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**Datasheet for the decision
of 5 February 2016**

Case Number: T 0432/11 - 3.3.04

Application Number: 00128661.6

Publication Number: 1219300

IPC: A61K39/35, A61K39/36, A61P37/08

Language of the proceedings: EN

Title of invention:
Treatment of allergies

Patent Proprietor:
Biomay AG

Opponent:
Inspicos P/S

Headword:
Lapse of the patent/BIOMAY

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

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

Decisions cited:
T 0329/88, T 0165/95, T 0749/01, T 0436/02, T 0289/06

Catchword:
-



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0432/11 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 5 February 2016

Appellant: Inspicos P/S
(Opponent) Kogle Allé 2
2970 Hørsholm (DK)

Representative: Koefoed, Peter
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Respondent: Biomay AG
(Patent Proprietor) Lazarettgasse 19
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 December 2010 concerning maintenance of the
European Patent No. 1219300 in amended form.**

Composition of the Board:

Chairwoman G. Alt
Members: B. Claes
L. Bühler

Summary of Facts and Submissions

- I. The opponent (appellant) lodged an appeal against the interlocutory decision of the opposition division of 10 December 2010 maintaining European patent No. 1 219 300 (the patent in suit) in amended form. Subsequently the appellant submitted a statement setting out the grounds of appeal.
- II. The patent proprietor (respondent) filed a reply in response to the appeal.
- III. The board summoned the parties to oral proceedings to be held on 4 February 2016.
- IV. In response, with a letter dated 5 November 2015, the respondent announced that it would not attend the oral proceedings and that the patent had lapsed due to non-payment of the renewal fees.
- V. By a communication dated 19 November 2015, the board informed the parties that the patent in suit had lapsed with effect for all the designated Contracting States and invited the appellant to inform the board, within two months from notification of the communication, whether it requested a continuation of the appeal proceedings (Rules 84(1) and 100(1) EPC).
- VI. With a submission dated 3 December 2015, the appellant informed the board that it did not intend to request continuation of the appeal proceedings.
- VII. On 1 February 2016 the board cancelled the oral proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. Rule 84(1) EPC provides that if "the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States, the opposition proceedings may be continued at the request of the opponent filed within two months of a communication from the European Patent Office informing him of the surrender or lapse".
3. Based on Rule 100(1) EPC, Rule 84(1) EPC applies *mutatis mutandis* in opposition appeal proceedings, *i.e.* the appeal proceedings may be continued at the request of the appellant-opponent filed within two months as from notification of the lapse. According to an interpretation *argumentum e contrario*, if no request for continuation of the proceedings is filed within the set time period and the state of the file gives no grounds for the proceedings to be continued by the board of its own motion, the appeal proceedings are terminated (see decisions T 329/88 of 22 June 1993; T 165/95 of 7 July 1997; T 749/01 of 23 August 2002; T 436/02 of 25 June 2004; T 289/06 of 17 December 2007).
4. In the present case, the notification of the lapse within the meaning of Rule 84(1) EPC was sent to the appellant on 19 November 2015. Thus, the period of two months for requesting the continuation of the appeal proceedings ended on Friday, 29 January 2016 (*cf.* Rule 126(2) EPC). No request for continuation of the appeal proceedings has been submitted during that period. Moreover, from the appellant's letter dated 5 November 2015 it clearly follows that the appellant

had no intention of submitting a request for continuation of the appeal proceedings within that period.

5. Hence, the appeal proceedings have to be terminated (*cf.* point 3 *supra*).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



P. Cremona

G. Alt

Decision electronically authenticated