

Publication in the Official Journal ~~Yes~~ / No

File Number: T 471/92 - 3.3.1
Application No.: 88 306 227.5
Publication No.: 0 299 683
Title of invention: Heterocyclic olefinic compounds and their use as aromatase inhibitors

Classification: C07D 249/08

D E C I S I O N
of 11 August 1992

Applicant: IMPERIAL CHEMICAL INDUSTRIES PLC

Headword: Aromatase inhibitors/ICI

EPC Articles 109(1), 111(1)

Keyword: "Ground of refusal removed - interlocutory revision" -
"Remittal without substantive examination"



Case Number : T 471/92 - 3.3.1

D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 11 August 1992

Appellant : IMPERIAL CHEMICAL INDUSTRIES PLC
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Decision under appeal : Decision of Examining Division of the European
Patent Office dated 15 October 1991 refusing
European patent application No. 88 306 227.5
pursuant to Article 97(1) EPC.

Composition of the Board :

Chairman : K.J.A. Jahn
Members : R.K. Spangenberg
J.A. Stephens-Ofner

Summary of Facts and Submissions

- I. European patent application No. 88 306 227.5 filed on 7 July 1988 and published under No. 0 299 683 was refused by the Examining Division on 15 October 1991. This decision was based on Claims 1 to 5 and 8 to 10 as filed and amended Claims 6 and 7. The only stated ground of refusal was that Claim 5 lacked novelty in respect of US-A-4 057 545.

- II. On 29 November 1991 a notice of appeal was filed, accompanied by the payment of the appropriate fee and a statement of grounds of appeal, comprising a fresh set of nine claims, Claims 1 to 4 being identical with original Claims 1 to 4 and Claims 5 to 9 corresponding to Claims 6 to 10 underlying the decision under appeal. The Appellant (the applicant) submitted that by cancellation of original Claim 5 the only ground of refusal had been removed.

The Appellant requested that the decision under appeal should be rectified under Article 109(1) EPC and that the application be allowed to proceed.

Reasons for the Decision

1. The appeal is admissible.

2. Since original Claim 5 has been cancelled, the only stated ground of refusal has been removed. Therefore, the decision under appeal should have been rectified already by the Examining Division, following the principle laid down in the decision T 139/87 (OJ EPO 1990, 68), see also the Guidelines for Examination in the EPO, Part E, Chapter XI, 7, as amended in January 1992.


3. In these circumstances, it is in the Board's judgment appropriate not to examine the case on its merits on the basis of the amended statement of claim, but to exercise its power under Article 111(1) EPC and to remit the case to the Examining Division without any substantive examination (see also T 63/86, OJ EPO 1988, 224).

Order

For these reasons, it is decided that:

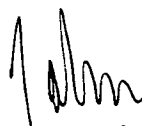
1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution on the basis of the set of claims submitted on 29 November 1991.

The Registrar:



E. Görgmaier

The Chairman:



K.J.A. Jahn