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**Datasheet for the decision
of 31 May 2016**

Case Number: T 2365/13 - 3.3.08

Application Number: 06808713.9

Publication Number: 1974032

IPC: C12N15/06, G01N33/50

Language of the proceedings: EN

Title of invention:

METHOD FOR IDENTIFYING A MODULATOR OF A CELL SIGNALLING

Applicant:

Progenitor Labs Limited

Headword:

Human pluripotent progenitor stem cells /PROGENITOR LABS

Relevant legal provisions:

EPC Art. 53(a), 111(1)

EPC R. 28(c)

Keyword:

Main Request - remittal to the first instance for further prosecution

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2365/13 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 31 May 2016

Appellant: Progenitor Labs Limited
(Applicant) 5 New Street Square
London
EC4A 3TW (GB)

Representative: Schlich, George
Schlich
9 St Catherine's Road
Littlehampton, West Sussex BN17 5HS (GB)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 2 July 2013 refusing European patent application No. 06808713.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Wieser
Members: P. Julià
D. Rogers
B. Stolz
J. Geschwind

Summary of Facts and Submissions

- I. European patent application no. 06 808 713.9, published as International patent application WO 2007/063316, was refused by the examining division. Basis for the refusal were a Main Request and Auxiliary Requests 1 and 2, all filed on 4 May 2012. The examining division considered the Main Request and Auxiliary Request 1 to contravene Article 53(a) EPC and Rule 28(c) EPC, and Auxiliary Request 2 not to meet the requirements of Articles 84, 83 and 56 EPC.
- II. The applicant (appellant) lodged an appeal against the decision of the examining division. With the statement setting out the Grounds of Appeal, the appellant filed a new Main Request and new Auxiliary Requests 1 and 2 and requested that the decision under appeal be set aside and a patent be granted on the basis of one of these new requests. Oral proceedings were requested as an auxiliary measure.
- III. The board issued a communication pursuant to Article 17(2) of the Rules of Procedure of the Boards of Appeal (RPBA).
- IV. In reply to the board's communication, the appellant withdrew its request for oral proceedings and requested that the decision under appeal be set aside and the case be remitted to the examining division for further prosecution on the basis of the Main Request filed with the statement setting out the Grounds of Appeal.

Reasons for the Decision

1. In its communication (cf. point III *supra*), the board informed the appellant that it had become aware that the department of first instance, in view of the CJEU judgement C-364/13, has reconsidered its practice with regard to the patentability of inventions referring to human pluripotent stem cells ("*progenitor cells*" in the present case).
2. The board drew the appellant's attention to the communication of the examining division issued on 9 March 2016 concerning European patent application no. 13 186 524.8, related to human pluripotent stem cells. This communication refers to document WO 2003/046141, publication date 5 June 2003 (one and a half years before the priority date of the present application), as the earliest publication of an enabling disclosure of human parthenogenetically derived pluripotent stem cells, which according to CJEU judgement C-364/13 does not involve the use of human embryos.
3. In the light of these facts, the appellant was informed that the board intended to set aside the decision under appeal and to remit the case to the examining division for further prosecution on the basis of the Main Request.
4. The appellant withdrew its request for oral proceedings and agreed with the course of action proposed by the board (cf. point IV *supra*).
5. Therefore, according to Article 111(1) EPC, the case is remitted to the examining division for further prosecution on the basis of the Main Request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution on the basis of the Main Request filed on 4 November 2013 with the statement setting out the Grounds of Appeal.

The Registrar:

The Chairman:



A. Wolinski

M. Wieser

Decision electronically authenticated