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Aktenzeichen / Case Number / N^o du recours : T 161/90 - 3.3.2

Anmeldenummer / Filing No / N^o de la demande : 82 302 532.5

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 067 540

Bezeichnung der Erfindung: Microbial gene promoter/operators

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : C12N 15/00

ENTSCHEIDUNG / DECISION

vom / of / du 18 June 1990

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Genentech, Inc.

Einsprechender / Opponent / Opposant : Gist-Brocades N.V.

Stichwort / Headword / Référence :

EPÜ/EPC/CBE Article 108, Rules 78(3), 83(4)

Schlagwort / Keyword / Mot clé : "Late Notice of Appeal and payment of
appeal fee - no appeal in existence"
"Reimbursement of appeal fee"

Leitsatz / Headnote / Sommaire



Case Number : T 161/90 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 18 June 1990

Appellant : Genentech, Inc.
(Proprietor of the patent) 460 Point San Bruno Boulevard
South San Francisco
California 94080 (US)

Representative : Armitage, Ian Michael
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Respondent : Gist-Brocades N.V.
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Representative : Huygens, Arthur Victor, Dr.
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Patent & Trademarks Department
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Decision under appeal : Decision of the Opposition Division of the European Patent Office dated 8 November 1989, posted 15 December 1989 rejecting the opposition filed against European patent No. 0 067 540 pursuant to Article 102(2) EPC.

Composition of the Board :

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

Summary of Facts and Submissions

- I. European patent No. 67540 was granted on 13 May 1987 on the basis of European patent application No. 82 302 532.5.
- II. By decision of 8 November 1989, notified on 15 December 1989, the Opposition Division rejected the opposition pursuant to Article 102(2) EPC.
- III. The Appellant filed a Notice of Appeal on 28 February 1990, and paid the fee for appeal on 27 February 1990.

Neither date is within the two month period prescribed by Article 108 EPC.

- IV. By a communication dated 12 April 1990 and sent by registered letter with advice of delivery, the Registry of the Board informed the Appellant that the Notice of Appeal was not filed within the time limit laid down in Article 108 EPC, that the fee for the appeal was not paid within the time limit and that the appeal would be rejected as inadmissible.

The Appellant was invited to file observations within two months.

- V. By letter dated 18 May 1990 and received on 23 May 1990, the Appellant stated that no re-establishment of rights was sought and a refund of the appeal fee was requested.

Reasons for the Decision

The decision under appeal was notified on 15 December 1989. According to Article 108 and Rules 78(3) and 83(4) EPC the period for Notice of Appeal expired on 25 February 1990. This date being a Sunday, the latest date for the filing of such a notice was 26 February 1990.

At this date, neither the Notice of Appeal nor the appeal fee had been received by the European Patent Office. Consequently, there is no appeal in existence (Article 108 EPC). The appeal fee must therefore be reimbursed.

Order

For these reasons, it is decided that:

1. There is no appeal in existence.
2. Reimbursement of the appeal fee is ordered.

The Registrar:

The Chairman:

M. Beer

P. Lançon