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D E C I S I O N
of 27 April 2001

Case Number: T 0354/01 - 3.3.4

Application Number: 91307750.9

Publication Number: 0472434

IPC: C12N 15/11

Language of the proceedings: EN

Title of invention:

Antisense oligonucleotides complementary to the macromolecular synthesis operon of bacteria, and their uses in diagnosis and therapy

Applicant/Patentee:

BAYLOR COLLEGE OF MEDICINE, et al

Opponent:

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Headword:

Antisense oligonucleotides/BAYLOR COLLEGE

Relevant legal provisions:

EPC Art. 108

EPC R. 67

Keyword:

"Appeal withdrawn"

"Reimbursement of appeal fee"

Decisions cited:

J 0012/86, T 0041/82

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0354/01 - 3.3.4

D E C I S I O N
of the Technical Board of Appeal 3.3.4
of 27 April 2001

Appellant: BAYLOR COLLEGE OF MEDICINE
One Baylor Plaza
Houston
TX 77030 (US)

Representative: Wise, Stephen James
c/o RAWORTH MOSS & COOK
36 Sydenham Road
Croydon
Surrey CR0 2EF (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 6 September 2000
refusing European patent application
No. 91 307 750.9 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: U. M. Kinkeldey
Members: S. Hoffmann
A. Marie

Summary of Facts and Submissions

- I. On November 2000, the applicant filed a notice of appeal against the decision of the Examining Division posted on 6 September 2000, by which the European Patent Application No. 91 307 750.9 was refused. The fee for the appeal was paid at the same day.
- II. By letter received on 16 January 2001, the applicants withdrew the appeal and further stated that they "consider that the applicants are entitled to a refund of the appeal fee since no processing of this appeal had yet commenced." No grounds for the appeal were submitted.

Reasons for the Decision

1. The words "the applicants are entitled to a refund" used by the appellants (see above Section II) express in the boards view a request to order the refund of the appeal fees.
2. The present appeal was withdrawn from consideration by the board of appeal in respect of admissibility and allowability, but the board of appeal still has to take a decision on the issue of this request in the exercise of its inherent power to decide any request made to it which arises out of the appeal (T 41/82 OJ EPO 1982, 256 and J 12/86 OJ EPO 1988, 083).
3. Reimbursement can be ordered in a case in which no notice of appeal is filed within the time limit prescribed by Article 108 EPC because the appeal has never existed.

4. In the present case in due time the notice of appeal was filed and the appeal fees paid. The consequence of the failure to file a statement of grounds of appeal is not that the appeal is regarded as without existence. Rather under Rule 65 EPC the appeal would have to be rejected as inadmissible. Neither has the withdrawal of the appeal the effect that the appeal has to be regarded as without existence, but that the appeal is withdrawn from consideration by the board of appeal and therefore cannot be examined either for admissibility or for allowability. Thus, the appeal existed until it was withdrawn. This leaves no room for allowing the request on the basis mentioned under point 2 above.
5. According to Rule 67 EPC appeal fees shall be reimbursed either in the case of interlocutory revision (Article 109 EPC), or if the board of appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.
6. Interlocutory revision did not take place in the present case so that this alternative of Rule 67 EPC can not serve as a basis for allowing the appellants' request.
7. Equally, the further requirement of Rule 67 EPC that the appeal has to be allowable and a substantial procedural violation has occurred are obviously not fulfilled.
8. A reason given by the appellants in their letter of 16 January 2001 for the allowability of their request to refund the appeal fees was that "no processing of this appeal had yet commenced" (see section II above).

By this the appellants seem to imply that in such circumstances the possibility was not excluded that the appeal fees were to be refunded without an express provision in the EPC.

9. This board agrees with the position taken in decision T 41/82 (loc. cit., point 4) that the restrictive language of Rule 67 EPC is plainly inconsistent with the idea that a board of appeal has a wide discretion to order reimbursement of appeal fees.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee made in the appellants' letter dated 16 January 2001 is rejected.

The Registrar:

The Chairwoman:

P. Martorana

U. Kinkeldey

1. The first part of the report is a general introduction to the subject of the study. It discusses the importance of the study and the objectives of the research.

2. The second part of the report is a detailed description of the methodology used in the study. It includes information about the sample size, the data collection methods, and the statistical analysis techniques.

3. The third part of the report is a discussion of the results of the study. It compares the findings with previous research and discusses the implications of the study for practice and policy.