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**Datasheet for the decision
of 20 March 2007**

Case Number: T 0058/07 - 3.3.08

Application Number: 90910604.9

Publication Number: 0479870

IPC: C12N 9/50

Language of the proceedings: EN

Title of invention:

A mutated subtilisin protease

Patentee:

Novozymes A/S

Opponent:

Genencor International, Inc.

Headword:

-

Relevant legal provisions:

EPC Art. 108

EPC R. 67

Keyword:

"Wish not to pursue the appeal expressed before expiry of the
two month period for filing a notice of appeal"

"Refund of the appeal fee (no)"

Decisions cited:

J 0012/86

Catchword:

-



Case Number: T 0058/07 - 3.3.08

D E C I S I O N
of the Technical Board of Appeal 3.3.08
of 20 March 2007

Appellant: Novozymes A/S
(Patent Proprietor) Krogshøjvej 36
DK-2880 Bagsvaerd (DK)

Representative: Bassett, Richard Simon
Eric Potter Clarkson LLP
Park View House
58 The Ropewalk
Nottingham NG1 5DD (GB)

Respondent: Genencor International, Inc.
(Opponent) 925 Page Mill Road
Palo Alto
CA 94304-1013 (US)

Representative: Kremer, Simon Mark
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23 Kingsway
London WC2B 6HP (GB)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 29 November 2006
revoking European patent No. 0479870 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: L. Galligani
Members: T. J. H. Mennessier
C. Heath

Summary of Facts and Submissions

- I. With a notice of appeal dated 5 January 2007 the patent proprietor (appellant) lodged an appeal against the decision of the opposition division dated 29 November 2006, whereby the European patent No. 90 910 604.9 with publication number 0 479 870 was revoked.
- II. The appeal fee was paid on 8 January 2007.
- III. With a letter dated 26 January 2007 the appellant announced that it did not wish to pursue the appeal and requested that the appeal fee be refunded. It submitted that since the two month period as prescribed in Article 108 EPC had not yet expired the appeal fee could be refunded. This is interpreted as a formal request for refund of the appeal fee.
- IV. No statement setting out the grounds of appeal was filed.

Reasons for the Decision

1. The Board considers that the wish not to pursue the appeal as expressed in its letter of 26 January 2007 amounts to a withdrawal of the appeal.
2. As the notice of appeal was filed in due time, i.e. within two months after the date of notification of the decision appealed from, and the appeal fee was paid, an appeal is deemed to have been filed (Article 108 EPC).
3. As ruled in decision J 12/86 (OJ EPO 1988, 83), once an appeal has been filed in accordance with Article 108

EPC and has therefore come into existence, the only power to order reimbursement of the appeal fee is that provided by Rule 67 EPC. Thus in the present case, the fact that the appeal has been withdrawn during the two month period as prescribed in Article 108 EPC does not create *per se* a right for a refund of the appeal fee.

4. According to Rule 67 EPC, as applicable to *inter partes* proceedings, an appeal fee shall be reimbursed when the Board of appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation. This is not applicable here as, in view of the wish not to pursue the appeal expressed already before filing a statement setting out the grounds of appeal, admissibility of the appeal is not even an issue. However, the appeal is in existence.
5. There is therefore no basis for ordering refund of the appeal fee in the present case.

Order

For these reasons it is decided that:

The request for refund of the appeal fee is rejected.

The Registrar:

The Chairman:

A. Wolinski

L. Galligani