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**Datasheet for the decision
of 14 March 2007**

Case Number: T 0969/05 - 3.3.02

Application Number: 94920360.8

Publication Number: 0706376

IPC: A61K 9/16

Language of the proceedings: EN

Title of invention:

Anti-angiogenic compositions and methods of use

Patentee:

Angiotech Pharmaceuticals, Inc., et al

Opponents:

Schering AG
Focal, Inc.
Abbott Vascular Devices Limited

Headword:

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Relevant legal provisions:

EPC Art. 107

Keyword:

"Not adversely affected by a decision when not a party to the proceedings leading to that decision"
"Appeal not admissible"

Decisions cited:

G 0003/04

Catchword:

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Case Number: T 0969/05 - 3.3.02

D E C I S I O N
of the Technical Board of Appeal 3.3.02
of 14 March 2007

(Opponent)

Schering AG
D-13342 Berlin (DE)

Representative:

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(Opponent)

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Representative:

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(Opponent)

Abbott Vascular Devices Limited
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Representative:

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Respondent: Angiotech Pharmaceuticals, Inc.
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Vancouver
British Columbia V6T 1Z4 (CA)

Representative: Gowshall, Jonathan Vallance
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
19 April 2005 concerning maintenance of
European patent No. 0706376 in amended form.

Composition of the Board:

Chairman: U. Oswald
Members: J. Willems
J. Riolo

Summary of Facts and Submissions

- I. The subject of the proceedings is the decision of the Opposition Division, dispatched on 19 April 2005, maintaining in amended form European Patent No 0706376 (application 94920360.8).
- II. The proprietors of the patent in suit are Angiotech Pharmaceuticals Inc of Vancouver (Canada) and The University of British Columbia of Vancouver (Canada).
- III. Notices of opposition against the patent were filed by:
Schering AG of Berlin (Opponent I);

Focal Inc. of Lexington (MA), USA (Opponent II);

Inflow Dynamics AG of München (DE) (Opponent III - opposition withdrawn with letter of 16 September 2004);

STS Biopolymers Inc. of Henriette (NY), USA (Opponent IV - opposition withdrawn with letter of 16 January 2004); and

Abbot Vascular Devices Limited of Weydon Lane (UK) (Opponent V, originally named Biocompatibles Ltd.).
- IV. The appellants are:

Conor MedSystems, Inc, 1003 Hamilton Court, Menlo Park, CA 94025, USA (Appellant I)
and

Shajanand Medical Technologies PVT. Ltd., Parsi Street, Daiyedpura, Surat - 395 003 (Gujarat), India (Appellant II).

V. The appellants did not take part in the proceedings before the decision of the Opposition Division was issued.

Appellant I filed a notice of intervention on 28 April 2005 and a notice of appeal on 29 April 2005.

Appellant II filed a notice of intervention and of appeal on 17 June 2005.

VI. In a communication dated 18 November 2005, the Board gave its provisional opinion that an appeal filed by a party who was not a party to the proceedings in first instance would have to be rejected as inadmissible.

VII. Oral proceedings took place on 14 March 2007.

VIII. The appellants argued that their interventions were filed while the proceedings in first instance were still pending because the decision of the Opposition Division was an interlocutory decision and therefore did not end the opposition proceedings.

IX. The proprietors argued that the appeals were inadmissible because the appellants were not parties to the procedure, and that, as such, their interventions were inadmissible. The proprietors further argued that, in any case, the appellants were not parties at the date of notification of the decision under appeal so that they were not adversely affected by it and had no right to appeal from it.

X. Appellant I requested that the case be remitted to the first instance for a decision on the admissibility of the interventions of both appellants; as an auxiliary

request that the Board will decide that opposition proceedings were still pending at the time the interventions were filed and subsequently will remit the case to the first instance to decide on the substantive issues raised in its intervention; more alternatively that 4 questions of law will be referred to the Enlarged Board of Appeal.

- XI. Appellant II requested in writing that the case be remitted to the first instance for an interlocutory decision, allowing a separate appeal, on the admissibility of its intervention; alternatively that its intervention and subsequent appeal will be deemed admissible and that the case be remitted to the first instance in so far as the appellants have raised fresh grounds; more alternatively that a question of law shall be referred to the Enlarged Board of Appeal.
- XII. The proprietors requested that the appeals will be rejected as inadmissible (in writing) or that the appeals be dismissed.

Reasons for the decision

1. Article 107 EPC gives a right to appeal to "any party to proceedings adversely affected by a decision", or in the German and French versions, respectively, "denjenigen (...), die an dem Verfahren beteiligt waren, das zu der Entscheidung geführt hat, (...)" and "toute partie à la procédure ayant conduit à une décision (...) pour autant qu'elle n'ait pas fait droit à ses prétensions".

2. The Enlarged Board of Appeal in decision G 3/04 expressly confirmed that this means that there is no right to appeal for a party not having taken part in the proceedings having led to the contested decision.
3. It is therefore clear that the appellants, who were not parties to the proceedings having led to the decision under appeal, have no right to appeal from this decision.
4. As there is no important question of law at stake in this respect, there is no reason to submit any questions to the Enlarged Board of Appeal.
5. The question of whether the notices of intervention, filed after the decision of the Opposition Division but within two months after the notification of that decision, have produced any effect can be left aside as irrelevant for this decision.
6. Similarly, since the appeal is to be rejected as inadmissible, the request for a referral to the first instance need not be further considered.

Order

For these reasons it is decided that:

The appeals are rejected as inadmissible.

The Registrar:

The Chairman:

A. Townend

U. Oswald