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D E C I S I O N
of 10 May 2005

Case Number: T 1358/05 - 3.3.08

Application Number: 98910147.2

Publication Number: 0968298

IPC: C12N 15/86

Language of the proceedings: EN

Title of invention:

Adenovirus vectors specific for cells expressing
carcinoembryonic antigen and methods of use thereof

Applicant:

CELL GENESYS, INC.

Opponent:

-

Headword:

Adenovirus vectors/GENESYS

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:

-



Case Number: T 1358/05 - 3.3.08

D E C I S I O N
of the Technical Board of Appeal 3.3.08
of 10 May 2005

Appellant:

CELL GENESYS, INC.
342 Lakeside Drive
Foster City
CA 94404 (US)

Representative:

Roques, Sarah Elizabeth
J.A. Kemp & Co.
14 South Square
Gray's Inn
London WC1R 5JJ (GB)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 23 March 2005
refusing European application No. 98910147.2
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: L. Galligani
Members: P. Julià
C. Rennie-Smith

Summary of Facts and Submissions

I. The applicant (appellant) filed on 25 May 2005 a notice of appeal against the decision of the examining division dated 23 March 2005 whereby the European Patent application No. 98 910 147.2 (published as WO-A-98/39467) entitled "Adenovirus vectors specific for cells expressing carcinoembryonic antigen and methods of use thereof" was refused under Article 97(1) EPC for grounds of added subject-matter (Article 123(2) EPC), lack of clarity (Article 84 EPC) and lack of novelty and of inventive step (Articles 54 and 56 EPC, respectively). The appeal fee was paid on the same day. No statement of grounds of appeal was filed within the time limit set by Article 108 EPC.

II. By a communication dated 28 November 2005 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 within the prescribed time limit.

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