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**Datasheet for the decision  
of 14 September 2009**

**Case Number:** T 0454/09 - 3.3.08

**Application Number:** 94904150.3

**Publication Number:** 0677110

**IPC:** C12N 15/74

**Language of the proceedings:** EN

**Title of invention:**

Recombinant lactic acid bacterium containing an inserted promoter

**Patentees:**

Bioneer A/S, et al

**Opponent:**

Institut Pasteur

**Headword:**

Recombinant lactic acid/BIONEER

**Relevant legal provisions:**

EPC Art. 108  
EPC R. 101(1)

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

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**Keyword:**

"Missing statement of grounds"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0454/09 - 3.3.08

**DECISION**  
of the Technical Board of Appeal 3.3.08  
of 14 September 2009

**Appellants:** Bioneer A/S et al.  
(Patent Proprietors) Kogle Allé 2  
DK-2970 Hoersholm (DK)

**Representative:** Nilausen, Kim  
Zacco Denmark A/S  
Hans Bekkevolds Allé 7  
DK-2900 Hellerup (DK)

**Respondent:** Institut Pasteur  
(Opponent) 28, Rue du Docteur Roux  
F-75724 Paris Cedex 15 (FR)

**Representative:** Desaix, Anne  
Ernest Gutmann - Yves Plasseraud S.A.S.  
3, rue Auber  
F-75009 Paris (FR)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
17 December 2008 concerning maintenance of  
European patent No. 0677110 in amended form.

**Composition of the Board:**

**Chairman:** L. Galligani  
**Members:** M. R. Vega Laso  
J. Geschwind

## **Summary of Facts and Submissions**

- I. The appeal contests the interlocutory decision of the Opposition Division of the European Patent Office dated 17 December 2008 concerning maintenance of European Patent No. 0 677 110 in amended form. The appellants (patentees) filed a notice of appeal on 17 February 2009 and paid the fee for appeal on the same day. No statement of grounds was filed by the appellants within the time limit specified in Article 108 EPC.
- II. By a communication dated 22 June 2009 sent by registered letter with advice of delivery, the registry of the Board informed the appellants that no statement of grounds 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, and Rule 101(1) EPC. The appellants were invited to file observations within two months. They did not reply to said communication, and no request for re-establishment of rights was filed.

## **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 101(1) EPC).

**Order**

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

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

G. Nachtigall

L. Galligani