Internal distribution code:
(A) [ - ] Publication in OJ
(B) [ - ] To Chairmen and Members
(C) [ - ] To Chairmen
(D) [ X ] No distribution

Datataset for the decision of 30 September 2019

Case Number: T 0772/19 - 3.3.07
Application Number: 14165008.5
Publication Number: 2799090
IPC: A61K49/10, A61K51/04
Language of the proceedings: EN

Title of invention:
Process for preparing a pharmaceutical formulation of contrast agents

Patent Proprietor:
GUERBET

Opponents:
Bracco Imaging SpA
Bayer Pharma Aktiengesellschaft

Headword:
Missing statement of grounds

Relevant legal provisions:
EPC Art. 108
EPC R. 101(1), 103(2), 126(2), 99(2)
**Keyword:**
Admissibility of appeal - missing statement of grounds
Case Number: T 0772/19 – 3.3.07

DECISION
of Technical Board of Appeal 3.3.07
of 30 September 2019

Appellant: Bracco Imaging SpA
(Intellectual Property Dept.
Via Egidio Folli, 50
20134 Milano (IT))

Representative: Macchetta, Francesco
(Opponent 1)
Bracco Imaging SpA
IP Department
Via Caduti di Marcinelle 13
20134 Milano (IT)

Representative: Regimbeau
(Patent Proprietor)
93420 Villepinte (FR)

Respondent: GUERBET
15, Rue des Vanesses
75847 Paris Cedex 17 (FR)

Representative: Santarelli
(Opponent 2)
49, avenue des Champs-Elysées
75008 Paris (FR)

Party as of right: Bayer Pharma Aktiengesellschaft
(Müllerstrasse 178
13353 Berlin (DE))

Composition of the Board:
Chairman                J. Riolo
Members:                S. Albrecht
                        Y. Podbielski
Summary of Facts and Submissions

I. The appeal is directed against the decision of the Opposition Division of 6 November 2018, posted on 4 January 2019.

II. The appellant (opponent 01) filed a notice of appeal on 14 March 2019 and paid the appeal fee on the same day.

III. By communication of 24 June 2019, 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 8 July 2019 the appellant requested reimbursement of the appeal fee. In a communication dated 19 July 2019 the appellant was informed that Rule 103(2) EPC only allowed for reimbursement of the appeal fee if the appeal was withdrawn and that the request for reimbursement of the appeal fee could therefore at present not be granted. No reply was received.

Reasons for the Decision

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). The Board decided to refuse the request for reimbursement of the appeal fee for the reasons given in the communication dated 19 July 2019.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

B. Atienza Vivancos J. Riolo

Decision electronically authenticated