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**Datasheet for the decision
of 13 August 2014**

Case Number: T 1964/10 - 3.3.04

Application Number: 01937500.5

Publication Number: 1282436

IPC: A61K38/26, A61P9/10

Language of the proceedings: EN

Title of invention:

Treatment of acute coronary syndrome with GLP-1

Patent Proprietor:

Medtronic, Inc.

Opponent:

Novo Nordisk A/S

Headword:

Treatment with GLP-1/MEDTRONIC

Relevant legal provisions:

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

Keyword:

Lapse of patent in all designated states (yes)
Patent proprietor and opponent appellants
No request by appellants to continue appeal proceedings
Termination of appeal proceedings (yes)

Decisions cited:

T 0329/88, T 0708/01, T 0749/01, T 0520/10

Catchword:

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**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1964/10 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 13 August 2014

Appellant: Medtronic, Inc.
(Patent Proprietor) 710 Medtronic Parkway NE
Minneapolis, MN 55342-5604 (US)

Representative: Hirsch & Associés
58, avenue Marceau
75008 Paris (FR)

Appellant: Novo Nordisk A/S
(Opponent) Novo Allé
DK-2880 Bagsvaerd (DK)

Representative: Potter Clarkson LLP
The Belgrave Centre
Talbot Street
Nottingham, NG1 5GG (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
29 July 2010 concerning maintenance of the
European Patent No. 1282436 in amended form.**

Composition of the Board:

Chairwoman G. Alt
Members: B. Claes
M. Blasi

Summary of Facts and Submissions

- I. Both the patent proprietor (hereinafter appellant I) and the opponent (hereinafter appellant II) lodged an appeal against the interlocutory decision of the opposition division, whereby European patent No. 1 282 436, which had been granted on European patent application No. 01937500.5, was found, in amended form, to meet the requirements of the EPC.
- II. By a first communication dated 24 July 2013 and a second communication of the board pursuant to Rules 84(1) and 100(1) EPC dated 21 May 2014, the parties' attention was drawn to the fact that the patent had lapsed in all designated Contracting States and the appellants were asked to inform the board, within a two-month time limit, whether any of them requested a continuation of the appeal proceedings.
- III. In response to the first communication of the board, appellant II notified the board that it did not request a continuation of the appeal proceedings.
- IV. Appellant I did not request, in response to either of the board's communications, the continuation of the appeal proceedings.

Reasons for the Decision

1. Pursuant to Rule 84(1) EPC, if the European patent has lapsed in all the designated Contracting States, the opposition proceedings may be continued at the request of the opponent filed within two months of a communication of the European Patent Office informing it of the lapse. According to Rule 100(1) EPC, this also applies in appeal proceedings following opposition

proceedings (see e.g. decision T 329/88 of 22 June 1993, points 1 and 2 of the reasons, and decision 749/01 of 23 August 2002, points 2 and 3 of the reasons).

2. According to an interpretation *argumentum e contrario* of Rule 84(1) EPC, it follows that the appeal proceedings are to be terminated if the opponent and appellant does not submit such a request within the period prescribed (see e.g. decision T 329/88, *supra*, point 3 of the reasons).
3. However, if - as in the present case - the patent proprietor is an appellant, it would be inappropriate to allow the opponent(s) to decide whether the appeal proceedings shall be continued. For this reason the board considers that Rule 84(1) EPC has to be applied *mutatis mutandis* in such opposition appeal proceedings so that equally the patent proprietor can request that the appeal proceedings be continued (see e.g. decision T 708/01 of 17 March 2005 and decision T 520/10 of 11 June 2013, both point 1 of the reasons).
4. As appellant II has explicitly indicated that it does not request a continuation of the appeal proceedings (see Section III, *supra*) and appellant I has not, within the time limit set, requested the continuation of the appeal proceedings (see Section IV, *supra*), the appeal proceedings are to be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



P. Cremona

G. Alt

Decision electronically authenticated