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**Datasheet for the decision
of 1 March 2022**

Case Number: T 1821/19 - 3.3.04

Application Number: 11718831.8

Publication Number: 2560683

IPC: A61K39/395, A61P35/00,
C07K16/24, C07K16/28,
C07K16/30, C07K16/46

Language of the proceedings: EN

Title of invention:

Production of Heteromultimeric Proteins

Patent Proprietor:

F. Hoffmann-La Roche AG

Opponent:

Genmab A/S

Headword:

Heteromultimeric Proteins/HOFFMANN-LA ROCHE

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

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Case Number: T 1821/19 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 1 March 2022

Appellant: F. Hoffmann-La Roche AG
(Patent Proprietor) Grenzacherstrasse 124
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Representative: Boulton Wade Tennant LLP
Salisbury Square House
8 Salisbury Square
London EC4Y 8AP (GB)

Appellant: Genmab A/S
(Opponent) Kalvebod Brygge 43
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Representative: J A Kemp LLP
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
11 April 2019 concerning maintenance of the
European Patent No. 2560683 in amended form.**

Composition of the Board:

Chair G. Alt
Members: A. Chakravarty
R. Romandini

Summary of Facts and Submissions

- I. Both the patent proprietor and the opponent filed appeals against the decision of the interlocutory decision of opposition division that the patent as amended in the form of auxiliary request 1 met the requirements of the EPC. The opponent subsequently withdrew their appeal.
- II. The patent proprietor (appellant) filed their notice of appeal on 21 June 2019 and paid the appeal fee on the same day.
- III. The notice of appeal contained a request for oral proceedings for the event that the decision of the opposition division was not set aside.
- IV. By communication of 2 September 2019, 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.
- V. 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. Thus, 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, a decision can be taken without appointing oral proceedings. Indeed, the appellant has not provided any statement on the substantive merits of the appeal or explanation of why no statement of grounds was filed. It did not react to the Registrar's notification of an impending rejection of the appeal as inadmissible either.

3. The lack of any response to such a notification is considered in the case law of the boards of appeal to be equivalent to an abandonment of the request for oral proceedings (see for instance decision T 1042/07 of 22 August 2008, point 3 of the reasons). For this reason the board considers that the initial conditional request for oral proceedings has become obsolete.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chair:



I. Aperribay

G. Alt

Decision electronically authenticated