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**Datasheet for the decision
of 22 December 2011**

Case Number: T 1557/08 - 3.4.03

Application Number: 98907061.0

Publication Number: 963590

IPC: H01C 7/12

Language of the proceedings: EN

Title of invention:

Improvements relating to electrical surge arresters

Patent Proprietor:

Tyco Electronics UK Limited

Opponent:

ABB Schweiz AG

Headword:

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Relevant legal provisions:

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

Relevant legal provisions (EPC 1973):

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Keyword:

"Continuation of appeal proceedings after lapse of patent"

Decisions cited:

T 0708/01

Catchword:

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Case Number: T 1557/08 - 3.4.03

D E C I S I O N
of the Technical Board of Appeal 3.4.03
of 22 December 2011

Appellant:
(Patent Proprietor)

Tyco Electronics UK Limited
Faraday Road
Dorcan
Swindon
Wiltshire SN3 5HH (GB)

Representative:

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Respondent:
(Opponent)

ABB Schweiz AG
Brown Boveri Strasse 6
CH-5400 Baden (CH)

Representative:

Ingold, Mathias
ABB Patent Attorneys
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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 12 June 2008
revoking European patent No. 963590 pursuant to
Article 101(3)(b) EPC.

Composition of the Board:

Chairman: G. Eliasson
Members: E. Wolff
P. Mühlens

Summary of Facts and Submissions

- I. The appeal of the patent proprietor lies against the decision of the Opposition Division of 12 June 2008 revoking European patent No. 963590.
- II. The patent has meanwhile lapsed in all designated Contracting States. By communication of the Board of 19 August 2011, the attention of the parties was drawn to Rule 84(1) EPC and the appellant (patent proprietor) was asked whether he wanted the appeal proceedings to be continued.
- III. There was no reply to the communication.

Reasons for the Decision

If a European patent has lapsed in all designated Contracting States, Opposition proceedings may be continued at the request of the opponent, 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 to decide whether the appeal proceedings shall be continued. For this reason, Rule 84(1) EPC has to be applied in such cases so that the patent proprietor can request that the appeal proceedings be continued (see decision T 708/01, not published in OJ EPO). No such request has been filed. The appeal proceedings are consequently terminated by decision of the Board.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:

S. Sánchez Chiquero

G. Eliasson