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**Datasheet for the decision
of 16 June 2020**

Case Number: T 1082/17 - 3.5.02

Application Number: 09757635.9

Publication Number: 2290763

IPC: H01R25/14

Language of the proceedings: EN

Title of invention:

Connectors with brushes and pins which slide along electrical guides for home, business or industrial installations

Patent Proprietor:

Sistemas Metalper, S.L.

Opponent:

Fabricacion de Material Electrico, S.A.

Relevant legal provisions:

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

Keyword:

Lapse of patent in all designated states - termination of appeal proceedings - Patent proprietor sole appellant

Decisions cited:

T 0520/10, T 2020/14



Beschwerdekammern

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Case Number: T 1082/17 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 16 June 2020

Appellant: Sistemas Metalper, S.L.
(Patent Proprietor) Avenida Blasco Ibañez, 28
46630 La Font de la Figuera, Valencia (ES)

Representative: Isern Patentes y Marcas S.L.
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08036 Barcelona (ES)

Respondent: FABRICACION DE MATERIAL ELECTRICO, S.A.
(Opponent) P. IND. LA FERRERIA, VAPOR, 12-14
08110 MONTCADA I REIXAC (BARCELONA) (ES)

Representative: Durán-Corretjer, S.L.P.
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08037 Barcelona (ES)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 7 March 2017
revoking European patent No. 2290763 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman R. Lord
Members: G. Flyng
R. Cramer

Summary of Facts and Submissions

- I. The present appeal was lodged by the patent proprietor against the decision of the Opposition Division revoking European patent No. 2 290 763.
- II. In a communication of the board dated 29 November 2019 the parties were informed that as could be seen from the European Patent Register, European patent No. 2 290 763 had lapsed in all designated Contracting States.

The patent proprietor, who is the sole appellant in the present appeal case, was requested to indicate, within a period of two months from notification of the communication, whether it wished to pursue its appeal.

It was stated *inter alia* that if, within the above-mentioned period, no answer was received, the proceedings would be terminated without a decision on the merits of the appeal.

- III. No reply was received by the board in response to the above-mentioned communication.

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. Pursuant to Rule 100(1) EPC and in the absence of provisions stating otherwise, Rule 84(1) EPC applies to 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 surrender or lapse. Furthermore, according to an interpretation *argumentum e contrario*, if no request for continuation of the proceedings is filed within the set time limit and the state of the file gives no grounds for the proceedings to be continued by the board of its own motion, the appeal proceedings will be terminated.
3. However, if the patent proprietor is the sole appellant, as in the present case, it would be inappropriate to allow the respondent/opponent to decide whether the appeal proceedings shall be continued. For this reason, Rule 84(1) EPC has to be applied *mutatis mutandis* in such opposition appeal proceedings. Thus, it is the patent proprietor as the appellant who can request that the appeal proceedings be continued (cf. e.g. T 520/10, T 2020/14).
4. No request for continuation of the appeal proceedings has been received within the set time limit. Furthermore, the board sees no reason to continue the appeal proceedings of its own motion. Hence, the appeal proceedings are to be terminated.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated