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**Datasheet for the decision  
of 28 February 2011**

**Case Number:** T 1823/10 - 3.3.08

**Application Number:** 99926984.8

**Publication Number:** 1088077

**IPC:** C12N 15/45

**Language of the proceedings:** EN

**Title of invention:**

Newcastle disease virus infectious clones, vaccines and diagnostic assays

**Patentee:**

Stichting Dienst Landbouwkundig Onderzoek

**Opponent:**

Intervet International BV

**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 1823/10 - 3.3.08

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.08  
of 28 February 2011

**Appellant:** Stichting Dienst Landbouwkundig Onderzoek  
(Patent Proprietor) Costerweg 50  
NL-6701 BH Wageningen (NL)

**Representative:** Prins, Adrianus Willem et al.  
Vereenigde  
P.O. Box 87930  
NL-2508 DH Den Haag (NL)

**Respondent:** Intervet International BV  
(Opponent) Wim de Körverstraat 35  
NL-5830 AN Boxmeer (NL)

**Representative:** van Gent, Marieke  
Intervet International B.V.  
Patent Department  
P.O. Box 31  
NL-5830 AA Boxmeer (NL)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
28 May 2010 concerning maintenance of European  
patent No. 1088077 in amended form.

**Composition of the Board:**

**Chairman:** M. Wieser  
**Members:** M. R. Vega Laso  
D. S. Rogers

## Summary of Facts and Submissions

- I. The appeal lies from the interlocutory decision of the Opposition Division of the European Patent Office dated 28 May 2010 concerning the European patent No. 1 088 077 entitled "Newcastle disease virus infectious clones, vaccines and diagnostic assays". The Opposition Division decided that the patent could be maintained in amended form on the basis of a set of claims according to the Auxiliary Request I and an amended description which were filed at the oral proceedings held on 19 November 2009.
  
- II. The appellant (patent proprietor) filed a notice of appeal on 28 July 2010 and paid the appeal fee on the same day. However, no statement of grounds of appeal was filed within the time limit specified in Article 108 EPC.
  
- III. By a communication dated 11 November 2010 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, and Rule 101(1) EPC. The appellant was invited to file observations within two months. Attention was also drawn to Article 122 EPC. The appellant 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 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). Since the appeal is inadmissible, the appellant's request to set aside the interlocutory decision of the Opposition Division to the extent as the decision was adverse, cannot be considered.

## **Order**

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

The appeal is rejected as inadmissible.

The Registrar

The Chairman

A. Wolinski

M. Wieser