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D E C I S I O N
of 27 September 2004

Case Number: T 0595/03 - 3.3.8

Application Number: 88309194.4

Publication Number: 0314317

IPC: C12N 15/00

Language of the proceedings: EN

Title of invention:

Adhesion variants, nucleic acid encoding them and compositions comprising them

Patentee:

Genentech Inc.

Opponents:

BIOGEN Inc.
Genetics Institute, LLC

Headword:

Adhesion variants/GENENTECH

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 0595/03 - 3.3.8

D E C I S I O N
of the Technical Board of Appeal 3.3.8
of 27 September 2004

Appellant: Genetics Institute, LLC
(Opponent 02) 87 Cambridge Park Drive
Cambridge, MA 02140 (US)

Representative: Tomlinson, Edward James
Frohwitter
Patent- und Rechtsanwälte
Possartstrasse 20
D-81679 München (DE)

Respondent: Genentech Inc.
(Proprietor of the patent) 1 DNA Way
South San Francisco,
CA 94080-4990 (US)

Representative: Walton, Sean M.
MEWBURN ELLIS LLP
York House
23 Kingsway
London WC2B 6HP (GB)

Other Party: BIOGEN Inc.
(Opponent 01) 14 Cambridge Center
Cambridge, MA 02142 (US)

Representative: Adams, Harvey V. J.
Mathys & Squire
100 Gray's Inn Road
London WC1X 8AL (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
11 March 2003 concerning maintenance of
European patent No. 0314317 in amended form.

Composition of the Board:

Chairman: L. Galligani
Members: T. J. H. Mennessier
M. B. Günzel

Summary of Facts and Submissions

- I. The patentee (respondent), opponent 01 and opponent 02 (appellant) each filed an appeal against the decision of the opposition division dated 11 March 2003 concerning maintenance of the European patent No. 0 314 317 in amended form pursuant to Articles 102(3) and 106(3) EPC.
- II. With a letter of 2 July 2003, opponent 01 withdrew its opposition.
- III. With a letter of 6 September 2004, the patentee withdrew its appeal.
- IV. The appellant had filed a notice of appeal on 13 May 2003 and had paid the appeal fee on the same day. No statement of grounds of appeal was filed.
- V. By a communication dated 18 August 2003 sent by registered letter with advice of delivery, the registry of the board informed the appellant that no statement of grounds of appeal had been filed and that, therefore, the appeal had to be rejected as inadmissible. The appellant was invited to file observations within two months and attention was drawn to the possibility of filing a request for re-establishment of rights under Article 122 EPC. The appellant did not reply to said communication.

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 anything that could be regarded as a statement of grounds of appeal according to Article 108 EPC, the sole pending appeal of opponent 02 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 02 is rejected as inadmissible.

The Registrar:

The Chairman:

A. Wolinski

L. Galligani