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**Datasheet for the decision
of 11 June 2012**

Case Number: T 1009/10 - 3.2.08

Application Number: 00988113.7

Publication Number: 1239795

IPC: A61F 2/24

Language of the proceedings: EN

Title of invention:

Enhanced visualization of medical implants

Patentee:

Edwards Lifesciences Corporation

Opponent:

THOMPSON GRAY LLP

Headword:

Lapse of the patent/EDWARDS LIFESCIENCES CORPORATION

Relevant legal provisions:

EPC R. 84(1), 100(1), 126(2), 131, 133(1)

Keyword:

"Continuation of appeal proceedings after lapse of patent -
(no) "

Decisions cited:

T 0329/88

Catchword:

-



Case Number: T 1009/10 - 3.2.08

D E C I S I O N
of the Technical Board of Appeal 3.2.08
of 11 June 2012

Appellant I: Edwards Lifesciences Corporation
(Patent Proprietor) One Edwards Way
Irvine, CA 92625 (US)

Representative: Eke, Philippa Dianne
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Watford
Hertfordshire WD18 0JU (GB)

Appellant II: THOMPSON GRAY LLP
(Opponent) Sussex Innovation Centre
Science Park Square
Falmer, Brighton BN1 9SB (GB)

Representative: Davies, Christopher Robert
Dehns
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
25 February 2010 concerning maintenance of
European patent No. 1239795 in amended form.

Composition of the Board:

Chairman: T. Kriner
Members: R. Ries
A. Pignatelli

Summary of Facts and Submissions

- I. European patent no 1239795 was maintained in amended form by the decision of the opposition division dated 25 February 2010.
- II. The patent proprietor and the opponent both filed an appeal against this decision, paid the appeal fee and filed a statement setting out the grounds of appeal within the prescribed periods.
- III. On 28 February 2011, the patent proprietor withdrew its appeal and its request for oral proceedings.
- IV. With communication posted on 12 December 2011, the Board informed the parties that the patent had lapsed with effect for all designated Contracting States and that therefore the opposition/appeal proceedings would be terminated, if the opponent did not request to continue them within two months from notification of the communication.
- V. On 31 January 2012, the patent proprietor confirmed that the patent had lapsed with effect for all the designated contracting states.
- VI. No submission has been filed by the opponent within the two months since the notification of the communication cited under point IV.

Reasons for the Decision

1. This decision is issued after the entry into force of the EPC 2000 on 13 December 2007, while the application entered the European phase before this date. Reference is made to the relevant transitional provisions for the amended and new provisions of the EPC, from which it may be derived which Articles and Rules of the EPC 1973 are still applicable to the present proceedings and which Articles and Rules of the EPC 2000 apply. Where Articles or Rules of the former version of the EPC apply, their citations are followed by the indication "1973" (cf. Office's EPC, Citation practice, pages 4-6).
2. The appeal lodged by the opponent is admissible. The opponent is the sole appellant since the patent proprietor has withdrawn its appeal.
3. In the present case, the patent has lapsed during the appeal proceedings.

The EPC contains no specific provision concerning the continuation of appeal proceedings in case a European patent has lapsed.

Rule 100(1) EPC lays down that, unless otherwise provided, the provisions relating to proceedings before the department which has taken the decision impugned shall apply to appeal proceedings.

For the opposition proceedings, Rule 84(1) EPC provides that if the European patent has lapsed for all the designated states, the opposition proceedings may be continued at the request of the opponent, provided that

this request is filed within two months from a notification by the EPO of the lapse. Thus, Rule 84(1) EPC concerning the continuation of opposition proceedings in such a case has to be applied to the present appeal proceedings.

According to an interpretation per "argumentum e contrario" of this provision it follows that the appeal proceedings are to be closed if the opponent and sole appellant does not submit such a request within the period prescribed (cf. also decision T 329/88 not published in OJ EPO).

4. In the present case, the notification of the lapse within the meaning of Rule 84(1) EPC was sent to the appellant on 12 December 2011. The period for requesting continuation of the appeal proceedings ended on 22 February 2012 according to Rule 126(2) EPC in conjunction with Rule 131 EPC.

Since no request has been filed within this time limit and also taking into account Rule 133(1) EPC, the appeal proceedings have to be closed.

Order

For these reasons it is decided that:

The appeal proceedings are closed.

The Registrar:

The Chairman:

V. Commare

T. Kriner