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**Datasheet for the decision
of 4 August 2022**

Case Number: T 1582/18 - 3.3.08

Application Number: 10181534.8

Publication Number: 2322664

IPC: C12Q1/689

Language of the proceedings: EN

Title of invention:

Methods and sequences for the detection and identification of methicillin-resistant Staphylococcus aureus MREJ type vi strains

Patent Proprietor:

Genehm Sciences Canada, Inc.

Opponents:

Beckman Coulter, Inc.
R-Biopharm AG

Headword:

Detection methicillin-resistant Staphylococcus aureus/GENE OHM SCIENCES CANADA

Relevant legal provisions:

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

Keyword:

Decisions cited:

T 1905/16

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1582/18 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 4 August 2022

Appellant I: Geneohm Sciences Canada, Inc.
(Patent Proprietor) 2555 Boul. du Parc Technologique
Québec, QC G1P 4S5 (CA)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Appellant II: Beckman Coulter, Inc.
(Opponent 1) 250 S. Kraemer Boulevard
Brea, CA 92821 (US)

Representative: Boulton Wade Tennant LLP
Salisbury Square House
8 Salisbury Square
London EC4Y 8AP (GB)

Party as of right: R-Biopharm AG
(Opponent 2) An der neuen Bergstrasse 17
64297 Darmstadt (DE)

Representative: Hertin und Partner
Rechts- und Patentanwälte PartG mbB
Kurfürstendamm 54/55
10707 Berlin (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
6 April 2018 concerning maintenance of the
European Patent No. 2322664 in amended form.**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: P. Julià
 D. Rogers

Summary of Facts and Submissions

- I. European patent no. 2 322 664 is based on European patent application no. 10 181 534.8, a divisional application of the earlier European patent applications nos. 09 174 581.0 and 02 740 158.7 (published as EP 2 236 621 and EP 1 397 510, respectively), the latter application being originally filed under the PCT and published as International patent application WO 02/099034. The patent was granted with 14 claims.
- II. Two oppositions were filed on the grounds set forth in Articles 100(a), 100(b) and 100(c) EPC. The opposition division considered the main request and auxiliary request 1 to contravene Articles 76(1) and 123(2) EPC and auxiliary request 2 to fulfil all requirements of the EPC. The patent was thus maintained in amended form based on this auxiliary request 2.
- III. Appeals were lodged by the patent proprietor and the opponent 01 (appellants I and II, respectively). Both appellants replied to their respective statements of grounds of appeal and, as an auxiliary measure, requested oral proceedings. There were no submissions on file from opponent 02 (party as of right).
- IV. The board summoned the parties to oral proceedings scheduled for 7 February 2023.
- V. In a communication pursuant to Article 17 of the Rules of Procedure of the Boards of Appeal (RPBA 2020), the board informed the parties that, at the date of the scheduled oral proceedings, the patent in suit would have lapsed in all Contracting States and that, according to Rule 84(1) EPC - which was also applicable

in appeal proceedings against a decision of the opposition division (Rule 100(1) EPC), the opposition proceedings could be continued at the request of the opponents.

The parties were also informed that, according to the case law of the Boards of Appeal of the EPO, if - as in the present case - the patent proprietor was an appellant, Rule 84(1) EPC applied also *mutatis mutandis* to the patent proprietor (cf. "Case Law of the Boards of Appeal of the EPO", 9th edition 2019, III.Q.1.2, 887, in particular, III.Q.1.2.2, 888).

The parties were further informed that, unless a request for continuation of the proceedings was filed within two months from notification of the board's communication, the appeal proceedings would be discontinued, the scheduled oral proceedings for 7 February 2023 would be cancelled, and the board would take the decision to terminate the present appeal proceedings. In this context, reference was made to the decision T 1905/16 of 16 November 2020.

- VI. In reply, appellant II consented in the appeal being discontinued, withdrew the appeal and requested a 50% refund of the appeal fee (Rule 103(3)(b) EPC).

- VII. Appellant I neither replied to the board's communication nor made a request for a continuation of the appeal proceedings. No submissions were made by the party as of right.

Reasons for the Decision

Since no request for continuation of the appeal proceedings has been received (Rules 84(1) and 100(1) EPC), the oral proceedings scheduled for 7 February 2023 are cancelled and the board decides to terminate the present appeal proceedings.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



L. Malécot-Grob

T. Sommerfeld

Decision electronically authenticated