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D E C I S I O N
of 18 April 2005

Case Number: T 0939/04 - 3.3.8

Application Number: 93902138.2

Publication Number: 0620850

IPC: C12N 15/00

Language of the proceedings: EN

Title of invention:

Immunogenic detoxified mutants of cholera toxin and of the toxin LT, their preparation and their use for the preparation of vaccines

Patentee:

Chiron S.p.A.

Opponents:

Aventis Pasteur Limited
Peptide Therapeutics Limited

Headword:

Detoxified mutants/CHIRON

Relevant legal provisions:

EPC Art. 108, 122
EPC R. 65(1)

Keyword:

"Missing statement of grounds of appeal"
"Appeal inadmissible (yes)"

Decisions cited:

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Catchword:

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Case Number: T 0939/04 - 3.3.8

D E C I S I O N
of the Technical Board of Appeal 3.3.8
of 18 April 2005

Appellant:
(Opponent 01)

Aventis Pasteur Limited
1755 Steeles Avenue
Toronto
Ontario M2R 3T4 (CA)

Representative:

Williams, Richard Andrew Norman
Hepworth Lawrence Bryer & Bizley
Merlin House Falconry
Court Bakers Lane
Epping
Essex CM16 5DQ (GB)

Respondent:
(Proprietor of the patent)

Chiron S.p.A.
Via Fiorentina, 1
I-53100 Siena (IT)

Representative:

Marshall, Cameron John
Carpmaels & Ransford
43, Bloomsbury Square
London WC1A 2RA (GB)

Other party:
(Opponent 02)

Peptide Therapeutics Limited
321, Cambridge Science Park
Milton Road
Cambridge CB4 4WG (GB)

Representative:

Lawrence, Malcolm Graham
Hepworth Lawrence Bryer & Bizley
Merlin House Falconry
Court Bakers Lane
Epping
Essex CM16 5DQ (GB)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted 23 April 2004
rejecting the oppositions filed against
European patent No. 0620850 pursuant to Article
102(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. Opponent 01 (appellant) filed on 30 June 2004 a notice of appeal against the decision of the opposition division dated 23 April 2004 whereby the oppositions against European Patent No. 0 620 850 with the title "Immunogenic detoxified mutants of cholera toxin and of the toxin LT, their preparation and their use for the preparation of vaccines" were rejected under Article 102(2) EPC. The appeal fee was paid on the same day. No statement of grounds of appeal was filed.
- II. By a communication dated 14 October 2004 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 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. Nor was a request for re-establishment of rights 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 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 is rejected as inadmissible.

The Registrar:

The Chairman:

A. Wolinski

L. Galligani