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**Datasheet for the decision
of 12 July 2022**

Case Number: T 0120/22 - 3.3.09

Application Number: 10181835.9

Publication Number: 2260724

IPC: A23L29/20, A23L29/206,
A23L29/269, A23L29/212,
A23L29/238, A23L29/256,
A23L29/262, A23L2/52, A61K47/36

Language of the proceedings: EN

Title of invention:
Process for preparing concentrate thickener compositions

Patent Proprietor:
Simply Thick LLC

Opponent:
Fresenius Kabi Deutschland GmbH

Headword:
Inadmissibility of appeal/SIMPLY THICK

Relevant legal provisions:
EPC Art. 108
EPC R. 101(1)

Keyword:

Admissibility of appeal (no) - missing statement of grounds
Oral proceedings - abandonment of request

Decisions cited:

G 0002/19, T 1042/07, T 0234/10, T 2143/14, T 0118/19,
T 2144/21

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0120/22 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 12 July 2022

Appellant: Simply Thick LLC
(Patent Proprietor) 200 S. Hanley Road
Suite 1102
St. Louis, MO 63105 (US)

Representative: Boulton Wade Tennant LLP
Salisbury Square House
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London EC4Y 8AP (GB)

Respondent: Fresenius Kabi Deutschland GmbH
(Opponent) Else-Kröner-Str. 1
61352 Bad Homburg (DE)

Representative: Fresenius Kabi Deutschland GmbH
Patent Department
Pharmaceuticals Division
Borkenberg 14
61440 Oberursel (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 November 2021
revoking European patent No. 2260724 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chair A. Haderlein
Members: N. Obrovski
M. Ansorge

Summary of Facts and Submissions

- I. The appeal of the patent proprietor (appellant) is directed against the decision of the Opposition Division dated 4 November 2021 revoking the patent.
- II. The appellant filed a notice of appeal, paid the appeal fee, and requested oral proceedings if the Board was "minded to revoke the patent in any form, or to reject the appeal as inadmissible". They did not file any statement of grounds of appeal.
- III. After the expiry of the prescribed period for filing the statement of grounds of appeal, the Board informed the appellant in a communication that no such statement had been filed and that it was therefore to be expected that the appeal would be rejected as inadmissible. The appellant replied by confirming that they did not intend to file any grounds of appeal. In a subsequent telephone call with the Board's registrar, the appellant further stated that they would not withdraw the appeal and that they would await the Board's decision.

Reasons for the Decision

1. Under Article 108, third sentence, EPC a statement setting out the grounds of appeal must be filed within four months of notification of the decision. Failing this, the appeal must be rejected as inadmissible under Rule 101(1) EPC.

2. As the appellant did not file any statement of grounds of appeal within the prescribed period, the appeal must be rejected as inadmissible.

3. According to settled case law, an appellant's failure to reply in substance to a board's communication indicating that the appeal is expected to be rejected as inadmissible due to a missing statement of grounds of appeal is considered to be equivalent to an abandonment of the request for oral proceedings (see T 1042/07, T 234/10, T 2143/14, T 118/19, T 2144/21). This is all the more so where, as in the present case, an appellant explicitly confirms after receipt of such a communication that they do not intend to file any grounds of appeal and will await the Board's decision.
 - 3.1 Moreover, the nature of the right to request oral proceedings under Article 116(1), first sentence, EPC is not absolute and exceptions may be made where its application would make no sense in the specific circumstances of an individual case (G 2/19, Reasons B.II.2.).
 - 3.2 The decision could therefore be taken in written proceedings.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chair:



A. Nielsen-Hannerup

A. Haderlein

Decision electronically authenticated