

A		B		C	X
---	--	---	--	---	---

File Number: T 188/92 - 3.3.2
Application No.: 86 302 425.3
Publication No.: 0 207 589
Title of invention: Fibrinolytic enzyme

Classification: C12N 15/00

D E C I S I O N
of 15 December 1992

Applicant: BEECHAM GROUP PLC

Headword: Grounds for appeal/BEECHAM

EPC Article 108; Rule 65(1)

Keyword: "Grounds for appeal - inadequate content - inadmissibility of appeal"

Decisions cited: T 220/83, T 432/88



Case Number : T 188/92 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 15 December 1992

Appellant : BEECHAM GROUP PLC
Beecham House
Great West Road
Brentford
Middlesex TW8 9BD (GB)

Representative : Valentine, Jill Barbara
Beecham Pharmaceuticals
Patents & Trade Marks Dept.
Great Burgh
Yew Tree Bottom Road
Epsom
Surrey KT18 5XQ (GB)

Decision under appeal : Decision of the Examining Division of the
European Patent Office dated 8 October 1991
refusing European patent application
No. 86 302 425.3 pursuant to Article 97(1) EPC.

Composition of the Board :

Chairman : P.A.M. Lançon
Members : E.M.C. Holtz
U.M. Kinkeldey

Summary of Facts and Submissions

- I. This appeal lies against the decision of 8 October 1991 by the Examining Division to refuse European patent application No. 86 302 425.3.
- II. The Appellants on 3 December 1991 filed a Notice of Appeal, requesting that the decision be reversed in its entirety and the application either allowed or remitted to the Examining Division for further consideration. The appeal fee was paid on the same date.
- III. On 17 February 1992, the Appellants further filed a telefax, titled Grounds of Appeal, wherein the Board was requested to consider the appeal "in light of the arguments previously submitted to the Examining Division in letters of response dated 11 January, 1990, 20 August, 1990 and 5 July, 1991".

The Appellants' main request was that the claims be allowed in their "present" form. The subsidiary request was that Claims 1 to 3 be cancelled and replaced with a single claim.

Finally oral proceedings were requested in the event that the Appellants' main request would be rejected.

- IV. On 26 June 1992, the Board issued a communication pursuant to Article 110(2) EPC, in which the provisional opinion was expressed that the letter submitted on 17 February 1992 did not seem to meet the requirements of Article 108 EPC as regards statements of grounds. The Board finally observed that it had interpreted the request for oral proceedings as valid only in the event that there would be a substantive review of the appeal.

The Appellants were invited to comment on this finding, but did not submit any observations within the time period of two months given in the communication. Having been thereafter asked about the request for oral proceedings, the Appellants on 16 November submitted a telefax, waiving "their right to oral proceedings on the admissibility of the Appeal".

Reasons for the Decision

1. The Notice of Appeal was filed and the appeal fee was paid within the time period as set down in Article 108 EPC.

However, Article 108 EPC provides that a written statement setting out the grounds of appeal must be filed within four months after the date of notification. Therefore, the admissibility of the appeal depends on whether or not the telefax submitted on 17 February 1992 meets the conditions of Article 108 EPC so as to constitute such valid grounds of appeal.

2. According to the constant case-law of the Boards of Appeal, as represented by, among others, decisions T 220/83, OJ EPO 1986, 249 and T 432/88 of 15 June 1989, not published in the OJ EPO, a mere referral in general to statements in earlier submissions or in documents cited, would not suffice to fulfil the purpose of the requirement that grounds for the appeal be filed, which was to give the legal and factual reasons why the contested decision had to be set aside (T 432/88, point 3). In these decisions it was further noted that a general referral, of the kind made in the present case, would leave the Board and the parties to the appeal to ascertain for themselves any facts substantiating the contention made. This was

however precisely what the requirement of grounds of appeal was designed to prevent.

3. In what way and to what extent the observations to which the Appellants referred in their telefax of 17 February 1992 would be relevant to the decision under appeal is not mentioned. This letter therefore does not meet the requirements of Article 108 for a Statement of Grounds of Appeal.

As the Notice of Appeal of 3 December 1991 does not contain any grounds, the appeal must be declared inadmissible.

Order

For these reasons, it is decided that:

The appeal is rejected as inadmissible.

The Registrar:



P. Martorana

The Chairman:



P. Lançon

On

28.12.92 04912

liber