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**Datasheet for the decision
of 23 June 2020**

Case Number: T 1501/17 - 3.3.02

Application Number: 08846814.5

Publication Number: 2218712

IPC: C07D215/48, A61K31/282,
A61K31/47, A61P35/00, A61K45/06

Language of the proceedings: EN

Title of invention:
COMBINATION OF ANTI-ANGIOGENIC SUBSTANCE AND ANTI-TUMOR
PLATINUM COMPLEX

Patent Proprietor:
Eisai R&D Management Co., Ltd.

Opponent:
Generics (U.K.) Limited (trading as Mylan)

Headword:
Lapse of patent

Relevant legal provisions:
EPC R. 84(1), 100(1)

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

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1501/17 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 23 June 2020

Appellant: Generics (U.K.) Limited (trading as Mylan)
(Opponent) Albany Gate
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Hertfordshire EN6 1AG (GB)

Representative: Gill Jennings & Every LLP
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Respondent: Eisai R&D Management Co., Ltd.
(Patent Proprietor) 6-10, Koishikawa 4-chome
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Representative: J A Kemp LLP
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
28 April 2017 concerning maintenance of the
European Patent No. 2218712 in amended form.**

Composition of the Board:

Chairman M. O. Müller
Members: A. Lenzen
L. Bühler

Summary of Facts and Submissions

- I. The present appeal was lodged by the opponent against the interlocutory decision of the opposition division, on the amended form in which European patent No. 2 218 712 could be maintained.

- II. A communication of the board dated 17 January 2020 was issued, drawing the parties' attention to the fact that, according to the entries in the European Patent Register, the patent had lapsed with effect for all designated Contracting States. Pursuant to Rules 84(1) and 100(1) EPC, the appellant (opponent) was invited to inform the board, within two months from notification of the communication, whether they requested a continuation of the appeal proceedings.

- III. No reply was received within the time period set in the board's communication.

Reasons for the Decision

1. Pursuant to Rule 84(1) EPC, 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. According to Rule 100(1) EPC, Rule 84(1) EPC also applies in opposition-appeal proceedings.

2. If no request for continuation of the proceedings is filed within the set time period 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 are terminated.

3. In the present case, the communication dated 17 January 2020 informing of the lapse within the meaning of Rule 84(1) EPC was deemed to be delivered to the appellant on 27 January 2020 (Rule 126(2) EPC). Thus, the period of two months for requesting continuation of the appeal proceedings ended on 27 March 2020 (Rule 131(2), (4) EPC). No request for continuation of the appeal proceedings was received within the set time period or within the period under Rule 133(1) EPC. Furthermore, the board sees no reason to continue the 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:



N. Maslin

M. O. Müller

Decision electronically authenticated