

Internal distribution code:

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

**Datasheet for the decision
of 15 February 2019**

Case Number: T 0362/18 - 3.3.04

Application Number: 12165896.7

Publication Number: 2505204

IPC: A61K38/08, A61K38/09, A61P35/00

Language of the proceedings: EN

Title of invention:
Method of treating prostate cancer with the GnRH antagonist
degarelix

Patent Proprietor:
Ferring B.V.

Opponents:
Fresenius Kabi Deutschland GmbH
Generics [UK] Limited (trading as Mylan)

Headword:
GnRH antagonist/FERRING

Relevant legal provisions:
EPC Art. 108
EPC R. 99(2), 101(1)

Keyword:

Admissibility of appeal - missing statement of grounds

Decisions cited:

T 1042/07

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0362/18 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 15 February 2019

Appellant: Ferring B.V.
(Patent Proprietor) Polaris Avenue 144
2132 JX Hoofddorp (NL)

Representative: Bates, Philip Ian
Reddie & Grose LLP
The White Chapel Building
10 Whitechapel High Street
London E1 8QS (GB)

Respondent I: Fresenius Kabi Deutschland GmbH
(Opponent 1) Else-Kröner-Str. 1
61352 Bad Homburg (DE)

Representative: Fresenius Kabi Deutschland GmbH
Patent Department
Borkenberg 14
61440 Oberursel (DE)

Respondent II: Generics [UK] Limited (trading as Mylan)
(Opponent 2) Albany Gate
Darkes Lane
Potters Bar
Hertfordshire EN6 1AG (GB)

Representative: Elkington & Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks, Kent TN13 1XR (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on
13 December 2017 revoking European patent No.**

2505204 pursuant to Article 101(2) and 101(3) (b)
EPC

Composition of the Board:

Chairwoman G. Alt
Members: A. Chakravarty
 M. Blasi

Summary of Facts and Submissions

- I. The appeal is directed against the decision of the opposition division of 9 October 2017, posted on 13 December 2017, to revoke the European patent No. 2 505 204.
- II. The patent proprietor (appellant), having received the decision on 18 December 2017, filed a notice of appeal on 7 February 2018 and paid the appeal fee on the same day. The notice of appeal contained a request for oral proceedings for the event that the decision of the opposition division is not set aside.
- III. By communication of 28 May 2018, received by the appellant, the Registrar 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. The communication also indicated that, unless a statement to the contrary was made by the appellant within the specified time period, the Board assumed that the appellant's request for oral proceedings did not apply to the issue of inadmissibility of the appeal because no grounds of appeal had been filed in due time.
- IV. No reply was received.

Reasons for the Decision

1. No written statement setting out the grounds of appeal was filed within the four-month time limit provided by Article 108, third sentence, EPC, having expired on 23 April 2018 pursuant to Rule 126(2) and Rule 131(1) and (4) 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).

2. Notwithstanding the appellant's conditional request for oral proceedings made in the notice of appeal, the present decision can be taken without the appointment of oral proceedings. Since the appellant has not provided any statement regarding the substantive merits of the appeal and has neither given any explanation or comments as to why no statement of grounds had been filed, nor reacted to the Board Registry's notification of an impending rejection of the appeal as inadmissible, the Board considers that the initial conditional request for oral proceedings has become obsolete. The lack of any response to the Board's notification is considered to be equivalent to an abandonment of the request for oral proceedings (see T 1042/07 of 22 August 2008, point 3 of the reasons).

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chair:



S. Lichtenvort

G. Alt

Decision electronically authenticated