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**Datasheet for the decision  
of 25 November 2010**

**Case Number:** T 0234/10 - 3.3.08

**Application Number:** 98917325.7

**Publication Number:** 0977875

**IPC:** C12N 15/75

**Language of the proceedings:** EN

**Title of invention:**

Improved prokaryotic expression of protein

**Patentees:**

NEWCASTLE UNIVERSITY VENTURES LIMITED, et al

**Opponent:**

Danisco US Inc.

**Headword:**

Prokaryotic expression/NEWCASTLE

**Relevant legal provisions:**

EPC Art. 108, 116(1)  
EPC R. 101

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

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**Keyword:**

"Missing statement of grounds"

**Decisions cited:**

T 1042/07

**Catchword:**

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Case Number: T 0234/10 - 3.3.08

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.08  
of 25 November 2010

**Appellants:**  
(Patent Proprietors) NEWCASTLE UNIVERSITY VENTURES LIMITED  
Sun Alliance House  
35 Mosley Street  
Newcastle upon Tyne NE1 1XX (GB)

Novozymes A/S  
Krogshøjvej 36  
DK-2880 Bagsvaerd (DK)

**Representative:**  
Smith, Stephen Edward  
Potter Clarkson LLP  
Park View House  
58 The Ropewalk  
Nottingham NG1 5DD (GB)

**Respondent:**  
(Opponent) Danisco US Inc.  
925 Page Mill Road  
Palo Alto CA 94304-1013 (US)

**Representative:**  
Kremer, Simon Mark  
Mewburn Ellis LLP  
33 Gutter Lane  
London EC2V 8AS (GB)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 9 December 2009  
revoking European patent No. 0977875 pursuant  
to Article 101(2),(3)(b) EPC.

**Composition of the Board:**

**Chairman:** L. Galligani  
**Members:** P. Julià  
R. Moufang

## **Summary of Facts and Submissions**

- I. The patent proprietors (appellants) filed on 3 February 2010 a notice of appeal against the decision of the opposition division dated 9 December 2009, whereby the European patent No. 0 977 875 was revoked under Article 101(2) and (3)(b) EPC. In their notice of appeal, the appellants requested oral proceedings (Article 116 EPC) if the board of appeal intended not to allow the appeal. 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 25 May 2010 sent by registered letter with advice of delivery, the appellants were 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, in conjunction with Rule 101(1) EPC. The appellants were invited to file observations within two months but did not reply to said communication, and no request for re-establishment of rights was filed.

## **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 any statements that could be regarded as a statement of grounds of appeal pursuant to Article 108 EPC, the appeal has to be rejected as inadmissible (Article 108 EPC in conjunction with Rule 101(1) EPC).

2. Since the appellants have not provided any statement as to the substantive merits of their appeal, have not given any explanation or comments as to why no statement of grounds had been filed, and have not reacted to the board's notification of an impending rejection of the appeal as inadmissible, the board considers the initial auxiliary request for oral proceedings to have become obsolete as a consequence of the subsequent course of action taken. The lack of any response to the board's notification is considered to be equivalent to an abandonment of the request for oral proceedings (see T 1042/07 of 22 August 2008, point 3 of the reasons).

## **Order**

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

The appeal is rejected as inadmissible.

The Registrar

The Chairman

A. Wolinski

L. Galligani