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**Datasheet for the decision  
of 31 October 2018**

**Case Number:** T 0188/15 - 3.3.08

**Application Number:** 06708017.6

**Publication Number:** 1851305

**IPC:** C12N5/00, C12P21/02

**Language of the proceedings:** EN

**Title of invention:**

PRODUCTION OF A POLYPEPTIDE IN A SERUM-FREE CELL CULTURE  
LIQUID CONTAINING PLANT PROTEIN HYDROLYSATE

**Patent Proprietor:**

Novo Nordisk Health Care AG

**Opponent:**

Baxter Healthcare S.A.

**Headword:**

Plant protein hydrolysate/NOVO NORDISK

**Relevant legal provisions:**

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

**Keyword:**

Lapse of patent in all designated states - termination of the  
appeal proceedings

**Decisions cited:**

T 0329/88, T 0949/09, T 0520/10, T 0480/13

**Catchword:**



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

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Case Number: T 0188/15 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 31 October 2018**

**Appellant I:** Novo Nordisk Health Care AG  
(Patent Proprietor) Thurgauerstrasse 36/38  
8050 Zürich (CH)

**Representative:** J A Kemp  
14 South Square  
Gray's Inn  
London WC1R 5JJ (GB)

**Appellant II:** Baxter Healthcare S.A.  
(Opponent) Thurgauerstrasse 130  
8152 Glattpark/Opfikon (CH)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
17 November 2014 concerning maintenance of the  
European Patent No. 1851305 in amended form.**

**Composition of the Board:**

**Chairman** B. Stolz  
**Members:** M. R. Vega Laso  
J. Geschwind

## **Summary of Facts and Submissions**

- I. The appeals of the patent proprietor (appellant I) and the opponent (appellant II) lie from an interlocutory decision of an opposition division under Article 101(3) (a) and 106(2) EPC posted on 17 November 2014, in which it was found that, account being taken of the amendments introduced into the claims according to the auxiliary request 2 and the description adapted thereto, the European patent No. 1 851 305 with the title "Production of a polypeptide in a serum-free cell culture liquid containing plant protein hydrolysate" and the invention to which it relates meet the requirements of the EPC.
  
- II. By a communication pursuant to Rule 84(1) EPC dated 9 August 2018, the board informed the appellants that, even though the European patent had lapsed with effect for all the designated Contracting States, the appeal proceedings could be continued at their request, provided that the request was filed within two months from notification of the communication.
  
- III. No request for continuation of the proceedings was received from either appellant.

## **Reasons for the Decision**

1. Pursuant to Rule 84(1) EPC in conjunction with Rule 100(1) EPC, appeal proceedings may be continued after the European patent has lapsed, if the opponent files a request to this effect within two months of a communication informing him of the lapse (see, *inter alia*, decisions T 329/88 of 22 June 1993; T 949/09 of 17 October 2012; and T 480/13 of 5 November 2014).

2. According to the jurisprudence of the Boards of Appeal (see, e.g., decision T 520/10 of 11 June 2013), when the patent proprietor has filed an appeal, by analogy to Rule 84(1) in connection with Rule 100(1) EPC the appeal proceedings may be continued also upon request of the patent proprietor.
3. Since no request for continuation of the appeal proceedings was received from either appellant in due time, the board decides to terminate the appeal proceedings.
- 4.

## **Order**

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

The appeal proceedings are terminated.

The Registrar:

The Chairman:



L. Malécot-Grob

B. Stolz

Decision electronically authenticated