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Einschreiben/ Registered Letter

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Date : 28.04.2017

Legal File No.: R78-266
Patent No. EP 2485864
Patent proprietor: Tomologic AB
Your ref. BY193PE

**COMMUNICATION CONCERNING THE STAYING OF PROCEEDINGS
UNDER RULE 78(1) EPC**

With reference to your request for stay of proceedings filed by fax with the EPO FORM 2300E received by the European Patent Office (EPO) on 10 April 2017, the Legal Division of the EPO informs you as follows:

1. Rule 78(1) EPC stipulates that proceedings for grant before the EPO shall be stayed in the case that a third party provides evidence that he has instituted proceedings against the applicant/proprietor seeking a decision within the meaning of Article 61(1) EPC. A decision within the meaning of Article 61(1) EPC is a final decision adjudging that a person other than the applicant/ proprietor is entitled to the grant of the European patent. Thus the European patent is the subject of national entitlement proceedings within the meaning of Article 61 EPC and Rule 78EPC.

2. Therefore in order to enable the Legal Division to decide on the applicability of Rule 78 EPC evidence need to be filed from which it can be clearly derived that entitlement proceedings against the proprietor of the above mentioned patent are pending before a competent national court.

2.1 However the filed acknowledgment of receipt of the writ of summons dated 01.01.2017 confirms only the filing of nullity plea proceedings against European patent 2 485864 (Prozessnummer O2017_002) and does not mention that entitlement proceedings against the proprietor has been initiated before the Swiss Federal Patents Court.

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2.2 You are invited to clarify the situation and to file appropriate evidence proving the pendency of entitlement proceedings within the meaning of Article 61 EPC and Rule 78EPC against the proprietor Tomologic AB concerning the above mentioned patent.

3. As the conditions of Rule 78(1) EPC are consequently not fulfilled, the Legal Division considers that the proceedings before the EPO cannot be stayed with respect to the above-mentioned European patent.


4. You are requested to remedy the aforementioned deficiencies and file the relevant evidence within a time limit of two months from notification of this communication otherwise the document shall be deemed not to have been received.

Right to be heard (Art. 113 EPC)

Should you have any objections to the findings of the Legal Division, you are invited to file your comments within two months from the date of the notification of this communication.

Responsibility

The Legal Division is solely responsible for the procedure where the applicant is not entitled (OJ EPO 12/2013, p. 600). Please therefore address all relevant correspondence directly to the Legal Division citing the abovementioned legal file number.



p.o. Lydia Cassar
Legal Division