Datasheet for the decision of 28 June 2019

Case Number: T 2625/18 - 3.3.07
Application Number: 11726020.8
Publication Number: 2579897
IPC: A61K47/48
Language of the proceedings: EN

Title of invention:
CYSTEINE ENGINEERED ANTIBODIES AND CONJUGATES

Applicant:
Genentech, Inc.

Headword:
Missing statement of grounds

Relevant legal provisions:
EPC Art. 108  
EPC R. 99(2), 101(1)

Keyword:
Admissibility of appeal - missing statement of grounds

Decisions cited:
Catchword:
Beschwerdekammern
Boards of Appeal
Chambres de recours

Case Number: T 2625/18 – 3.3.07

DECISION
of Technical Board of Appeal 3.3.07
of 28 June 2019

Appellant: Genentech, Inc.
(Applicant)
1 DNA Way
South San Francisco, CA 94080 (US)

Representative: Mewburn Ellis LLP
City Tower
40 Basinghall Street
London EC2V 5DE (GB)

Decision under appeal: Decision of the Examining Division of the European Patent Office posted on 2 May 2018 refusing European patent application No. 11726020.8 pursuant to Article 97(2) EPC.

Composition of the Board:
Chairman J. Riolo
Members: A. Usuelli
P. Schmitz
Summary of Facts and Submissions

I. The appeal is directed against the decision of the Examining Division of 2 May 2018, posted on 2 May 2018.

II. The appellant filed a notice of appeal on 10 July 2018 and paid the appeal fee on the same day. It requested that the decision under appeal be set aside and that the application be remitted to the examining division for grant or further prosecution on the basis of the main request or an auxiliary request filed in these proceedings. As a precaution, oral proceedings were requested if the Board intended not to remit the application on the basis of the main request, or intended to reject the appeal as inadmissible.

III. By communication of 31 October 2018, received by the appellant, the Registry of the Board informed the appellant that it appeared from the file that the written statement of grounds of appeal had not been filed, and that it was therefore to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The appellant was informed that any observations had to be filed within two months of notification of the communication.

IV. On 14 March 2019, the Board informed the appellant that they assumed that the appellant's request for oral proceedings did not apply to the issue of inadmissibility of the appeal for not having filed the statement of grounds of appeal and that if no observations were filed within two months, a written decision rejecting the appeal as inadmissible would be issued.
V. No reply was received.

Reasons for the Decision

1. No written statement setting out the grounds of appeal was filed within the time limit provided by Article 108, third sentence, EPC in conjunction with Rule 126(2) EPC. In addition, neither the notice of appeal nor any other document filed contains anything that could be regarded as a statement of grounds pursuant to Article 108 EPC and Rule 99(2) EPC. Therefore, the appeal has to be rejected as inadmissible (Rule 101(1) EPC).

2. Since the appellant did not file any response to the Board's communication of 14 March 2019, the Board could assume that the request for oral proceedings did not apply to the present constellation and therefore could decide without oral proceedings.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.
The Registrar: B. Atienza Vivancos

The Chairman: J. Riolo

Decision electronically authenticated