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D E C I S I O N
of 21 April 1997

Case Number: T 0153/95 - 3.2.2

Application Number: 90902398.8

Publication Number: 0404929

IPC: A61F 2/16

Language of the proceedings: EN

Title of invention:

Intraocular Lens

Patentee:

PHARMACIA AB (reg. number 556131-9608)

Opponent:

Crozafon Philippe Dr.

Headword:

-

Relevant legal provisions:

EPC Art. 116(1)

EPC R. 67

Keyword:

"Oral proceedings - request for"

Decisions cited:

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Catchword:

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Case Number: T 0153/95 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 21 April 1997

Appellant: Crozafon Philippe Dr.
(Opponent) 55 Promenade des Anglais
FR-06000 Nice (FR)

Respondent: PHARMACIA AB (reg. number 556131-9608)
(Proprietor of the patent) SW-171 97 Stockholm (SW)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted - rejecting the
opposition filed against European patent
No. 0 404 929 pursuant to Rule 56(1) EPC.

Composition of the Board:

Chairman: H. J. Seidenschwarz
Members: J. C. M. De Preter
D. Valle

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal, received on 10 February 1995 against the decision of the Opposition Division of 15 December 1994 on the rejection of the opposition against the patent No. 0 404 929. The statement setting out the grounds of appeal was received on 12 April 1995. The fee for appeal was paid on 10 February 1995.

The opposition was rejected as inadmissible because it did not comply with the provisions of Rule 55(c) EPC.

- II. The appellant complained in the statement of grounds among other things that the opposition division did not consider its request for oral proceedings according to Article 116 EPC. The respondent (proprietor) requested that - in the case the Board did not intend to reject the appeal - oral proceedings be held.

The Board issued a communication on 11 December 1995 stating that the Opposition division in its written decision overlooked the fact that it was precluded from doing so in the face of an existing request by the appellant for oral proceedings. Thus the decision was vitiated by a substantial procedural violation, resulting in the matter having to be referred back to the opposition division with the repayment of the appeal fee. Under those circumstances, any oral proceedings before the Board would have been pointless. Insofar as oral proceedings before the Board had been requested by the respondent, this would have seemed

only to have been intended to safeguard its position in the event of the Board contemplating issuing a decision which was adverse from its point of view.

The respondent did not answer to the communication of the Board nor did it contest the Board's interpretation of its request for oral proceedings.

Reasons for the Decision

1. The appeal is admissible.

2. Although the appellant had filed a request for oral proceedings (see letter of 23 August 1994, page 4, line 5 from the bottom) the Opposition Division issued the decision under appeal without complying with that request and thus violated Article 116(1) EPC. Furthermore the decision was based on grounds on which the appellant had not had the opportunity to present its comments, so that it is vitiated by two substantial procedural violations, justifying the referral of the case back to the Opposition Division (Article 10 Rules of Procedure of the Boards of Appeal) and the reimbursement of the appeal fee (Rule 67 EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division with the order to hold oral proceedings before issuing a final decision.
3. The appeal fee shall be reimbursed.

The Registrar: The Chairman:

S. Fabiani

H. Seidenschwarz