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D E C I S I O N
of 28 June 2005

Case Number: T 0639/02 - 3.3.8

Application Number: 91913039.3

Publication Number: 0589877

IPC: C12N 7/01

Language of the proceedings: EN

Title of invention:

Methods for producing functional, single-chain Fv antibody fragments on the surface of bacteriophage particles

Patentee:

Cambridge Antibody Technology Limited, et al

Opponents:

Dyax Corp.
BioInvent Therapeutic AB
Morphosys Gesellschaft für Proteinoptimierung mbH

Headword:

Antibody fragments/CAT

Relevant legal provisions:

EPC Art. 108
EPC R. 65(1)

Keyword:

"Missing statement of grounds"

Decisions cited:

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Catchword:

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Case Number: T 0639/02 - 3.3.8

D E C I S I O N
of the Technical Board of Appeal 3.3.8
of 28 June 2005

Appellant: Dyax Corp.
(Opponent 01) 300 Technology Square
Cambridge, MA 02139 (US)

Representative: Ritter, Stephen David
Mathys & Squire
120 Holborn
London EC1N 2SQ (GB)

Respondent: Cambridge Antibody Technology Limited
(Proprietor of the patent) The Science Park
Melbourn,
Cambridgeshire SG8 6EJ (GB)

Representative: Paget, Hugh Charles Edward
Mewburn Ellis LLP
York House
23 Kingsway
London WC2B 6HP (GB)

Other Party: BioInvent Therapeutic AB
(Opponent 02) S-223 70 Lund (SE)

Representative: Thomas, Philip John Duval
Eric Potter Clarkson
Park View House
58 The Ropewalk
Nottingham NG1 5DD (GB)

Other Party: Morphosys Gesellschaft für
(Opponent 04) Proteinoptimierung mbH
Frankfurter Ring 193a
D-80807 München (DE)

Representative: VOSSIUS & PARTNER
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D-81675 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
15 April 2002 concerning maintenance of
European patent No. 0589877 in amended form.

Composition of the Board:

Chairman: L. Galligani
Members: M. R. Vega Laso
C. Rennie-Smith

Summary of Facts and Submissions

- I. The patentee (respondent), opponent 01 (appellant), opponent 02 and opponent 04 each filed an appeal against the interlocutory decision of the opposition division dated 15 April 2002, by which decision the European patent No. 0 589 877 (European application No. 91 913 039.3) was maintained in amended form pursuant to Articles 102(3) and 106(3) EPC. Opponent 03 had withdrawn its opposition during the proceedings before the opposition division.
- II. In a letter of 30 September 2003, opponent 04 withdrew from the appeal proceedings. In a further letter dated 17 October 2003, the opponent indicated that it withdrew also its opposition.
- III. On 2 June 2005, opponent 02 withdrew its appeal and opposition.
- IV. The patentee withdrew its appeal on 6 June 2005.
- V. The present appellant (opponent 01) had filed a notice of appeal on 17 June 2002 and paid the appeal fee on the same day. No statement of grounds of appeal was filed.
- VI. By a communication dated 21 October 2002 sent by registered letter with advice of delivery, the appellant was informed that no statement of grounds of appeal had been filed and that, therefore, it was to be expected that the appeal would be rejected as inadmissible. The appellant was invited to file observations within two months. Attention was also

drawn to Article 122 EPC. The appellant did not reply to said communication, and no request for re-establishment of rights was filed.

Reasons for the Decision

As no written statement setting out the grounds of appeal has been filed, and as the notice of appeal does not contain any statements that could be regarded as a statement of grounds of appeal pursuant to Article 108 EPC, the sole pending appeal of opponent 01 has to be rejected as inadmissible (Article 108 EPC in conjunction with Rule 65(1) EPC).

Order

For these reasons it is decided that:

The appeal of opponent 01 is rejected as inadmissible.

The Registrar:

The Chairman:

A. Wolinski

L. Galligani