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**Datasheet for the decision
of 23 January 2019**

Case Number: T 0417/15 - 3.2.02

Application Number: 03078678.4

Publication Number: 1413245

IPC: A61B5/00, A61M5/172

Language of the proceedings: EN

Title of invention:

Telemetered characteristic monitor system

Patent Proprietor:

Medtronic MiniMed, Inc.

Opponent:

EP Opposition Foundation

Headword:

Relevant legal provisions:

EPC R. 84(1), 100(1), 133(1)

Keyword:

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

Decisions cited:

Catchword:



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Case Number: T 0417/15 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 23 January 2019

Appellant: EP Opposition Foundation
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3581HK Utrecht (NL)

Representative: Kazi, Ilya
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Respondent: Medtronic MiniMed, Inc.
(Patent Proprietor) 18000 Devonshire Street
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Representative: J A Kemp
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
18 December 2014 concerning the maintenance of
European Patent No. 1413245 in amended form**

Composition of the Board:

Chairman E. Dufrasne
Members: D. Ceccarelli
P. L. P. Weber

Summary of Facts and Submissions

- I. The opponent has appealed against the Opposition Division's decision, despatched on 18 December 2014, that account being taken of the amendments according to auxiliary request 1 made by the proprietor during the opposition proceedings, European patent No. 1 413 245 and the invention to which it related met the requirements of the EPC.
- II. The patent is based on European patent application No. 03078678.4, which is a division application of European patent application No. 99949741.5, and is accorded a date of filing of 20 September 1999.
- III. Inspection of the European patent register had shown that the patent had lapsed in all the designated Contracting States.
- IV. On 26 September 2018 the Board issued a communication under Rule 84(1) EPC asking the appellant/opponent to state, within a period of two months after notification of the communication, if it requested that the appeal proceedings be continued. According to form 3936 returned to the Board, the communication was received by the appellant/opponent on 1 October 2018.
- V. On 21 January 2019 the Board's registrar called the representative of the appellant/opponent, who confirmed that no reply to the communication had been delivered to a recognised postal service provider before the expiry of the period.

Reasons for the Decision

1. The appeal is admissible.
2. According to Rule 84(1) EPC, which applies to opposition appeal proceedings by virtue of Rule 100(1) EPC, if a European patent has lapsed in all the designated Contracting States, the opposition appeal proceedings may be continued at the request of the appellant/opponent filed within two months of a communication from the European Patent Office informing him of the lapse.
3. No reply to the communication under Rule 84(1) EPC was received by the Board within the two-month period after its notification. Moreover, in view of the confirmation of the appellant/opponent that no reply had been delivered to a recognised postal service provider in due time before expiry of that period, there is no need for the Board to wait for the expiry of the time limit of three months pursuant to Rule 133(1) EPC before establishing that no reply will be received in due time.
4. Hence, the appellant/opponent has not requested in due time that the appeal proceedings be continued. As a consequence, they are to be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



D. Hampe

E. Dufrasne

Decision electronically authenticated