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**Datasheet for the decision
of 14 December 2020**

Case Number: T 1622/16 - 3.2.06

Application Number: 04747403.6

Publication Number: 1701011

IPC: F01N3/02, F01N3/021

Language of the proceedings: EN

Title of invention:
EXHAUST EMISSION CONTROL DEVICE

Patent Proprietor:
Hino Motors, Ltd.

Opponent:
Tenneco GmbH

Headword:

Relevant legal provisions:
EPC R. 84(1), 100(1), 126(2)
EPC Art. 131

Keyword:
Lapse of patent in all designated states - termination of
appeal proceedings - continuation of appeal proceedings (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1622/16 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 14 December 2020

Appellant: Tenneco GmbH
(Opponent) Luitpoldstrasse 83
67480 Edenkoben (DE)

Representative: Thews, Gustav
STT Sozietät Thews & Thews
Patentanwälte
Augustaanlage 32
68165 Mannheim (DE)

Respondent: Hino Motors, Ltd.
(Patent Proprietor) 1-1, Hino-dai 3-chome
Hino-shi,
Tokyo 191-8660 (JP)

Representative: Köhler, Walter
Louis, Pöhlau, Lohrentz
Patentanwälte
Postfach 30 55
90014 Nürnberg (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 6 May 2016
rejecting the opposition filed against European
patent No. 1701011 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Hannam
Members: P. Cipriano
 J. Hoppe

Summary of Facts and Submissions

- I. The appellant/opponent lodged an appeal against the interlocutory decision of the opposition division of 6 May 2016 which found that European patent No. 1 701 011 in an amended form met the requirements of the EPC.

- II. In a communication dated 29 September 2020, the Board informed the parties that the patent in suit had lapsed with effect for all the designated Contracting States and invited the appellant to inform the board, within two months from notification of the communication, whether it requested a continuation of the appeal proceedings (Rules 84(1) and 100(1) EPC).

- III. No reply was received from the appellant/opponent within the two month 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. Based on Rule 100(1) EPC, Rule 84(1) EPC applies *mutatis mutandis* in 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 lapse.

3. In the present case, the notification of the lapse within the meaning of Rule 84(1) EPC was sent by registered letter to the appellant on 29 September 2020. The period for requesting continuation of the appeal proceedings ended on 9 December 2020 by virtue of Rule 126(2) EPC) in conjunction with Rule 131 EPC. No such request was filed within that time limit.
4. According to an interpretation per "argumentum e contrario" of this provision it follows that the appeal proceedings are to be closed if the opponent and sole appellant does not submit such a request within the period prescribed.
5. Since no timely request was filed , the appeal proceedings are to be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



D. Grundner

M. Hannam

Decision electronically authenticated