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**Datasheet for the decision  
of 17 January 2014**

**Case Number:** T 1733/09 - 3.3.07

**Application Number:** 93908607.0

**Publication Number:** 637933

**IPC:** A61K51/10, A61K47/48, //  
A61K101:02, A61K103:10,  
A61K121:00

**Language of the proceedings:** EN

**Title of invention:**  
METHOD FOR TREATING ORGANS AND TISSUES

**Patent Proprietor:**  
Immunomedics, Inc.

**Opponent:**  
Bayer Pharma Aktiengesellschaft

**Headword:**  
Method for treating organs and tissues/Immunomedics

**Relevant legal provisions:**  
EPC R. 84(1)

**Keyword:**  
Lapse of patent in all designated states - (yes)  
Patent proprietor sole appellants  
Termination of appeal proceedings

**Decisions cited:**  
T 0520/10, T 0708/01

**Catchword:**



**Beschwerdekammern  
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Chambres de recours**

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Case Number: T 1733/09 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 17 January 2014**

**Appellant:**  
(Patent Proprietor)

Immunomedics, Inc.  
300 American Road  
Morris Plains, NJ 07950 (US)

**Representative:**

Mercer, Christopher Paul  
Carpmaels & Ransford LLP  
One Southampton Row  
London  
WC1B 5HA (GB)

**Respondent:**  
(Opponent)

Bayer Schering Pharma Aktiengesellschaft  
Müllerstrasse 178  
13353 Berlin (DE)

**Representative:**

Walton, Seán Malcolm  
Mewburn Ellis LLP  
33 Gutter Lane  
London  
EC2V 8AS (GB)

**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 16 June 2009  
revoking European patent No. 637933 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman:** J. Riolo  
**Members:** D. Boulois  
W. Ungler

## **Summary of Facts and Submissions**

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division taken at the oral proceedings dated 17 April 2009 , whereby European patent No. 0 637 933, which had been granted on the basis of European application No. 93 908 607.0, was revoked.
- II. With a letter dated 21 June 2013, the appellant noted that the patent was not longer in force, since it expired in all remaining designated states at the end of its 20 year term. The appellant considered that there was no need to continue the appeal proceedings and requested the Board to terminate the proceedings under Rule 84(1) EPC.
- III. By a communication dated 20 September 2013, the Board *inter alia* requested the parties to reconsider their requests for Oral Proceedings.
- IV. In reply to the Board's communication, the respondent informed the Board and the appellant that it agreed with the Proprietor's statements and requests in its letter of 21 June 2013, including that the oral proceedings should be cancelled and the appeal proceedings terminated; the opposition division's decision would become final and the patent revoked.
- V. With a letter dated 8 October 2013, the appellant informed the board and the respondent that it had no objection to the Board terminating the proceedings. The appellant withdrew its request for oral proceedings.

## **Reasons for the Decision**

1. Pursuant to Article 63(1) EPC, the term of an European patent is 20 years from the date of filing of the application. Thus, the opposed patent has lapsed in all designated Contracting States. If a European patent has lapsed in all designated States, opposition proceedings may be continued at the request of the opponent according to Rule 84(1) EPC.
2. 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 sole appellant, it would be inappropriate to allow the opponent-respondent to decide whether the appeal proceedings shall be continued, so that it is the patent proprietor who can request that the appeal proceedings be continued (see decision T520/10).
3. As the appellant (patent proprietor) requested with letter dated 21 June 2013 to terminate the present appeal proceedings in accordance to Rule 84(1) EPC, the appeal proceedings are to be terminated.

## **Order**

### **For these reasons it is decided that:**

The appeal proceedings are terminated.

The Registrar:

The Chairman:



D. Hampe

J. Riolo

Decision electronically authenticated