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**Datasheet for the decision  
of 23 September 2014**

**Case Number:** T 1622/10 - 3.3.02

**Application Number:** 03017154.0

**Publication Number:** 1384403

**IPC:** A01N37/18, A61F13/00,  
A61K39/00, A61K9/127, A61K9/52,  
A61K9/56

**Language of the proceedings:** EN

**Title of invention:**  
Adjuvant for transcutaneous immunization

**Patent Proprietor:**  
The Government of the United States of America, as  
represented by The Secretary of the Army

**Opponent:**  
Nordic Vaccine Technology A/S

**Headword:**

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

**Keyword:**  
Lapse of patent in all designated states - continuation of  
appeal proceedings (no)

**Decisions cited:**  
T 0708/01

**Catchword:**



**Beschwerdekammern  
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Case Number: T 1622/10 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 23 September 2014**

**Appellant:** The Government of the United States of America,  
(Patent Proprietor) as represented by The Secretary of the Army  
HQ USAMRMC,  
Fort Detrick  
Frederick, MD 21701-5012 (US)

**Representative:** Jaenichen, Hans-Rainer  
Vossius & Partner  
Postfach 86 07 67  
81634 München (DE)

**Respondent:** Nordic Vaccine Technology A/S  
(Opponent) Fruebjergvej 3  
2100 Copenhagen (DK)

**Representative:** Aagaard, Louise Yung  
Høiberg A/S  
St. Kongensgade 59 A  
1264 Copenhagen K (DK)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 4 May 2010  
revoking European patent No. 1384403 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** U. Oswald  
**Members:** H. Kellner  
L. Bühler

## **Summary of Facts and Submissions**

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division dated 4 May 2010, whereby European patent No. 1 384 403 was revoked.
- II. By communication of the Board of 16 December 2013, the parties' attention was drawn to the fact that the patent had lapsed with effect for all designated Contracting States and the appellant was asked to inform the Board whether it requested a continuation of the appeal proceedings.
- III. The appellant did not reply within the time limit of two months.

## **Reasons for the Decision**

1. If a European patent has lapsed with effect for all the 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(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 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).

2. In the present case, the notification of the lapse within the meaning of Rule 84(1) EPC was sent to the appellant on 16 December 2013. Thus, the period of two months for requesting the continuation of the appeal proceedings ended on 26 February 2014. The appellant did not reply to the Board's communication during that period. This is interpreted as an indication that the appellant is not willing to request continuation. Under these circumstances, the Board sees no reason to continue the appeal proceedings of its own motion. Therefore, the appeal proceedings are terminated. The ineffective notification of loss of rights of 10 April 2014 is to be disregarded.

## Order

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

The appeal proceedings are terminated.

The Registrar:

The Chairman:



N. Maslin

U. Oswald

Decision electronically authenticated