

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 January 2015**

Case Number: T 2141/13 - 3.3.09

Application Number: 03738077.1

Publication Number: 1513922

IPC: A23D9/02, A23K1/14, A23L1/30,
A61K8/67, A23D9/00, C11B1/10,
C12N1/00, A23K1/16, A61Q19/00,
A61K8/92, A61K8/99, C12P7/64

Language of the proceedings: EN

Title of invention:
PASTEURISATION PROCESS FOR MICROBIAL CELLS AND MICROBIAL OIL

Patent Proprietor:
DSM IP Assets B.V.

Opponent:
Suntory Holdings Limited

Headword:

Relevant legal provisions:
EPC Art. 108
EPC R. 99(2), 101(1), 103(2), 126(2)

Keyword:
Admissibility of appeal - statement of grounds (not filed)

Decisions cited:

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 2141/13 - 3.3.09

**D E C I S I O N
of Technical Board of Appeal 3.3.09
of 26 January 2015**

Appellant: DSM IP Assets B.V.
(Patent Proprietor) Het Overloon 1
6411 TE Heerlen (NL)

Representative: Elkenbracht, Johan Christiaan
DSM Intellectual Property
P.O. Box 4
6100 AA Echt (NL)

Appellant: Suntory Holdings Limited
(Opponent) 1-40, Dojimahama 2-chome
Kita-ku, Osaka-shi
Osaka 530-8203 (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
2 August 2013 concerning maintenance of the
European Patent No. 1513922 in amended form.**

Composition of the Board:

Chairman W. Sieber
Members: M. O. Müller
D. Prietzel-Funk

Summary of Facts and Submissions

- I. This decision concerns the appeals filed by the opponent and the patent proprietor against the decision of the opposition division that European patent No. 1 513 922 as amended in accordance with "new auxiliary request 1" filed during the oral proceedings before the opposition division meets the requirements of the EPC.

Claim 1 of new auxiliary request 1 read as follows:

"1. A microbial oil which comprises at least 35% of a desired PUFA, and has an anisidine value (AnV) of no more than 20."

- II. The opponent filed a notice of appeal on 26 September 2013 and paid the appeal fee on the same day. The statement of grounds of appeal was filed on 12 December 2013.
- III. The patent proprietor filed a notice of appeal on 14 October 2013 and paid the appeal fee on the same day.
- IV. By communication of 15 January 2014, received by the patent proprietor on 22 January 2014, the registry of the board informed the patent proprietor 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 patent proprietor was invited to file observations within two months of notification of the communication.

- V. No answer to the registry's communication was received.
- VI. By letter of 17 July 2014, the patent proprietor filed a response to the grounds of appeal of the opponent including a new main request and auxiliary requests 1 to 6.

Claim 1 of the new main request read as follows:

"1. A microbial oil which comprises at least 35% of arachidonic acid (ARA), and has an anisidine value (AnV) of no more than 20, which oil has been produced by a fungus of the species *Mortierella alpina*."

- VII. By letter of 19 November 2014, the opponent withdrew its appeal.

Reasons for the Decision

1. No written statement setting out the grounds of appeal was filed by the patent proprietor within the time limit provided for 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 of the patent proprietor has to be rejected as inadmissible (Rule 101(1) EPC).
2. The opponent has withdrawn its appeal. Since no date for oral proceedings has been set and the board has not invited the opponent to file observations before

issuing the present decision, the appeal fee has to be reimbursed at 50% (Rule 103(2)(c) EPC).

3. Apparently, in view of the facts and arguments provided by the opponent in its statement of grounds of appeal, the patent proprietor intended to pursue its patent in a more restricted form than found allowable by the opposition division (point VI).

Since, however, the patent proprietor's own appeal is inadmissible and the opponent has withdrawn its appeal, the appeal proceedings have to be terminated and the impugned decision remains as it stands.

Order

For these reasons it is decided that:

1. The patent proprietor's appeal is rejected as inadmissible.
2. The opponent is reimbursed 50% of the appeal fee.
3. The appeal proceedings are terminated.

The Registrar:

The Chairman:



M. Cañueto Carbajo

W. Sieber

Decision electronically authenticated