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D E C I S I O N
of 13 September 1994

Case Number: T 0646/92 - 3.3.2

Application Number: 85104787.8

Publication Number: 0159678

IPC: A61K 31/275

Language of the proceedings: EN

Title of invention:

Use of 5-[(3,4-dimethoxyphenethyl)methylamino]-2-(3,4-dimethoxy-phenyl)-2-isopropylvaleronitrile

Applicant:

THE CANCER INSTITUTE OF JAPANESE FOUNDATION FOR CANCER RESEARCH, ET AL

Opponent:

-

Headword:

Admissibility/CANCER INSTITUTE

Relevant legal norms:

EPC Art. 108

Keyword:

"Admissibility of appeal (no) - insufficient grounds"

Decisions cited:

T 0220/83, T 0213/85, J 0022/86, T 0145/88, T 0432/88,
T 0250/89, T 0287/90, T 0188/92

Headnote/Catchword:



Case Number: T 0646/92 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 13 September 1994

Appellant:

THE CANCER INSTITUTE OF JAPANESE FOUNDATION FOR
CANCER RESEARCH
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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office dated 13 March 1992
refusing European patent application
No. 85 104 787.8 pursuant to Article 97(1) EPC.

Composition of the Board:

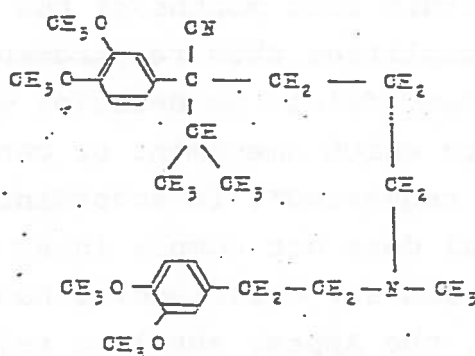
Chairman: P. A. M. Lançon
Members: I. A. Holliday
S. C. Perryman

Summary of Facts and Submissions

I. European patent application No. 85 104 787.8

(publication No. 0 159 678) was refused by a decision of the Examining Division dated 13 March 1992 on grounds of lack of novelty. The single claim of the application reads as follows:

"Use of 5-((3,4-dimethoxyphenetyl)methylamino)-2-(3,4-dimethoxy-phenyl)-2-isopropylvaleronitrile of the formula given below or a pharmaceutically acceptable salt thereof for the preparing of a composition for prevention of metastasis of cancer.



II. On 13 May 1992, the Appellant filed a Notice of Appeal and paid the appeal fee on the same date. The Appellant also made a conditional request for oral proceedings.

III. In a letter received on 9 June 1992, the Appellant withdrew the request for oral proceedings and stated that "for the substantiation of the appeal applicants refer to previous responses filed by the applicants in the prosecution. No further substantiation will follow".

IV. The Registrar of the Boards of Appeal telephoned the Appellant's representative on 16 June 1992 who confirmed that no further grounds of appeal would be filed.

- V. A communication from the Rapporteur dated 25 January 1994 set out the provisional opinion that the letter dated 9 June 1992 did not seem to represent adequate grounds within the meaning of Article 108 EPC. The Appellant did not reply.

Reasons for the Decision

1. In accordance with Article 108 EPC, an Appellant must file a Notice of Appeal against a contested decision within two months of the date of notification of the decision and a written statement setting out the grounds of appeal within four months of the said date. Rule 64(b) amplifies this requirement and refers to "a statement identifying the decision which is impugned and the extent to which amendment or cancellation of the decision is requested". In accordance with Rule 65(1), if the appeal does not comply inter alia with Article 108 and any deficiencies have not been remedied in due time, the Appeal shall be rejected as inadmissible.
 - 1.1 In decision T 220/83 (OJ EPO 1986, 249), the Board stated that Appellants, when setting out grounds for their appeal, cannot merely content themselves with asserting that the contested decision is incorrect and requesting that the patentability of the subject-matter denied by the department of first instance be reconsidered. Instead they must state in their grounds the legal or factual reasons why the contested decision should be set aside so as to ensure that the appeal may be considered objectively.
 - 1.2 The requirements of Article 108 EPC were also considered in decision J 22/86 (OJ EPO 1987, 280). In order to

comply with Article 108 EPC (third sentence), the written statement should set out fully the reasons why the appeal should be allowed and the decision under appeal be set aside. Exceptionally, a statement which does not contain such full reasons may satisfy the admissibility requirements if it is immediately apparent upon reading the decision under appeal and the written statement that the decision should be set aside.

- 1.3 In accordance with decision T 213/85 (OJ EPO 1987, 482) an appeal was rejected as inadmissible although the Appellant had filed a statement of appeal within the prescribed time limit. The statement was deemed insufficient since it failed to address the reasons why the Opposition Division had rejected the opposition. Decision T 145/88 (OJ EPO 1991, 251) rejected an appeal against a decision of the Opposition Division when the Board were unable to find even the minimum of reasoning in the Appellant's "Statement of Grounds". The case law relating to statements of grounds is summarised in decision T 250/89 (OJ EPO 1992, 355); in this case a reasoned statement was not filed within the time limit prescribed by Article 108 EPC and the original Notice of Appeal was considered insufficient to satisfy the statutory requirements.

- 1.4 The above case law has been followed in a number of unpublished decisions of the Boards of Appeal. Decision T 432/88 dated 15 June 1989 refused to admit the appeal as the statement submitted contained no legal or factual reasons. In cases T 287/90 dated 25 September 1991 and T 188/92 dated 15 December 1992, the appeals were deemed to be inadmissible since the statements of appeal in each case merely referred to arguments presented to the first instance.

2. The present case does not relate to exceptional circumstances as envisaged in decision J 22/86. The Statement of Grounds contains no reasons as to why the contested decision should be set aside. The appeal does not comply with Article 108 EPC and, accordingly, it must be rejected as inadmissible.

Order

For these reasons it is decided that:

1. The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

P. Martorana

P. Lançon