated Contracting States, opposition proceedings may be continued at the request of the opponent (see Rule 84(1) EPC). According to Rule 100(1) EPC, this also applies in appeal proceedings following opposition proceedings. However, if - as in the present case - the patent proprietor is the appellant, it would be inappropriate to allow the opponent(s) (respondent(s)) 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 (see
also the case law cited in decision T 606/10 of 12 May 2011, point 1.3 of the reasons), so that it is the patent proprietor who can request that the appeal proceedings be continued (see decision T 708/01 of 17 March 2005, point 1 of the Reasons).

2. As the patent proprietor has explicitly indicated that it does not request a continuation of the appeal proceedings (see Section III, supra), the appeal proceedings are to be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar

A. Wolinski

The Chairman

M. Wieser