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**Datasheet for the decision  
of 30 July 2018**

**Case Number:** T 0911/17 - 3.2.02

**Application Number:** 10012322.3

**Publication Number:** 2292161

**IPC:** A61B17/32, B25B23/142

**Language of the proceedings:** EN

**Title of invention:**  
Instrument for cutting tissue

**Patent Proprietor:**  
Covidien LP

**Opponent:**  
ETHICON ENDO-SURGERY, INC.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 63(1)  
EPC R. 84(1), 100(1), 100(2), 133(1)

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

**Decisions cited:**

T 0708/01

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0911/17 - 3.2.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.02**  
**of 30 July 2018**

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

**Representative:** Soames, Candida Jane  
Maschio & Soames IP Limited  
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Southampton SO15 2EW (GB)

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

**Representative:** Tunstall, Christopher Stephen  
Carpmaels & Ransford LLP  
One Southampton Row  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 10 February  
2017 revoking European patent No. 2292161  
pursuant to Article 101(3)(b) EPC**

**Composition of the Board:**

**Chairman** E. Dufrasne  
**Members:** D. Ceccarelli  
M. Stern

## **Summary of Facts and Submissions**

- I. The patent proprietor has appealed against the Opposition Division's decision, dispatched on 10 February 2017, to revoke European patent No. 2 292 161.
- II. The patent is based on European patent application No. 10012322.3, which is accorded a date of filing of 30 September 1997.
- III. On 13 April 2018 the Board issued a communication under Rule 100(2) EPC asking the appellant to state, within a period of two months after notification of the communication, if it requested that the appeal proceedings be continued.
- IV. On 24 July 2018 the Board's registrar called the appellant's representative, 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. In view of the date of filing of the application on which the patent in suit is based the term of 20 years of the European patent according to Article 63(1) EPC expired on 30 September 2017.
3. By analogy with Rule 84(1) EPC, which applies to opposition appeal proceedings under 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 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).

4. No reply to the communication under Rule 100(2) EPC was received by the Board within the two-month period after its notification. Moreover, in view of the appellant's confirmation 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 EPC before establishing that no reply will be received in due time.
  
5. Hence, the appellant patent proprietor 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