

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

D E C I S I O N
of 23 June 2004

Case Number: T 0656/03 - 3.3.8

Application Number: 91901327.6

Publication Number: 0506757

IPC: C12N 15/12

Language of the proceedings: EN

Title of invention:

A recombinant human factor VIII derivative

Patentee:

BIOVITRUM AB

Opponent:

Chiron Corporation

Headword:

-

Relevant legal provisions:

EPC Art. 108

EPC R. 65(1)

Keyword:

"Missing statement of grounds"

Decisions cited:

-

Catchword:

-



Case Number: T 0656/03 - 3.3.8

D E C I S I O N
of the Technical Board of Appeal 3.3.8
of 23 June 2004

Appellant I: Chiron Corporation
(Opponent) 4560 Horton Street
Emeryville
California 94608-2916 (US)

Representative: Hallybone, Huw George
Carpmaels & Ransford
43, Bloomsbury Square
London WC1A 2RA (GB)

Appellant II: BIOVITRUM AB
(Proprietor of the patent) S-112 76 Stockholm (SE)

Representative: Dörries, Hans Ulrich, Dr.
Dörries Frank-Molnia Pohlman
Postfach 22 16 61
D-80506 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
4 April 2003 concerning maintenance of European
patent No. 0506757 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 opponent (appellant I) filed on 30 April 2003 a notice of appeal against the decision of the opposition division dated 4 April 2003 concerning maintenance of the European Patent No. 506 757 in amended form pursuant to Articles 102(3) and 106(3) EPC. He paid the appeal fee on the same day. Oral proceedings were requested under Article 116 EPC prior to any written decision being issued which was adverse to the opponent. No statement of grounds of appeal was filed within the time limit set by Article 108 EPC.
- II. By a communication dated 17 November 2003 sent by registered letter with advice of delivery, the Registry of the Board informed appellant I that no statement of grounds had been filed and that therefore the appeal had to be rejected as inadmissible. Appellant I 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. Appellant I was also asked on behalf of the Board to indicate whether or not he requested oral proceedings for the purpose of the discussion of the above mentioned deficiency. His attention was drawn to the fact that after a rejection of his appeal as inadmissible, he would remain a party as of right to the appeal proceedings, in view of the appeal filed by the patent proprietor (appellant II). In response to the board's communication, by letter of 14 January 2004, appellant I confirmed that his request for oral proceedings did not extend to any discussion of the deficiencies noted in the Board's communication of 17 November 2003.

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 appeal 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 appellant I (opponent) is rejected as inadmissible.

The Registrar:

The Chairman:

A. Wolinski

L. Galligani