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**Datasheet for the decision
of 1 April 2019**

Case Number: T 1059/13 - 3.2.02

Application Number: 10158200.5

Publication Number: 2201969

IPC: A61M5/158, A61M5/20, A61M5/32

Language of the proceedings: EN

Title of invention:
Insertion device for an insertion set

Patent Proprietor:
Medtronic MiniMed, Inc.

Opponent:
Unomedical A/S

Headword:

Relevant legal provisions:
EPC R. 84(1), 100(1), 100(2), 133
EPC Art. 63(1)

Keyword:
Expiry of the patent - continuation of appeal proceedings (no)

Decisions cited:

T 0708/01, T 0829/11, T 0436/02, T 0749/01

Catchword:



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Case Number: T 1059/13 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 1 April 2019

Appellant: Medtronic MiniMed, Inc.
(Patent Proprietor) 18000 Devonshire Street
Northridge, CA 91325-1219 (US)

Representative: Ruschke, Hans Edvard
Ruschke Madgwick Seide & Kollegen
Postfach 86 06 29
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Respondent: Unomedical A/S
(Opponent) Birkerød Kongevej 2
3460 Birkerød (DK)

Representative: D Young & Co LLP
120 Holborn
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 19 February
2013 revoking European patent No. 2201969
pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman E. Dufrasne
Members: M. Stern
D. Ceccarelli

Summary of Facts and Submissions

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division to revoke European patent No. 2 201 969.
- II. The patent is based on European patent application No. 10 158 200.5 filed on 18 December 1998. It follows that the term of the patent pursuant to Article 63(1) EPC expired on 18 December 2018.
- III. By a communication of the Board dated 16 January 2019 pursuant to Rule 100(2) EPC, the parties' attention was drawn to the fact that the patent had lapsed in all designated Contracting States and the appellant was invited to inform the Board within two months from notification of the communication whether it requested a continuation of the appeal proceedings or not.
- IV. No answer to that communication was received within the two-months time limit.
- V. On 28 March 2019 the registrar of the Board contacted the representative of the appellant who confirmed that no reply to the above communication had been delivered to a recognised postal service provider in due time before expiry of the period.

Reasons for the Decision

1. In analogy to Rule 84(1) EPC, which is to be applied in opposition appeal proceedings (Rule 100(1) EPC), when a European patent has lapsed in all designated Contracting States, opposition appeal proceedings may be continued at the request of the patent proprietor

filed within two months of a communication from the European Patent Office informing him of the lapse (T 708/01, point 1 of the Reasons). In the present case, the term of the patent pursuant to Article 63(1) EPC expired.

2. Since the appellant's representative confirmed that no reply to the communication had been delivered to a recognised postal service provider in due time before expiry of the period, the expiry of the time limit of three months pursuant to Rule 133 EPC has not to be waited before proceeding further.
3. A continuation of the appeal proceedings was not requested so that the appeal proceedings are to be terminated (T 829/11, T 436/02, T 749/01).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



D. Hampe

E. Dufrasne

Decision electronically authenticated