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Aktenzeichen / Case Number / N^o du recours : T 195/90 - 3.4.2

Anmeldenummer / Filing No / N^o de la demande : 81 303 203.4

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 044 219

Bezeichnung der Erfindung: **Methods of immuno analysis using monoclonal
Title of invention: antibodies**
Titre de l'invention :

Klassifikation / Classification / Classement : G01N 33/54

ENTSCHEIDUNG / DECISION

vom / of / du 20 June 1990

Anmelder / Applicant / Demandeur : Unilever PLC,
Unilever NV

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Grounds of appeal/UNILEVER

EPO / EPC / CBE Art. 108, 111(1)

Schlagwort / Keyword / Mot clé : "Minimum requirements for grounds of appeal;
remittal to first instance."

Leitsatz / Headnote / Sommaire



Case Number : T 195/90

D E C I S I O N
of the Technical Board of Appeal 3.4.2
of 20 June 1990

Appellant : Unilever PLC
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Representative : Butler, David John
Unilever PLC
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Decision under appeal : Decision of Examining Division 061
of the European Patent Office
dated 3 May 1989 refusing European
patent application No. 81 303 203.4
pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : E. Turrini
Members : C. Black
C. Payraudeau

Summary of Facts and Submissions

- I. The European patent application No. 81 303 203.4 filed on 13 July 1981 was published under No. 0 044 219.
- II. After oral proceedings had been held on request of the Appellant, the Examining Division informed the latter, in a communication under Rule 51(4) EPC, of the text in which it intended to grant the patent.
- III. The Appellant filed the required translations and paid the fees in due time, specifying, however, that he was only doing it in order to avoid an automatic loss of rights. In a further correspondence with the Examining Division, the Appellant indicated formally his disapproval of the proposed text and requested the grant of the patent on the basis of a set of claims which had been discussed during the oral proceedings, but had been considered as not allowable by the Examining Division and, for this reason, withdrawn by the Appellant.
- IV. By decision dated 3 May 1989, the Examining Division refused the application on the grounds that the proposed claims infringed the provision of Article 123(2) EPC.
- V. The Appellant filed a notice of appeal and paid the appeal fee in due time. However, in the grounds of appeal, also filed in due time, the Appellant did not contest any more the decision of the Examining Division, but indicated that he now requested that the patent be granted on the basis of the text which accompanied the advance notice of the communication under Rule 51(4) EPC.

VI. Subsidiarily, the Appellant requested oral proceedings "in the event that the EPO is no longer prepared to grant the patent on the basis of the above text".

Reasons for the Decision

1. Admissibility of the appeal.

1.1 The notice of appeal has been filed within the time limit set out in Article 108 EPC and the fee for appeal has been paid within the same time limit.

1.2 A letter entitled "grounds of appeal" has also been filed within the period prescribed in Article 108 EPC, last sentence.

Although the Appellant in this letter does not contest the reasons for the decision under appeal, but simply requests that this decision be set aside and the patent be granted in the form proposed by the Examining Division, the Board, following in this respect the previous decisions of the Legal Board of Appeal J 22/86 (Disapproval/Medical Biological, OJ EPO 1987, 280) and J 2/87 (Motorola, OJ EPO 1988, 330) in similar cases, considers that at least the minimum requirements of Article 108 EPC are satisfied by such grounds.

1.3 The other conditions of Articles 106-108 and Rule 64 EPC being also met, the appeal is admissible.

2. Allowability of the appeal

2.1 In the present case, the Examining Division has not granted an interlocutory revision, although it had previously communicated under Rule 51(4) EPC its intention to grant

the patent in the form as now requested by the Appellant (see point V hereinabove).

2.2 Therefore, since the indicated intention to grant a patent cannot be considered as binding on the Examining Division, it is now necessary to re-open the examination procedure in order to decide whether the Appellant's request is allowable, i.e. whether the patent application as now amended fulfils all the requirements of the EPC.

2.3 The Board deems it consequently advisable in application of Article 111(1) EPC to remit the case to the Examining Division for deciding on the allowability of the Appellant's main request.

3. Request for oral proceedings

3.1 Since the present decision is to remit the case to the Examining Division for deciding on the main request of the Appellant and since oral proceedings have only been requested in case of a negative decision, no oral proceedings before the Board of Appeal need to be appointed.

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 request presented by the Appellant in his grounds of appeal.

The Registrar:

The Chairman:

P. Martorana

E. Turrini