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**Datasheet for the decision  
of 5 June 2009**

**Case Number:** T 0199/09 - 3.3.08

**Application Number:** 00106729.7

**Publication Number:** 1041385

**IPC:** G01N 33/53

**Language of the proceedings:** EN

**Title of invention:**

Method and apparatus for detecting an organism-originated substance

**Applicant:**

FUJIFILM Corporation

**Headword:**

Detection method / FUJIFILM Corp.

**Relevant legal provisions:**

EPC Art. 108  
EPC R. 101, 103

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Missing statement of grounds"  
"Reimbursement of appeal fee - no"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0199/09 - 3308

**D E C I S I O N**  
of the Technical Board of Appeal 3308  
of 5 June 2009

**Appellant:**

FUJIFILM Corporation  
26-30, Nishiazabu 2-chome  
Minato-ku  
Tokyo (JP)

**Representative:**

Klunker . Schmitt-Nilson . Hirsch  
Destouchestraße 68  
D-80796 München (DE)

**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 12 August 2008  
refusing European patent application  
No. 00106729.7 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. On 16 October 2008, the appellant (applicant) filed a notice of appeal against the decision of the examining division dated 12 August 2008, whereby the European patent application No. 00 106 729.7 was refused pursuant to Article 97(2) EPC. 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 January 2009 sent by registered letter with advice of delivery, the appellant was informed that no statement of grounds of appeal had been filed and that, therefore, it was to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The appellant was invited to file observations within two months.
- III. In a letter dated 10 February 2009, the appellant requested refund of the appeal fee.

## **Reasons for the decision**

1. 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 101(1) EPC).

2. Rule 103(1) EPC defines the circumstances under which the appeal fee shall be reimbursed as:

(a) in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation or,

(b) if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement of grounds.

3). Failure to file a statement of grounds of appeal is not a circumstance which justifies reimbursement of the appeal. For this reason, the request for reimbursement of the appeal fee is rejected.

**Order**

**For these reasons, it is decided that:**

1. The appeal is rejected as inadmissible;
2. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:

A. Wolinski

L. Galligani