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**D E C I S I O N**  
**of 23 October 2003**

**Case Number:** T 0527/03 - 3.3.4

**Application Number:** 93902914.6

**Publication Number:** 0626861

**IPC:** A61K 39/395

**Language of the proceedings:** EN

**Title of invention:**  
Treatment for asthma

**Patentee:**  
BIOGEN, INC.

**Opponent:**  
Neumann Lydia Ellen  
Celltech Therapeutics Ltd  
Cytel Corporation

**Headword:**  
Treatment for asthma/BIOGEN

**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 0527/03 - 3.3.4

**DECISION**  
of the Technical Board of Appeal 3.3.4  
of 23 October 2003

**Appellant:** BIOGEN, INC.  
(Proprietor of the patent) 14 Cambridge Center  
Cambridge  
Massachusetts 02142 (US)

**Representative:** Wichmann, Hendrik, Dr  
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**Respondent I:** Neumann Lydia Ellen  
(Opponent) Manthalstrasse 15  
D-82335 Berg (DE)

**Representative:** Kador & Partner  
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**Respondent II:** Celltech Therapeutics Ltd  
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**Representative:** Mercer, Christopher Paul  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
13 February 2003 concerning maintenance of  
European patent No. 0626861 in amended form.

**Composition of the Board:**

**Chairwoman:** U. Kinkeldey  
**Members:** R. Gramaglia  
R. Moufang

## Summary of Facts and Submissions

- I. The appellant (patentee) filed a notice of appeal on 22 April 2003 and paid the fee for appeal on the same day. He requested that the interlocutory decision of the Opposition Division dated 13 February 2003 concerning maintenance of European patent No. 0 626 861 in amended form be set aside and that the patent be maintained on the basis of the main request filed at the oral proceedings of 2 October 2002. As an auxiliary request he asked for oral proceedings.
- II. No statement of grounds was filed. The notice of appeal contains nothing that could be regarded as a statement of grounds pursuant to Article 108 EPC.
- III. By communication dated 30 July 2003 sent by registered letter with advice of delivery, the registry of the Board informed the appellant that no statement of grounds had been filed and that the appeal could be expected to be rejected as inadmissible. The appellant was invited to file observations within two months. Attention was also drawn to Article 122 EPC.
- IV. On 17 October 2003 the registrar of the Board phoned the representative of the appellant and asked him to confirm whether or not he had ever filed observations to the communication dated 30 July 2003. The representative of the appellant confirmed that no observations had been filed. He also confirmed that he had not filed a written statement setting out the grounds of appeal.

V. By letter dated 22 October 2003 the appellant withdrew the request for oral proceedings.

**Reasons for the Decision**

As no written statement setting out the grounds of appeal has been filed, the appeal has to be rejected as inadmissible (Rule 65(1) EPC in conjunction with Article 108 EPC).

**Order**

**For these reasons it is decided that:**

The appeal is rejected as inadmissible.

The Registrar:

The Chairwoman:

P. Cremona

U. Kinkeldey