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**D E C I S I O N**  
**of 1 August 2006**

**Case Number:** T 0022/06 - 3.3.08

**Application Number:** 94910291.7

**Publication Number:** 0689597

**IPC:** C12N 15/54

**Language of the proceedings:** EN

**Title of invention:**

Use of porcine GAL  $\alpha$ (1.3) galactosyl transferase in xenograft therapies

**Applicant:**

AUSTIN RESEARCH INSTITUTE

**Opponent:**

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**Headword:**

Transferase/AUSTIN

**Relevant legal provisions:**

EPC Art. 108

EPC R. 65(1)

**Keyword:**

"Missing statement of grounds"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0022/06 - 3.3.08

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.08  
of 1 August 2006

**Appellant:** Austin Research Institute  
Krohnheimer Building  
Austin Hospital  
Studley Road  
Heidelberg, VIC 3084 (AU)

**Representative:** Soames, Candida Dr.  
D Young & Co  
120 Holborn  
London EC1N 2DY (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 22 July 2005  
refusing European application No. 94910291.7  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** L. Galligani  
**Members:** F. Davison-Brunel  
C. Rennie-Smith

## **Summary of Facts and Submissions**

- I. The applicant (appellant) filed on 30 September 2005 a notice of appeal against the decision of the examining division dated 22 July 2005 whereby the European Patent application No. 94 910 291.7 (published as EP-A-689597) entitled "Use of porcine GAL  $\alpha(1,3)$  galactosyl transferase in xenograft therapies" was refused under Article 97(1) EPC as it was considered not to meet the requirements of Article 83 EPC. The appeal fee was paid on 30 September 2005. No statement of grounds of appeal was filed within the time limit set by Article 108 EPC.
- II. By a communication dated 8 February 2006 sent by registered letter with advice of delivery, the Registry of the Board of Appeal 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, and no request for re-establishment of rights was 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 any statements that could be regarded as a statement of grounds of appeal pursuant 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