

Internal distribution code:

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

**Datasheet for the decision
of 26 May 2014**

Case Number: T 2370/09 - 3.3.02
Application Number: 05077139.3
Publication Number: 1642983
IPC: C12P7/64, A23D9/00, A23C11/04,
A61K31/20, A23L1/30
Language of the proceedings: EN

Title of invention:

Arachidonic acid and methods for the production and use thereof

Patent Proprietor:

MARTEK BIOSCIENCES CORPORATION

Opponents:

Cargill, Inc.
Suntory Liquors Limited
N.V. Nutricia

Headword:

Arachidonic acid/MARTEK

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision -
text or agreement to text withdrawn by patent proprietor -
patent revoked

Decisions cited:

T 0073/84

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2370/09 - 3.3.02

**D E C I S I O N
of Technical Board of Appeal 3.3.02
of 26 May 2014**

Appellant: MARTEK BIOSCIENCES CORPORATION
(Patent Proprietor) 6480 Dobbin Road
Columbia, MD 21045 (US)

Representative: Phillips, Gillian Margaret
Carpmaels & Ransford LLP
One Southampton Row
London WC1B 5HA (GB)

Appellant: Cargill, Inc.
(Opponent 1) 15407 McGinty Road West
Wayzata
Minnesota, MN 55391-5624 (US)

Representative: Bijvank, Koen Mattijs Lodewiek
V.O.
Johan de Wittlaan 7
2517 JR Den Haag (NL)

Appellant: Suntory Liquors Limited
(Opponent 2) Daiba 2-3-3
Minato-ku
Tokyo (JP)

Representative: Stoner, Gerard Patrick
Mewburn Ellis LLP
33 Gutter Lane
London
EC2V 8AS (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
1 October 2009 concerning maintenance of the
European Patent No. 1642983 in amended form.**

Composition of the Board:

Chairman U. Oswald
Members: K. Giebeler
 R. Cramer

Summary of Facts and Submissions

- I. The European patent 1 642 983 was maintained in amended form by the decision of the opposition division pronounced at the oral proceedings held on 11 June 2009.
- II. Appeals were filed against this decision by the patent proprietor and by opponents 01 and 02. Opponent 03 had withdrawn its opposition on 4 July 2008 and is therefore not a party to the appeal proceedings.
- III. The patent proprietor requested to set aside the decision under appeal and to maintain the patent as granted or on the basis of any of the auxiliary requests filed with the statement of grounds of appeal. The opponents requested that the decision under appeal be set aside and the patent be revoked. All appellants requested oral proceedings.
- IV. With letter of 14 May 2014 the patent proprietor withdrew all of its previous requests, and stated that it did no longer approve the text in which the patent was granted and would not be filing a new text to replace the disapproved text.

Reasons for the Decision

1. The appeals are admissible.
2. As the patent proprietor withdrew all of its requests and no longer approves the text in which the patent was granted, it may be inferred that it wishes to prevent any text whatever of the patent from being maintained (see T 73/84, OJ EPO 1985, 241). If there is no text on the basis of which the board can consider the appeals,

the patent must be revoked without any further substantive examination.

3. As revocation of the patent complies with the requests of the appellants/opponents, there is no need to hold oral proceedings and the decision can be issued in writing.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



N. Maslin

U. Oswald

Decision electronically authenticated