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**Datasheet for the decision  
of 25 February 2019**

**Case Number:** T 0596/14 - 3.3.02

**Application Number:** 99850140.7

**Publication Number:** 0992572

**IPC:** C10M171/00, C10M105/32,  
C10M105/48, C09K5/04

**Language of the proceedings:** EN

**Title of invention:**

Refrigerating machine oil used with carbon dioxide as  
refrigerant

**Patent Proprietor:**

Nippon Mitsubishi Oil Corporation

**Opponent:**

FUCHS Europe Schmierstoffe GmbH

**Headword:**

Refrigerating machine oil/Nippon Mitsubishi Oil Corporation

**Relevant legal provisions:**

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

**Keyword:**

Lapse of patent in all designated states - termination of  
appeal proceedings  
Patent proprietor sole appellant

**Decisions cited:**

T 0329/88, T 0708/01, T 0520/10, T 0660/13

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0596/14 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 25 February 2019**

**Appellant:** Nippon Mitsubishi Oil Corporation  
(Patent Proprietor) 3-12, Nishi-shimbashi 1-chome,  
Minato-ku  
Tokyo (JP)

**Representative:** Ehrner & Delmar Patentbyrå AB  
Drottninggatan 33, plan 4  
111 51 Stockholm (SE)

**Respondent:** FUCHS Europe Schmierstoffe GmbH  
(Opponent) Friesenheimer Str. 15  
68169 Mannheim (DE)

**Representative:** Müller Schupfner & Partner  
Patent- und Rechtsanwaltspartnerschaft mbB  
Schellerdamm 19  
21079 Hamburg (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 9 January 2014  
revoking European patent No. 0 992 572 pursuant  
to Article 101(2) and Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** M. Maremonti  
M. Blasi

## **Summary of Facts and Submissions**

- I. The present appeal was lodged by the patent proprietor against the decision of the opposition division revoking European patent No. 0 992 572.
  
- II. In a communication of the board pursuant to Rule 84(1) and Rule 100(1) EPC dated 6 September 2018 the parties were informed that it was apparent from the entries in the European Patent Register that the patent had been surrendered or had lapsed with effect for all the designated Contracting States in the course of the appeal proceedings. The appellant/patent proprietor was invited to indicate, within two months, whether continuation of the appeal proceedings was requested. The respondent/opponent was given the opportunity to file comments within the same time limit.
  
- III. The communication was delivered to the appellant/patent proprietor on 17 September 2018 and to the respondent/opponent on 10 September 2018.
  
- IV. No reply was received by the board in response to the communication.

## **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.

2. Pursuant to Rule 100(1) EPC and in the absence of provisions stating otherwise, Rule 84(1) EPC applies to 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 surrender or lapse. Furthermore, according to an interpretation *argumentum e contrario*, if no request for continuation of the proceedings is filed within the set time limit 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 will be terminated (see e.g. decisions T 329/88, reasons, point 3, and T 660/13, reasons, point 3).
3. However, if the patent proprietor is the sole appellant, as in the present case, it would be inappropriate to allow the respondent/opponent 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. Thus, it is the patent proprietor as the appellant who can request that the appeal proceedings be continued (see also decisions T 708/01, reasons, point 1, T 520/10, reasons, point 1).
4. In the present case, the communication pursuant to Rule 84(1) and Rule 100(1) EPC was delivered to the appellant on 17 September 2018. Thus, the time limit of two months for requesting the continuation of the appeal proceedings ended on Monday, 19 November 2018 (Rule 126(2), Rule 131(2), (4) and Rule 134(1) EPC). No request for continuation of the appeal proceedings has been received within the set time limit or within the period under Rule 133(1) EPC. Furthermore, the board sees no reason to continue the appeal proceedings

of its own motion. Hence, the appeal proceedings are to be terminated.

**Order**

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

**The appeal proceedings are terminated.**

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated