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**Datasheet for the decision
of 28 May 2018**

Case Number: T 2020/14 - 3.3.04

Application Number: 07846601.8

Publication Number: 2084190

IPC: C07K16/28, A61K39/395

Language of the proceedings: EN

Title of invention:

LINGO binding molecules and pharmaceutical use thereof

Patent Proprietor:

Novartis AG

Opponent:

Adams, Harvey Vaughan John

Headword:

LINGO binding molecules

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 0708/01, T 0520/10, T 1272/10, T 1825/11,
T 0018/13

Catchword:

-



Beschwerdekammern

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Case Number: T 2020/14 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 28 May 2018

Appellant:
(Patent Proprietor)

Novartis AG
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4056 Basel (CH)

Representative:

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Respondent:
(Opponent)

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Representative:

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 July 2014 concerning maintenance of the
European Patent No. 2084190 in amended form**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The present appeal was lodged by the patent proprietor against the interlocutory decision of the opposition division concerning maintenance of European patent No. 2 084 190 in amended form. The patent had been granted on European patent application No. 07846601.8 which was filed as international application with the publication No. WO2008/058736.

- II. In a communication of the board pursuant to Rule 84(1) and Rule 100(1) EPC dated 22 August 2017 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 appeal proceedings would be discontinued if no request for continuation of the proceedings was filed in due time and the state of the file gave no grounds for the proceedings to be continued by the board of its own motion. The respondent/opponent was given the opportunity to file comments within the same time limit.

- III. On 25 September 2017, the appellant informed the board that it had not received the communication of the board dated 22 August 2017.

- IV. With a further communication pursuant to Rule 84(1) and Rule 100(1) EPC and dated 2 October 2017 the board re-issued the communication of 22 August 2017 and again set a time limit of two months.

- V. After an enquiry from the registrar of the board, the respondent/opponent informed the board on 20 December 2017, that it had no record of receiving the board's communication dated 2 October 2017.
- VI. The appellant/patent proprietor confirmed on 21 December 2017 in response to the enquiry by the registrar, that it had received the board's communication dated 2 October 2017.
- VII. With a further communication pursuant to Rule 84(1) and Rule 100(1) EPC, dated 3 January 2018, the board re-issued the communication of 22 August 2017 to the respondent/opponent and set a new time limit of two months.
- VIII. In reply to the board's communication dated 3 January 2018 the respondent/opponent requested, for the event that the appellant/patent proprietor were not to request continuation of the proceedings, that the appeal proceedings be terminated and noted that there were no reasons for the board to continue the appeal proceedings of its own motion.
- IX. No reply from the appellant/patent proprietor was received in response to the communication dated 2 October 2017 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.

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 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 will be terminated (see e.g. decisions T 329/88 of 22 June 1993 and T 18/13 of 14 December 2016).
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, adverse to the appellant/patent proprietor, 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 who can request that the appeal proceedings be continued (see also decisions T 708/01 of 17 March 2005, T 520/10 of 11 June 2013, T 1825/11 of 14 July 2015 and T 1272/10 of 11 July 2016).
4. In the present case, the communication pursuant to Rule 100(1) and Rule 84(1) EPC was re-sent to the appellant on 2 October 2017. Thus, the period of two months for requesting the continuation of the appeal proceedings ended on 12 December 2017 (*cf.* Rule 126(2))

and Rule 131(2), (4) EPC). No request for continuation of the appeal proceedings has been submitted during that period and the board sees no reason to continue the appeal proceedings of its own motion. Hence, the appeal proceedings can be terminated (cf. point 2 *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