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**Datasheet for the decision
of 14 December 2016**

Case Number: T 0018/13 - 3.3.04

Application Number: 06706131.7

Publication Number: 1863834

IPC: C07K14/32, C12N9/00, C12N15/31,
C12N15/52, A23K1/00

Language of the proceedings: EN

Title of invention:
Polypeptides and nucleic acids encoding same

Patent Proprietor:
Novozymes A/S

Opponent:
DuPont Nutrition Biosciences ApS

Headword:
Polypeptides/NOVOZYMES

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

Keyword:
Lapse of patent in all designated states - termination of
appeal proceedings

Decisions cited:

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

Catchword:



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Case Number: T 0018/13 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 14 December 2016

Appellant: DuPont Nutrition Biosciences ApS
(Opponent) Langebrogade 1
P.O. Box 17
1001 Copenhagen K (DK)

Representative: D Young & Co LLP
120 Holborn
London EC1N 2DY (GB)

Respondent: Novozymes A/S
(Patent Proprietor) Krogshøjvej 36
2880 Bagsvaerd (DK)

Representative: Potter Clarkson LLP
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Nottingham NG1 5GG (GB)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
8 November 2012 concerning maintenance of the
European Patent No. 1863834 in amended form.

Composition of the Board:

Chairwoman R. Morawetz
Members: M. Montrone
L. Bühler

Summary of Facts and Submissions

- I. Both the patent proprietor and the opponent lodged an appeal against the interlocutory decision of the opposition division posted on 8 November 2012 maintaining European patent No. 1 863 834 in amended form.
- II. The patent proprietor withdrew its appeal in the letter dated 13 August 2014.
- III. The board summoned the parties to oral proceedings.
- IV. Subsequently, the patent proprietor announced in the letter dated 22 June 2016 that it would not attend the oral proceedings and the appellant-opponent withdrew in the letter dated 28 July 2016 its request for oral proceedings and stated that the patent had lapsed in all Contracting States.
- V. In a communication dated 4 August 2016, the board confirmed that the patent had lapsed in all designated Contracting States. Pursuant to Rules 84(1) and 100(1) EPC, the appellant-opponent was invited to inform the board, within a two-month from notification of the communication, whether it requested a continuation of the appeal proceedings. The parties were informed that if no request for continuation of proceedings was received in due time, the appeal proceedings would be discontinued.
- VI. No reply was received within the set time period.

Reasons for the Decision

1. 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*". According to Rule 100(1) EPC, Rule 84(1) EPC also applies in opposition-appeal proceedings.

2. 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 on 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).

3. In the present case, the notification of the lapse within the meaning of Rule 84(1) EPC was sent to the appellant-opponent on 4 August 2016 (see section V). Thus, the period of two months for requesting continuation of the appeal proceedings ended on 14 October 2016 (cf. Rule 126(2) EPC). No request for continuation of the appeal proceedings was received within the set time period. Hence, the appeal proceedings are to be terminated (cf. point 2 supra).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



D. Hampe

R. Morawetz

Decision electronically authenticated