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# Datasheet for the decision of 6 June 2014

**Case Number:** T 2388/13 - 3.3.08

**Application Number:** 03816210.3

**Publication Number:** 1543110

**IPC:** C12N5/00

**Language of the proceedings:** EN

**Title of invention:**
MESODERM AND DEFINITIVE ENDODERM CELL POPULATIONS

**Applicant:**
Mount Sinai School of Medicine of New York University

**Headword:**
Cell populations/MOUNT SINAI

**Relevant legal provisions:**
EPC Art. 108
EPC R. 101(2)

**Keyword:**
"Missing statement of grounds"

**Decisions cited:**
T 1042/07, T 0234/10

**Catchword:**

Europäisches Patentamt
European Patent Office
Office européen des brevets

**Beschwerdekammern**
**Boards of Appeal**
**Chambres de recours**

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**Case Number: T 2388/13 - 3.3.08**

# D E C I S I O N
# of Technical Board of Appeal 3.3.08
# of 6 June 2014

| | |
|---|---|
| **Appellant:** (Applicant) | Mount Sinai School of Medicine of New York University<br>One Gustave L. Levy Place<br>New York, NY 10028 (US) |
| **Representative:** | Gardner, Rebecca Katherine<br>Dehns<br>St Bride's House<br>10 Salisbury Square<br>London EC4Y 8JD (GB) |
| **Decision under appeal:** | **Decision of the Examining Division of the European Patent Office posted on 5 June 2013 refusing European patent application No. 03816210.3 pursuant to Article 97(2) EPC.** |

**Composition of the Board:**

| | |
|---|---|
| **Chairman** | M. Wieser |
| **Members:** | M. R. Vega Laso |
| | C. Heath |

## Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division of the European Patent Office posted on 5 June 2013, whereby the European patent application No. 03816210.3 with the title "Mesoderm and definitive endoderm cell populations" was refused pursuant to Article 97(2) EPC.

II. On 15 August 2013, the applicant (appellant) filed a notice of appeal and paid the appeal fee. It requested that the decision under appeal be set aside and a patent be granted on the basis of a main request which would follow or, in the alternative, on the basis of any of the auxiliary requests which would follow. As a subsidiary request oral proceedings were requested.

III. No statement of grounds of appeal was filed within the time limit set by Article 108 EPC.

IV. By a communication dated 11 February 2014 sent by registered letter with advice of delivery, the appellant was informed that it appeared from the file that a written statement of grounds of appeal had not 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.

V. The appellant did not reply to the 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 request in the notice of appeal that the decision of the examining division be set aside cannot be considered.

Since the appellant did not give any explanation as to why a statement of grounds had not been filed, nor reacted in any way to the board's notification of the impending rejection of the appeal as inadmissible, the initial auxiliary request for oral proceedings has become obsolete as a consequence of the appellant's subsequent course of action (see decision T 234/10 of 25 November 2010). In accordance with the findings of the competent board in decision T 1042/07 of 22 August 2008 (see point 3 of the reasons), the present board judges that the appellant's lack of response to the board's notification amounts to an abandonment of its request for oral proceedings.

**Order**

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

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

A. Wolinski M. Wieser

Decision electronically authenticated