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**Datasheet for the decision
of 28 October 2009**

Case Number: T 1369/09 - 3.3.02

Application Number: 03761278.5

Publication Number: 1558228

IPC: A61K 31/135

Language of the proceedings: EN

Title of invention:

Topical administration of basic antifungal compositions to
treat fungal infections of the nails

Applicant:

Dermatrends, Inc.

Headword:

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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 1369/09 - 3.3.02

DECISION
of the Technical Board of Appeal 3.3.02
of 28 October 2009

Appellant: Dermatrends, Inc.
Suite A
10130 Sorrento Valley Road
San Diego, CA 92121 (US)

Representative: Gowshall, Jonathan Vallance
Forrester & Boehmert
Pettenkoferstrasse 20-22
D-80336 München (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 14 January 2009
refusing European application No. 03761278.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: U. Oswald
Members: A. Lindner
J.-P. Seitz

Summary of Facts and Submissions

- I. The appeal contests the decision of the examining division posted on 14 January 2009, refusing European patent application No. 03 761 278.5.

The appellant (applicant) filed a notice of appeal received on 17 March 2009 and paid the fee for appeal on the same day. No statement of grounds of appeal was filed.

- II. In a communication dated 31 July 2009, sent by registered post with advice of delivery, the registrar of the board informed the appellant that no statement of grounds of appeal had been filed and that it was to be expected that the appeal would be rejected as inadmissible. The appellant was invited to file observations within two months.

- III. No reply was filed to said communication, nor a request for re-establishment of rights.

Reasons for the Decision

1. Article 108 EPC requires that a statement setting out the grounds of appeal shall be filed within four months of notification of the decision. Pursuant to Rule 101(1) EPC the appeal shall be rejected as inadmissible if it does not comply with Article 108 EPC.

2. In the present case no document was filed by the appellant which could be regarded as a statement setting out the grounds of appeal. Consequently, the appeal has to be rejected as inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

N. Maslin

U. Oswald