De Clercq & partners
intellectual property

European Patent Office
80298 München
Germany

Sint-Martens-Latem, January 26, 2018

Online filing **URGENT**

Our ref. : TBI-2771468-OPP
Re. : Appeal against Decision in Opposition
against European Patent no. 2 771 468 B1
In the name of The Broad Institute, Inc., Massachusetts Institute of Technology, President and Fellows of Harvard College

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Dear Madam, Dear Sir,

Further to our Notice of Appeal filed on 18 January 2018 and letter of 24 January 2018, we kindly request that the present appeal proceedings are accelerated.

Although the reasons for the Opposition Division's decision are not yet available, the Opposition Division announced during the Oral Proceedings their conclusion that the patent is not formally entitled to the priority of P1, P2, P5 and P11 (based on the so called "same applicant" case law). The Patentees *inter alia* argued for a reassessment of the law with respect to the jurisdiction of the EPO to assess priority entitlement as well as the current interpretation of the EPC and the Paris Convention by the EPO in this regard. The conclusion on priority entitlement was key to the Opposition Division's decision to revoke the patent for lack of novelty over two references that were published only after the second priority date claimed.

The validity of the claim to priority entitlement will be central to the present appeal proceedings, as will be set out in the statement of grounds for the appeal. The importance of this issue is illustrated by the fact that all of the Opponents as well as the Patentees requested the issue of formal entitlement to priority be heard first at the oral proceedings before the Opposition Division, which request was granted.

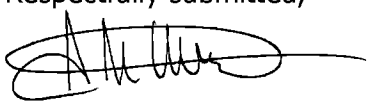
The same questions of law, and the same factual situation that forms the basis of the Opposition Division's finding on the formal entitlement to priority in the present case, also arises in opposition proceedings pending in relation to at least five patents in the same family. Also, it appears that the Opponents are largely identical between this appeal case and the other opposition proceedings. These other opposition proceedings concern the European patents EP 2 896 697, EP 2 784 162, EP 2 921 557, EP 2 931 898 and EP 2 764 103. In all of these opposition proceedings the same or nearly the same objections for lack of formal entitlement to priority to P1, P2, P5 and P11 have been raised by the Opponents.

The outcome of the present appeal proceedings will therefore be crucial to these other opposition proceedings, and therefore a stay is being requested by the Patentees in these other proceedings. An early decision in the present appeal proceedings will significantly enhance procedural economy for these other opposition cases, especially in the event of a stay. Therefore all parties and the public have a strong interest in the accelerated handling of the appeal (see e.g., decision T 734/12, point 5 of the reasons). Additionally, the present patent as well as the patents that are the subject of the other opposition proceedings mentioned above are part of a patent portfolio for which there is a strong interest from potential licensees. The outcome of the present appeal will directly affect the decision taken by these parties as to whether or not to take a license (cf. Notice from the Vice-President Directorate-General 3 dated 17 March 2008 concerning accelerated processing before the boards of appeal, OJ EPO 2008, 220).

The Patentees intend to file their statement of grounds as quickly as possible once the written decision of the Opposition Division has become available.

We respectfully request that a decision be communicated to us on accelerating this appeal in the near future.

Respectfully submitted,



Mrs. DE CLERCQ, Ann
Professional Representative before the EPO