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**Datasheet for the decision  
of 13 September 2011**

**Case Number:** T 0312/11 - 3.3.08

**Application Number:** 01928894.3

**Publication Number:** 1280900

**IPC:** C12N 15/12

**Language of the proceedings:** EN

**Title of invention:**

Dendritic cell co-stimulatory molecules

**Applicant:**

Johns Hopkins University

**Opponent:**

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**Headword:**

Dendritic cell/JOHNS HOPKINS UNIVERSITY

**Relevant legal provisions:**

EPC Art. 108

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

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**Keyword:**

"Appeal is deemed not to have been filed"  
"Reimbursement of appeal fee"

**Decisions cited:**

J 0012/86, T 0041/82

**Catchword:**

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Case Number: T 0312/11 - 3.3.08

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.08  
of 13 September 2011

**Appellant:** JOHNS HOPKINS UNIVERSITY  
(Applicant) 720 Rutland Avenue  
Baltimore  
MD 21205-2109 (US)

**Representative:** Wright, Simon Mark  
J.A. Kemp & Co.  
14 South Square  
Gray's Inn  
London WC1R 5JJ (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 25 June 2009  
granting a European patent pursuant to  
Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** M. Wieser  
**Members:** P. Julià  
J. Geschwind

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the examining division dated 25 June 2009 to grant a patent, which became effective on 22 July 2009 with the publication of the mention of the grant in the European Patent Bulletin.
  
- II. On 2 June 2010, the appellant filed a request to the examining division for correction of the decision according to Rule 140 EPC. It argued that the reference to the third priority document, erroneously omitted from the publication, should be introduced into the bibliographic data of the patent. At the same day, the appellant filed a request for re-establishment of rights (Article 122(1) EPC) in order to remedy the failure to observe the time limit for filing an appeal. It filed a notice and a statement of the grounds of appeal and paid the appeal fee and the fee for re-establishment of rights. It requested that the decision to grant a patent be set aside and a new decision be issued including the reference to the third priority document. Oral proceedings were requested as an auxiliary measure.
  
- III. With a communication dated 26 January 2011, the examining division informed the appellant that the requested correction under Rule 140 EPC was considered allowable.
  
- IV. With a letter dated 28 April 2011, the appellant withdrew the appeal and requested reimbursement of the appeal fee and of the fee for re-establishment of rights. It alleged that the appeal was redundant in

view of the fact that the examining division's decision to correct the appealed decision applied *ex tunc*. The appeal should thus be considered inadmissible or deemed not to have been filed.

- V. The board expressed its preliminary opinion in a communication pursuant to Rule 100(2) EPC and Article 17(2) of the Rules of Procedure of the Boards of Appeal, dated 30 June 2011.
- VI. With a further letter dated 5 August 2011, the appellant withdrew its request for re-establishment of rights under Article 122(1) EPC and its request for reimbursement of the fee for re-establishment of rights. The appellant finally requested that the appeal fee be reimbursed.

### **Reasons for the Decision**

1. Although the present appeal was withdrawn from consideration by the Board of Appeal in respect of admissibility and allowability, the Board of Appeal, in the exercise of its inherent power, is authorised to examine the appellant's request for reimbursement of the appeal fee (see decisions T 41/82 OJ EPO 1982, 256 and J 12/86 OJ EPO 1988, 83).
2. According to Article 108 EPC the notice of appeal shall be filed, in accordance with the Implementing Regulations, at the European Patent Office within two months of the notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid.

3. In the present case the notice of appeal was filed and the appeal fee was paid almost one year after the notification of the decision of the examining division, thus clearly outside the time limit of two months set by Article 108 EPC.
  
4. Therefore, the appeal is deemed not to have been filed. There is no legal basis for payment of the appeal fee which, for this reason, is reimbursed.

## **Order**

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

The appeal is deemed not to have been filed.

The appeal fee is reimbursed.

The Registrar:

The Chairman:

A. Wolinski

M. Wieser