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**Datasheet for the decision
of 14 November 2012**

Case Number: T 0216/11 - 3.3.04
Application Number: 02725577.7
Publication Number: 1377164
IPC: A61K 38/18, A61K 45/00,
A61P 35/00
Language of the proceedings: EN

Title of invention:

Erythropoietin ameliorates chemotherapy-induced toxicity in vivo

Patentee:

East Carolina University

Opponent:

BioGeneriX AG

Headword:

Erythropoietin/EAST CAROLINA UNIVERSITY

Relevant legal provisions:

EPC Art. 108
EPC R. 101(1)

Keyword:

"Missing statement of grounds of appeal"

Decisions cited:

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Catchword:

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Case Number: T 0216/11 - 3.3.04

D E C I S I O N
of the Technical Board of Appeal 3.3.04
of 14 November 2012

Appellant: East Carolina University
(Patent Proprietor) 210 Spilman Building
Greenville, NC 27858-4353 (US)

Representative: Harrison Goddard Foote
Belgrave Hall
Belgrave Street
Leeds
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Respondent BioGeneriX AG
(Opponent) Janderstrasse 3
D-68199 Mannheim (DE)

Representative: Keller, Günter
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D-80538 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 3 December 2010
revoking European patent No. 1377164 pursuant
to Article 101(3)(b) EPC.

Composition of the Board:

Chairman: C. Rennie-Smith
Members: G. Alt
M. Montrone

Summary of Facts and Submissions

- I. The appeal is against the decision of the Opposition Division of the European Patent Office dated 3 December 2010 revoking European patent No. 1 377 164 pursuant to Art. 101(2) and 101(3)(b) EPC.
- II. The appellant (patent proprietor) filed a notice of appeal on 31 January 2011 and paid the fee for appeal on the same day.
- III. No statement setting out the grounds of appeal was filed by the appellant. The notice of appeal contains nothing that could be regarded as such a statement of grounds pursuant to Article 108 EPC.
- IV. By communication dated 20 May 2011, sent by registered letter with advice of delivery, the Registry of the board informed the appellant that no statement of grounds had been filed and that the appeal could be expected to be rejected as inadmissible. The appellant was invited to file observations within two months.
- V. The appellant did not file observations in response to the communication.

Reasons for the decision

As no written statement setting out the grounds of appeal has been filed, the appeal has to be rejected as inadmissible (Article 108 EPC, third sentence, 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:

P. Cremona

C. Rennie-Smith