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**Datasheet for the decision
of 3 March 2011**

Case Number: T 0003/08 - 3.3.09

Application Number: 02425703.2

Publication Number: 1391155

IPC: A23K 1/16

Language of the proceedings: EN

Title of invention:

Composition for use in animal nutrition comprising a controlled release matrix, process for preparing and use thereof

Patentee:

Vetagro S.r.l.

Opponents:

AXISS FRANCE S.A.S. (Opponent 1)
Cargill Inc. (Opponent 2)

Headword:

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Relevant legal provisions:

EPC Art. 108
EPC R. 99(2), 101(1), 126(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Appeal of opponent 1 - inadmissible"
"Appeal of opponent 2 - withdrawn"
"Termination of appeal proceedings"

Decisions cited:

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Catchword:

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Case Number: T 0003/08 - 3.3.09

D E C I S I O N
of the Technical Board of Appeal 3.3.09
of 3 March 2011

Appellant 1:
(Opponent 1)
AXISS FRANCE S.A.S.
Zone Industrielle d'Ariod
Rue des Frères Lumière
F-01200 Bellegarde sur Valserine (FR)

Representative:
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Cabinet Poncet
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B.P. 317
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**Appellant 2/
Party as of right:**
(Opponent 2)
Cargill Inc.
15407 McGinty Road West
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MN 55491-5624 (US)

Representative:
Wibbelmann, Jobst
Wuesthoff & Wuesthoff
Patent- und Rechtsanwälte
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Respondent:
(Patent Proprietor)
Vetagro S.r.l.
Via P. Colletta 12
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Representative:
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Decision under appeal: Decision of the Opposition Division of the European Patent Office posted 21 November 2007 rejecting the oppositions filed against European patent No. 1391155 pursuant to Article 102(2) EPC 1973.

Composition of the Board:

Chairman: W. Ehrenreich
Members: N. Perakis
K. Garnett

Summary of Facts and Submissions

- I. By decision of the Opposition Division announced orally at the oral proceedings of 24 October 2007 and issued in writing on 21 November 2011 the oppositions filed against the European patent EP-B-1 391 155 were rejected.
- II. With a letter dated 19 December 2007 Opponent 2 (Appellant 2), Cargill Inc, filed an appeal against the decision of the Opposition Division and paid the appeal fee on the same day. Appellant 2 requested a date for oral proceedings to be fixed. The statement setting out the grounds of appeal was filed on 11 March 2008.
- III. With a letter dated 25 January 2008 Opponent 1 (Appellant 1), AXISS France S.A.S., filed a notice of appeal against the decision of the Opposition Division and paid the appeal fee on the same day. Oral proceedings were requested as an auxiliary measure. No grounds of appeal were filed within the prescribed time limit.
- IV. By a communication dated 20 May 2008 the Registrar of the board informed Appellant 1 that it appeared from the file that no written statement of grounds of appeal had been filed. 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. Appellant 1 was informed that any observations had to be filed within two months of notification of the communication. However, no observations or any other submissions were subsequently filed by Appellant 1.

- V. With a letter dated 28 November 2008 the Patent Proprietor (Respondent) filed observations on the Appeal of Appellant 2 and requested oral proceedings.
- VI. The board summoned the parties to oral proceedings to be held on 29 March 2011.
- VII. By letter dated 16 February 2011 and received by the EPO on the same day, Appellant 2 withdrew its appeal.
- VIII. By communication dated 2 March 2011 the board cancelled the oral proceedings.

Reasons for the Decision

- 1. Both Opponents filed notices of appeal against the decision of the Opposition Division.

Opponent 2 (Appellant 2) withdrew its appeal with a letter dated 16 February 2011.

Opponent 1 (Appellant 1) did not file any written statement setting out the Grounds of appeal within the time limit provided by Article 108, third sentence, EPC in conjunction with Rule 126(2) EPC. In addition, the notice of appeal of Opponent 1 (Appellant 1) contains nothing that could be regarded as a statement of grounds pursuant to Article 108 EPC and Rule 99(2) EPC. Moreover, no further submissions were filed by Opponent 1 (Appellant 1) which could be regarded as such a statement.

2. Therefore, the appeal of Opponent 1 (Appellant 1) has to be rejected as inadmissible (Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC).
3. The effect of the rejection of the Opponent 1's appeal coupled with the earlier withdrawal of Opponent 2's appeal will be that the appeal proceedings are terminated.

Order

For these reasons it is decided that:

The appeal of Opponent 1 (Appellant 1) is rejected as inadmissible.

The Registrar

The Chairman

C. Eickhoff

W. Ehrenreich