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Aktenzeichen / Case Number / N^o du recours : T 116/90 - 3.3.1

Anmeldenummer / Filing No / N^o de la demande : 90 301 052.9

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 018 135

Bezeichnung der Erfindung: Xanthine derivatives, a process for their preparation
Title of invention: and their use in pharmaceutical compositions
Titre de l'invention :

Klassifikation / Classification / Classement : C07D 473/06

Interlocutory

ENTSCHEIDUNG / DECISION

vom / of / du 3 December 1990

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Beecham-Wuelving GmbH & Co. KG

Einsprechender / Opponent / Opposant :

Hoechst Aktiengesellschaft

Stichwort / Headword / Référence : Corrected Decision / Beecham

EPO / EPC / CBE Rule 89

Schlagwort / Keyword / Mot clé :

"First instance decision corrected" -
"retrospective effect of correction" -
"second appeal fee paid by Appellant refunded
as without purpose"

Leitsatz / Headnote / Sommaire



Case Number : T 116 /90 - 3.3.1

Interlocutory D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 3 December 1990

Appellant : HOECHST AKTIENGESELLSCHAFT, Frankfurt
(Opponent) -Ressortgruppe Patente, Marken und Lizenzen-
D-6230 Frankfurt am Main 80

Respondent : Beecham-Wuelfing GmbH & Co. KG
(Proprietor of the patent) Stresemannallee 6
D-4040 Neuss

Representative : Russell, Brian John
Beecham Pharmaceuticals
Great Burgh
Yew Tree Bottom Road
Epsom
Surrey, KT18 5XQ
SB

Composition of the Board :

Chairman : K.J.A. Jahn
Members : G.D. Paterson
P.K.H. Krasa

Summary of facts and submissions

- I. In this case, the Opposition Division issued a Decision dated 7 December 1989 in which it maintained the patent in amended form. Thereafter, on 23 May 1990, it issued a further Decision in which it corrected an error in its previous Decision under Rule 89 EPC, the error being that the previous Decision had not stated that it was an Interlocutory Decision within Article 106(3) EPC. Attached to the Decision under Rule 89 EPC was a corrected version of the previous Decision (also dated 23 May 1990).

On 14 February 1990 the Opponent filed an appeal and paid the appeal fee. A Statement of Grounds of Appeal was filed on 14 March 1990. Then, following issue of the Decision under Rule 89 EPC and its enclosures on 23 May 1990, the Appellant filed a further notice of appeal on 2 June 1990 and paid a further appeal fee and requested that the previously filed grounds of appeal should apply to the later filed appeal. The Appellant requested refund of an appeal fee.

- II. In response to a communication on behalf of the Board dated 5 September 1990 the Appellant inter alia confirmed that he raised no objection to the amendment of the Decision dated 7 December 1989. The Respondent filed no observations within the stated time limit.

Reasons for the Decision

1. As stated in Decision T 212/88 dated 8 May 1990 (to be published), the correction of a mistake in a decision under Rule 89 EPC has a retrospective effect. Thus in the present case, the issue of the Decision under Rule 89 EPC

dated 23 May 1990 had the effect of correcting the Decision dated 7 December 1989 without changing its date. Although the corrected version of the Decision dated 7 December 1989 which accompanied the Decision under Rule 89 EPC had been re-dated 23 May 1990, this re-dating was unnecessary and in fact misleading, because it led the Appellant to file a second notice of appeal and to pay the further appeal fee, on the basis that a further appealable decision was thought to have been issued.

2. In the circumstances, the second notice of appeal filed by the Appellant on 2 June 1990 has no purpose, and the second appeal fee has to be refunded.

Order

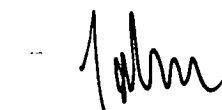
For these reasons it is decided that:

The appeal fee paid by the Appellant on 2 June 1990 shall be refunded.

The Registrar:


E. Görgmaier

The Chairman:


K.J.A. Jahn