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**Datasheet for the decision
of 6 November 2008**

Case Number: T 0914/06 - 3.3.01

Application Number: 96924367.4

Publication Number: 0848704

IPC: C07D 207/34

Language of the proceedings: EN

Title of invention:

Form III Crystalline R-(R*,R*)
-2-(4-fluorophenyl)-beta-delta-dihydroxy-5-(1-methyl-ethyl)-3-
phenyl-4-(phenylamino)carbonyl-1H-pyrrole-1-heptanoic acid
hemi calcium salt (atorvastatin)

Patentee:

Warner-Lambert Company LLC

Opponent:

Teva Pharmaceutical Industries Ltd.
LEK Pharmaceutical and Chemical Company d.d.

Headword:

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Relevant legal provisions:

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Relevant legal provisions (EPC 1973):

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 0914/06 - 3.3.01

DECISION
of the Technical Board of Appeal 3.3.01
of 6 November 2008

Appellant: Warner-Lambert Company LLC
(Patent Proprietor) 235 East 42nd Street
New York
NY 10017 (US)

Representative: Henkel, Feiler & Hänzel
Patentanwälte
Maximiliansplatz 21
D-80333 München (DE)

Respondent: Teva Pharmaceutical Industries Ltd.
(Opponent) 5 Basel Street
P.O. Box 3190
Petah Tiqva 49131 (IL)

Representative: Gallagher, Kirk James
D Young & Co
120 Holborn
London EC1N 2DY (GB)

Respondent: LEK Pharmaceutical and Chemical Company d.d.
(Opponent) Verovskova 57
SI-1526 Ljubljana (SI)

Representative: TBK-Patent
Bavariaring 4-6
D-80336 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
31 March 2006 concerning maintenance of
European patent No. 0848704 in amended form.

Composition of the Board:

Chairman: P. Ranguis
Members: J.-B. Ousset
D. S. Rogers

Summary of Facts and Submissions

I. The appeal is against the decision of the Opposition Division of the European Patent Office posted 31 March 2006 maintaining the European patent No. 0 848 704 in amended form.

The appellant (patent proprietor) filed a notice of appeal on 12 June 2006 and paid the fee for appeal on the same date. No statement setting out the grounds of appeal was filed. The notice of appeal contains nothing that could be regarded as a statement within the meaning of Article 108 EPC 1973, third sentence.

II. By a communication sent by registered letter with advice of delivery on 14 September 2006 and received by the appellant on 18 September 2006 the Registry of the Board informed the appellant that no statement of grounds had been filed and that the appeal could be expected to be rejected as inadmissible. The appellant was invited to file observations within two months. The attention of the appellant was also drawn to Rule 84a EPC 1973 and to Article 122 EPC 1973.

III. No answer has been given to the Registry's communication.

Reasons for the Decision

No written statement setting out the grounds of appeal has been filed, and the notice of appeal contains nothing that could be regarded as a statement of grounds pursuant to Article 108 EPC 1973. Thus the appeal has to be rejected as

inadmissible pursuant to Rule 65(1) EPC 1973 in conjunction with Article 108 EPC 1973, third sentence.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

M. Schalow

P. Ranguis