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**D E C I S I O N
of 9 March 2004**

Case Number: T 0955/03 - 3.3.4
Application Number: 94907826.5
Publication Number: 0680517
IPC: C12Q 1/68
Language of the proceedings: EN

Title of invention:

Methods and diagnostic kits utilizing mammalian stress promoters to determine toxicity of a compound

Patentee:

PRESIDENT AND FELLOWS OF HARVARD COLLEGE, et al

Opponents:

AstraZeneca AB
AstraZeneca UK Limited
Amersham Pharmacia Biotech (UK) Ltd
Digital Gene Technologies, Inc.
SmithKline Beecham plc
Hyseq Inc.
MONSANTO COMPANY

Headword:

Stress promoters/HARVARD

Relevant legal provisions:

EPC Art. 108
EPC R. 65(1)

Keyword:

"Missing statements of grounds"

Decisions cited:

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Catchword:

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Case Number: T 0955/03 - 3.3.4

D E C I S I O N
of the Technical Board of Appeal 3.3.4
of 9 March 2004

Appellant I: PRESIDENT AND FELLOWS OF HARVARD COLLEGE
(Proprietor of the patent) 124 Mount Auburn Street
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Fourth Floor South
Cambridge
Massachusetts 02138 (US)

and
XENOMETRIX, INC.
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Colorado 80301 (US)

Representative: VOSSIUS & PARTNER
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Appellant II: AstraZeneca AB
(Opponent 01) S-151 85 Södertälje (SE)

Representative: Gainey, Laurence David Scott
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Global Intellectual Property
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Alderley Park
Macclesfield
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Appellant III: AstraZeneca UK Limited
(Opponent 02) 15 Stanhope Gate
London W1Y 6LN (GB)

Representative: Gainey, Laurence David Scott
AstraZeneca PLC
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Cheshire SK10 4TG (GB)

Respondent: Amersham Pharmacia Biotech Ltd
(Opponent 03) Amersham Place
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Buckinghamshire HP7 9NA (GB)

Representative: Bassett, Richard Simon
Eric Potter Clarkson
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Respondent: Digital Gene Technologies, Inc.
(Opponent 04) 11149 North Torrey Pines Road
Suite 110
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Representative: Woods, Geoffrey Corlett
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Respondent: SmithKline Beecham plc
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Representative: Blakey, Alison Jane
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Respondent: Hyseq Inc.
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Representative: Silveston, Judith
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Respondent: MONSANTO COMPANY
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Representative: Voelker, Ingeborg Carla Emmy
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
16 May 2003 concerning maintenance of European
patent No. 0680517 in amended form.

Composition of the Board:

Chairwoman: U. M. Kinkeldey
Members: M. R. J. Wieser
S. C. Perryman

Summary of Facts and Submissions

I. The appeals contest the interlocutory decision of the Opposition Division of the European Patent Office dated 16 May 2003 concerning maintenance of European Patent No. 0 680 517 in amended form.

The appellant I (patentee) filed a notice of appeal on 25 July 2003 and paid the fee for appeal on the same day.

The appellant II (opponent 1) filed a notice of appeal on 16 July 2003 and paid the fee for appeal on the same day.

The appellant III (opponent 2) filed a notice of appeal on 16 July 2003 and paid the fee for appeal on the same day.

By letter dated 26 September 2003 the appellant I (patentee) withdrew the appeal.

No statements of grounds were filed by appellants II and III. Their notices of appeal contain nothing that could be regarded as a statement of grounds pursuant to Article 108 EPC.

II. By communications dated 28 October 2003 sent by registered letter with advice of delivery, the registry of the Board informed the appellants II and III that no statement of grounds had been filed and that the appeals could be expected to be rejected as inadmissible.

The appellants were invited to file observations within two months.

Attention was also drawn to Article 122 EPC.

III. In response to an inquiry by the registry of the Board, the representative of appellants II and III confirmed by fax dated 5 March 2004 that the communications of 28 October 2003 had been received, that no Statement of Grounds or requests under Article 122 EPC had been filed by these appellants.

Reasons for the Decision

As no written statements setting out the grounds of appeal have been filed, the appeals of appellants II and III have to be rejected as inadmissible (Rule 65(1) EPC in conjunction with Article 108 EPC).

Order

For these reasons it is decided that:

The appeals of appellants II and III are rejected as inadmissible.

The Registrar:

The Chairwoman:

P. Cremona

U. Kinkeldey