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D E C I S I O N
of 7 October 2002

Case Number: T 0282/01 - 3.3.4

Application Number: 92913153.0

Publication Number: 0584266

IPC: C12N 15/86

Language of the proceedings: EN

Title of invention:

Recombinant virus expressing carcinoembryonic antigen and methods of use thereof

Applicant:

THE GOVERNMENT OF THE UNITED STATES OF AMERICA as represented by the SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Opponent:

-

Headword:

Carcinoembryonic antigen/US GOVERNMENT

Relevant legal provisions:

EPC R. 89

Keyword:

"Correction of the order of the decision - allowability -yes"

Decisions cited:

T 0850/95

Catchword:

-



Case Number: T 0282/01 - 3.3.4

D E C I S I O N
of 7 October 2002
correcting the decision of the Technical Board of Appeal 3.3.4
of 17 July 2002

Appellant:
(Applicant)

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
as represented by the SECRETARY OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
National Institute of Health
Office of Technology Transfer
Westwood Building
Box 0TT
Bethesda, MD 20892-9902 (US)

Representative:

Brown, David Leslie
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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 13 October 2000
refusing European patent application
No. 92 913 153.0 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairwoman: U. M. Kinkeldey
Members: F. L. Davison-Brunel
S. U. Hoffmann

Summary of Facts and Submissions

- I. The present decision concerns the correction under Rule 89 EPC of the decision dated 17 July 2002, taken in the case T 0282/01 concerning European patent application No. 92 913 153.0.
- II. The appellant filed pages 1 to 44 of the description at the oral proceedings on 17 July 2002 in order to adapt the original filed description to the wording of the claims found allowable by the Board. The newly filed description was based on a copy of the originally filed description. The amendments were made in handwriting and only concerned certain pages whereas the remainder was supposed to stay unamended. This amended version of the description was the subject-matter of the order of the Board's decision announced at the end of the oral proceedings.
- III. By fax of 15 August 2002, received on the same day, the appellant submitted that line 17 on page 27 of the description allowed at the oral proceedings was unclear, because the faint crossing-out of the part "out" of the word "without" was not correct and had not been presented as a voluntary amendment. The appellant's representative explained that the text he had available at the oral proceedings had some time previously been annotated at line 17 of page 27, to remind him to check with the applicant whether the amendment was required. The applicant had in fact advised that the original wording "without" was correct, so that no amendment was required. However the annotation was still present in the representative's copy, so that when a copy was made and filed by the representative at oral proceedings the annotation was

also inadvertently included.

The appellant requested that the official record be clarified in this regard.

Reasons for the decision

1. The minutes of the oral proceedings of 17 July 2002 refer *inter alia* to page 27 of the description as it was in fact filed at oral proceedings containing the faint crossing-out of the part "out" of the word "without" in line 17. Therefore, the minutes correctly record the appellant's request and the order of the decision announced at oral proceedings. Insofar no clarification or correction is allowable. However, the appellant's request for clarification of the official record has to be interpreted as a request for correction of the decision under Rule 89 EPC.

2. The requested correction is allowable under Rule 89 EPC if it relates to a linguistic error, error of transcription or obvious mistake in the decision made by the Board. In the present case, the mistake was made by the appellant and the decision is correctly based on the documents filed by the appellant. However, this conclusion is incomplete since the appellant's mistake was inadvertently adopted by the Board. In respect of the description, the order of the decision refers to the pages filed by the appellant at the oral proceedings. By this reference this wording of page 27 containing the appellant's unnoticed mistake became an integral part of the decision in the same way as if it was repeated in the decision itself (cf. point 2 in the

reasons of the decision T 850/95, dated 12 July 1986). It follows from this that an error in the description may be corrected under Rule 89 EPC.

3. The real intention of the Board was to issue a decision without any amendment on page 27 of the description with regard to the original filed page 27. The members of the Board did not notice the faint crossing-out of the part "out" of the word "without" in line 17 of page 27 of the copy of the description filed by the appellant at the oral proceedings and did not intentionally decide on this amendment but rather intended to establish the wording according to page 27 of the description originally filed. This mistake was obvious since an amendment of page 27 was never requested and at no time the subject-matter of the proceedings. Therefore, the requirements of Rule 89 EPC are fulfilled and a correction of the decision of 17 July 2002 as requested is allowable.

Order

For these reasons it is decided that:

The order of the decision of 17 July 2002 is corrected as follows:

In point 2(c) the wording "description pages 1 to 44" is replaced by the wording "description pages 1 to 26 and 28 to 44";

in point 2(d) in front of the wording "drawings as originally filed" the wording "page 27 and" is added.

The Registrar:

The Chairwoman:

P. Cremona

U. Kinkeldey