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**Datasheet for the decision  
of 21 April 2009**

**Case Number:** T 1839/08 - 3.3.02

**Application Number:** 97914779.0

**Publication Number:** 0910339

**IPC:** A61K 9/00

**Language of the proceedings:** EN

**Title of invention:**

Buccal Polar Spray

**Patentee:**

Novadel Pharma Inc.

**Opponent:**

Akzo Nobel N.V.

**Headword:**

Buccal Oral Spray/NOVADEL PHARMA

**Relevant legal provisions:**

EPC Art. 108  
EPC R. 101(1)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Missing statement of grounds"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1839/08 - 3.3.02

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.02  
of 21 April 2009

**Appellant:**  
(Patent Proprietor)

Novadel Pharma Inc.  
31 State Highway 12  
Flemington  
NJ 08822 (US)

**Representative:**

Luderschmidt, Schüler & Partner  
Patentanwälte  
John-F.-Kennedy-Strasse 4  
D-65189 Wiesbaden (DE)

**Respondent:**  
(Opponent)

Akzo Nobel N.V.  
Velperweg 7  
NL-6800 SB Arnhem (NL)

**Representative:**

Van den Broek, Ludovicus A.G.M.  
P.O. Box 20  
NL-5340 BH Oss (NL)

**Decision under appeal:**

Decision of the Opposition Division of the  
European Patent No. 0910339 pursuant to  
Article 101(2)(3)(b) EPC.

**Composition of the Board:**

**Chairman:** U. Oswald  
**Members:** M. C. Ortega Plaza  
T. Karamanli

## **Summary of Facts and Submissions**

- I. The appeal contests the decision of the opposition division dispatched by registered letter with advice of delivery on 11 July 2008, revoking European patent No. 0910339.

The appellant (proprietor) filed a notice of appeal in a letter received on 19 September 2008 and paid the fee for appeal on the same day. No statement of grounds was filed.

- II. In a communication dated 12 January 2009, sent by registered post, the registrar of the board informed the appellant that no statement of grounds of appeal had been filed and that it was to be expected that it would be rejected as inadmissible. The appellant was informed about the possibility of filing a request for re-establishment of rights under Article 122 EPC and was invited to file observations within two months.

- III. No reply was filed to said communication.

## **Reasons for the Decision**

1. Article 108 EPC requires that a statement setting out the grounds of appeal shall be filed within four months of the notification of the decision. Pursuant to Rule 101(1) EPC the appeal shall be rejected as inadmissible if it does not comply with Article 108 EPC.

2. In the present case no document was filed by the appellant which could be regarded as a statement setting out the grounds of appeal. Consequently the appeal has to be rejected as inadmissible.

**Order**

**For these reasons it is decided that:**

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

N. Maslin

U. Oswald