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File Number: J 29/92 - 3.1.1

Application No.: 92 201 931.0

Publication No.:

Title of invention:

Classification:

**Bis zur Veröffentlichung
der Anmeldung nur für den
internen Gebrauch.**

D E C I S I O N
of 9 December 1992

Applicant: Merck Sharp & Dohme Limited

Headword: Premature appeal inadmissible/MERCK

EPC Article 106(1)

Keyword: Appeal inadmissible where no decision



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Boards of Appeal

Chambres de recours

Case Number : J 29/92 - 3.1.1

D E C I S I O N
of the Legal Board of Appeal 3.1.1
of 9 December 1992

Appellant : Merck Sharp & Dohme Limited
Hertford Road
Hoddesdon
Hertfordshire EN11 9BU (GB)

Representative : Mrs J.D. Barrett-Major
Merck & Co., Inc.
European Patent Department
Terlings Park
Eastwick Road
Harlow
Essex CM20 2QR (GB)

Decision under appeal : None (purportedly appeal is against communication of 5 August 1992 of Receiving Section).

Composition of the Board :

Chairman : O. Bossung
Members : S. Perryman
J.-C. De Preter

Summary of Facts and Submissions

- I. European Patent application No. 92 201 931.0 was filed on behalf of the Appellants on 27 June 1992, claiming priority from three GB applications dated 5 July 1991, 10 July 1991 and 3 March 1992 respectively. By letter dated 26 June, received 30 June 1992, the Appellants requested:
- (a) that page 12 as originally filed be cancelled, and replaced with the corresponding revised page enclosed with that letter and
 - (b) that the application as modified by the enclosed replacement page, be accorded a new filing date corresponding to the date of receipt of the replacement page, while retaining the benefit of its claimed priority date of 5 July 1991.
- II. In a communication on EPO-FORM 1063 dated 5 August 1992 the Receiving Section informed the Appellants that the amendments to the European patent application which were filed on 30 June 1992 could not be accepted since they were filed prior to the Appellants' receipt of the search report (Rule 86(1) EPC); and that the requested new date of filing for the application, namely the date of receipt, 30 June 1992, of the replacement page 12, could not be accorded.
- III. On the 13 August 1992 a telephone call was made on behalf of the Appellants to the Receiving Section to protest against the non-acceptance of a new filing date, notified in the communication of 5 August 1992. The Appellants were advised over the telephone that they could request an appealable decision. No request for such a decision was filed.

IV. By letter dated 19 August 1992, received on 26 August 1992, the Appellants filed an appeal against the "decision" of the Receiving Section of 5 August 1992, requesting cancellation of the "decision" and requesting that the subject case be accorded a filing date corresponding to the date of receipt of the replacement page, incorrectly stated as "27 June 1992". The appeal fee was paid and the Statement of Grounds of the Appeal was filed at the same time.

Reasons for the Decision

1. Article 106(1) EPC provides that an appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. The EPC makes no other provision for appeals to lie, so that for an appeal to be admissible there must first have been a decision.
2. In the present case there has merely been a communication from the Receiving Section. There have been no decisions of any kind. The appeal here is thus premature and must be dismissed as inadmissible under Rule 65(1) EPC.
3. Rule 67 EPC does not allow the reimbursement of the appeal fee if the appeal has to be rejected as inadmissible.

Order

For these reasons, it is decided that:

1. The appeal is rejected as inadmissible.

2. The request for reimbursement of the appeal fee is rejected.

The Registrar:

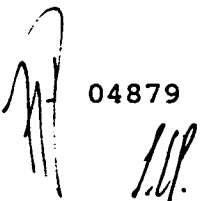


M. Beer

The Chairman:



O. Bossung



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