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**Datasheet for the decision
of 31 July 2012**

Case Number: T 1266/09 - 3.3.02

Application Number: 00956719.9

Publication Number: 1207911

IPC: A61K 51/12

Language of the proceedings: EN

Title of invention:

Composition comprising radiopharmaceutical metal complexes in silica-coated containers

Patentee:

GE Healthcare Limited

Opponent:

MALLINCKRODT, INC.

Headword:

Surrender of the patent/GE Healthcare

Relevant legal provisions:

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

Keyword:

"Continuation of appeal proceedings after surrender of the patent in all the designated Contracting States (no)"

Decisions cited:

G 0002/97, R 0004/09, T 0708/01

Catchword:

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Case Number: T 1266/09 - 3.3.02

D E C I S I O N
of the Technical Board of Appeal 3.3.02
of 31 July 2012

Appellant: GE Healthcare Limited
(Patent Proprietor) Amersham Place
Little Chalfont
Buckinghamshire HP7 9NA (UK)

Representative: Canning, Lewis R.
GE Healthcare Limited
Amersham Place
Little Chalfont
Buckinghamshire HP7 9NA (UK)

Respondent: MALLINCKRODT, INC.
(Opponent) 675 McDonnell Boulevard
P.O. Box 5840
St. Louis
Missouri 63134 (US)

Representative: Jones, Nicholas Andrew
Withers & Rogers LLP
4 More London Riverside
London
SE1 2AU (UK)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted 15 April 2009
revoking European patent No. 1207911 pursuant
to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman: U. Oswald
Members: M. Ortega Plaza
L. Bühler

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Opposition division revoking the European patent No. 1 207 911.
- II. In its communication pursuant to Rule 100(2) EPC posted on 18 November 2011, the Board noted that the European patent No. 1 207 911 had been surrendered in all the designated Contracting States. Referring to the decision T 708/01 of 17 March 2005, the Board invited the appellant to state whether it wished to maintain the appeal and to justify why proceedings should continue. No reply was received within the time limit set.

Reasons for the Decision

1. The European patent No. 1 207 911 has been surrendered in all the designated Contracting States. By analogy to Rule 84(1) together with Rule 100(1) EPC, the appeal proceedings may be continued, provided that the appellant (patent proprietor) maintains its appeal and motivates why proceedings should continue (see T 708/01 of 17 March 2005, points 1.1 to 1.4 of the Reasons).
2. Users of the European patent system have the responsibility to take all necessary steps to avoid a loss of rights (G 2/97, OJ EPO 1999, 123, point 4.2 of the Reasons; R 4/09 of 30 April 2010, point 2.3.2 of the Reasons). Since no reply to the Board's communication was received within the time limit set, the Board sees no justification for continuing the appeal proceedings

of its own motion in the absence of any sign of interest of the appellant in these proceedings.

Order

For these reasons it is decided that:

The proceedings before the Board of Appeal are discontinued.

The Registrar:

The Chairman:

N. Maslin

U. Oswald