

**Internal distribution code:**

- (A)  Publication in OJ  
(B)  To Chairmen and Members  
(C)  To Chairmen  
(D)  No distribution

**Datasheet for the decision  
of 18 September 2013**

**Case Number:** T 0287/13 - 3.3.02

**Application Number:** 05777087.7

**Publication Number:** 1785137

**IPC:** A61K 31/47, A61K 31/4709,  
A61K 31/397, A61P 3/06

**Language of the proceedings:** EN

**Title of invention:**  
Remedy for hyperlipemia

**Patent Proprietor:**  
Kowa Company, Ltd.  
Nissan Chemical Industries, Ltd.

**Opponent:**  
Merck Sharp & Dohme Corp.

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. -

**Keyword:**  
-

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0287/13 - 3.3.02

**DECISION**  
of the Technical Board of Appeal 3.3.02  
of 18 September 2013

**Appellants:**  
(Patent Proprietor 1) Kowa Company, Ltd.  
6-29, Nishiki 3-chome,  
Naka-ku,  
Nagoya-shi, Aichi-ken 460-8625 (JP)

(Patent Proprietor 2) Nissan Chemical Industries, Ltd.  
7-1, Kanda Nishiki-cho 3-chome  
Chiyoda-ku,  
Tokyo 101-0054 (JP)

**Representative:** Hartz, Nikolai  
Wachtershauser & Hartz  
Patentanwaltspartnerschaft  
Ottostrasse 4  
D-80333 München (DE)

**Respondent:**  
(Opponent) Merck Sharp & Dohme Corp.  
126 East Lincoln Avenue  
Rahway, NJ 07065-0907 (US)

**Representative:** Jaap, David Robert  
Merck & Co., Inc.  
Hertford Road  
Hoddesdon, Herts EN11 9BU (GB)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 3 December 2012  
revoking European patent No. 1785137 pursuant  
to Article 101(3)(b) EPC.

**Composition of the Board:**

**Chairman:** U. Oswald  
**Members:** M. C. Ortega Plaza  
D. Prietzel-Funk

## **Summary of Facts and Submissions**

- I. The appeal is directed against the decision of the Opposition Division of 3 December 2012, posted on 3 December 2012.
- II. The appellants (patent proprietors) filed a notice of appeal on 1 February 2013 and paid the appeal fee on the same day.
- III. By communication of 8 May 2013, received by the appellant, the Registry of the Board informed the appellant that it appeared from the file that the written statement of grounds of appeal had not been filed, and that it was therefore to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The appellant was informed that any observations had to be filed within two months of notification of the communication.
- IV. No reply was received.

## **Reasons for the Decision**

No written statement setting out the grounds of appeal was filed within the time limit provided by Article 108, third sentence, EPC in conjunction with Rule 126(2) EPC. In addition, neither the notice of appeal nor any other document filed contains anything that could be regarded as a statement of grounds pursuant to Article 108 EPC and Rule 99(2) EPC. Therefore, the appeal has to be rejected as inadmissible (Rule 101(1) EPC).

**Order**

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

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

N. Maslin

U. Oswald