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**D E C I S I O N**  
of 16 July 1997

**Case Number:** T 0792/96 - 3.3.4

**Application Number:** 86304970.6

**Publication Number:** 0215548

**IPC:** C12N 15/57

**Language of the proceedings:** EN

**Title of invention:**  
Expression of protein C

**Patentee:**  
ZYMOGENETICS, INC., et al

**Opponents:**  
IMMUNO Aktiengesellschaft  
Eli Lilly and Company

**Headword:**  
Expression of protein C/ZYMOGENETICS

**Relevant legal provisions:**  
EPC Art. 108, 122  
EPC R. 65(1), 78(3)

**Keyword:**  
"Statement setting out the grounds of appeal not filed within  
the time limit"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0792/96 - 3.3.4

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.4  
of 16 July 1997

**Appellant:**  
(Opponent I)

IMMUNO Aktiengesellschaft  
Industriestrasse 67  
A-1221 Wien (AT)

**Representative:**

Kolb, Helga, Dr. Dipl.-Chem.  
Hoffmann Eitle  
Patent- und Rechtsanwälte  
Arabellastrasse 4  
81925 München (DE)

**Other party:**  
(Opponent II)

Eli Lilly and Company  
Lilly Corporate Center  
Indianapolis  
Indiana, 46285 (US)

**Representative:**

Golding, Douglas Michael  
J.A. KEMP & CO.  
14 South Square  
Gray's Inn  
London WC1R 5LX (GB)

**Respondent:**  
(Proprietor of the patent)

ZYMOGENETICS, INC.  
4225 Roosevelt Way, N.E.  
Seattle, WA 98105 (US)

**Representative:**

Bizley, Richard Edward  
Hepworth, Lawrence, Bryer & Bizley  
Merlin House  
Falconry Court  
Baker's Lane  
Epping  
Essex CM16 5DQ (GB)

**Decision under appeal:**

Interlocutory decision of the Opposition Division  
of the European Patent Office posted 1 July 1996  
concerning maintenance of the European patent  
No. 0 215 548 in amended form.

**Composition of the Board:**

**Chairwoman:** U. M. Kinkeldey  
**Members:** F. L. Davison-Brunel  
W. Moser

## Summary of Facts and Submissions

- I. On 17 May 1994, the Appellant (Opponent I) gave notice to the EPO of opposition to the granted European No. 0 215 548.
- II. By its decision dated 1 July 1996, the Opposition Division maintained the patent in amended form.
- III. On 2 September 1996, the Appellant lodged a notice of appeal against that decision and paid the appeal fee at the same time. He requested the reversal of the decision under appeal and revocation of the patent. However, no statement of the grounds of appeal was filed within the time limit laid down in Article 108, third sentence and Rule 78 (3) EPC.
- IV. By communication dated 20 February 1997, the Appellant was informed that no statement setting out the grounds of appeal had been filed and that it was to be expected, therefore, that pursuant to Rule 65(1) EPC in conjunction with Article 108 EPC, his appeal would be rejected as inadmissible. The Appellant was further informed that any observations on this communication had to be filed within two months. In addition, the Appellant's attention was drawn to Article 122 EPC (re-establishment of rights). However, the Appellant failed to reply.

## Reasons for the Decision

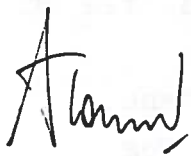
1. The present appeal has to be rejected as inadmissible because no statement setting out the grounds of appeal was filed within the time limit laid down in Article 108, third sentence and Rule 78(3) EPC.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

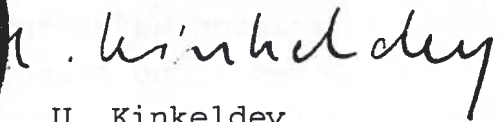
The Registrar:



A. Townend



The Chairwoman:



U. Kinkeldey

Beglaubigt/Certified  
Certifiée conforme:  
München/Munich

Geschäftsstelle  
Registry/Greffe

18. JULI 1997