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**Datasheet for the decision
of 3 April 2019**

Case Number: T 2578/16 - 3.2.02

Application Number: 10185767.0

Publication Number: 2316348

IPC: A61B17/068, A61B17/072

Language of the proceedings: EN

Title of invention:
Surgical stapling apparatus

Patent Proprietor:
Covidien LP

Opponent:
ETHICON ENDO-SURGERY, INC.

Headword:

Relevant legal provisions:
EPC Art. 63(1), 76(1)
EPC R. 84(1), 100(1), 133(1)

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

Decisions cited:

T 0708/01

Catchword:



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Case Number: T 2578/16 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 3 April 2019

Appellant: Covidien LP
(Patent Proprietor) 15 Hampshire Street
Mansfield, MA 02048 (US)

Representative: Maschio, Antonio
Maschio & Soames IP Limited
30 Carlton Crescent
Southampton SO15 2EW (GB)

Appellant: ETHICON ENDO-SURGERY, INC.
(Opponent) 4545 Creek Road
Cincinnati, OH 45242 (US)

Representative: Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
23 September 2016 concerning maintenance of the
European Patent No. 2316348 in amended form.**

Composition of the Board:

Chairman E. Dufrasne
Members: P. L. P. Weber
M. Stern

Summary of Facts and Submissions

- I. The appeals of the patent proprietor and of the opponent are directed against the decision of the Opposition Division posted on 23 September 2016 that account being taken of the amendments made by the patent proprietor during the opposition proceedings, the European patent No. 2316348 and the invention to which it relates were found to meet the requirements of the Convention.
- II. The European patent No. 2316348 is based on European patent application No. 10185767.0 deemed to have been filed on 18 September 1998 (Article 76(1) EPC).
- III. With communication of 4 January 2019, the appellant-patent proprietor and the appellant-opponent were requested to inform the Board within a period of two months after notification of the communication, whether they requested the appeal proceedings to be continued or not.
- IV. No answer to that communication was received within the two months period.
- V. On 20 March 2019 the registrar of the Board contacted the representative of the appellant-opponent who confirmed that no reply to the above communication was delivered to a recognised postal service provider in due time before expiry of the period.
- VI. On 27 March 2019 the registrar of the Board contacted the representative of the appellant-patent proprietor who confirmed that no reply to the above communication was delivered to a recognised postal service provider in due time before expiry of the period.

Reasons for the Decision

1. As mentioned above the patent in suit is based on a patent application filed on 18 September 1998. It follows that the term of the patent pursuant to Article 63(1) EPC expired on 18 September 2018.
2. When a European patent has lapsed in all designated Contracting States, according to Rule 84(1) EPC, which is to be applied in opposition appeal proceedings (Rule 100(1) EPC), 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. In analogy to Rule 84(1) EPC, the opposition appeal proceedings may be continued at the request of the appellant-patent proprietor filed within two months of a communication from the European Patent Office informing him of the lapse (e.g. T 0708/01, point 1 of the Reasons).
3. Since the representatives confirmed that no reply to the respective communication had been delivered to a recognised postal service provider in due time before expiry of the period, the expiry of the time limit of three months pursuant to Rule 133 EPC has not to be waited for before proceeding further.
4. A continuation of the appeal proceedings was not requested, so that 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. Hampe

E. Dufrasne

Decision electronically authenticated