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**Datasheet for the decision  
of 26 January 2017**

**Case Number:** T 1311/14 - 3.3.09

**Application Number:** 04812384.8

**Publication Number:** 1753302

**IPC:** A23K1/16, A23K1/18

**Language of the proceedings:** EN

**Title of invention:**

Composition for animal consumption and method for reducing MAP  
kinase activity

**Patent Proprietor:**

Virginia Tech Intellectual Properties, Inc.

**Opponent:**

Mars, Incorporated

**Headword:**

**Relevant legal provisions:**

EPC Art. 108, 101, 111(1), 113(2)

EPC R. 99(2), 101(1)

**Keyword:**

Appeal of patent proprietor inadmissible - missing statement  
of grounds

Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 2405/12

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1311/14 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 26 January 2017**

**Respondent:** Virginia Tech Intellectual Properties, Inc.  
(Patent Proprietor) 2200 Kraft Drive, Suite 1050  
Blacksburg, VA 24060 (US)

**Representative:** Daniels, Jeffrey Nicholas  
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Bedford House  
John Street  
London WC1N 2BF (GB)

**Appellant:** Mars, Incorporated  
(Opponent) 6885 Elm Street  
McLean, Virginia 22101 (US)

**Representative:** Cornish, Kristina Victoria Joy  
Kilburn & Strode LLP  
20 Red Lion Street  
London WC1R 4PJ (GB)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
9 April 2014 maintaining European Patent No.  
1753302 in amended form.

**Composition of the Board:**

**Chairman** W. Sieber  
**Members:** J. Jardón Álvarez  
D. Prietzel-Funk

## **Summary of Facts and Submissions**

I. This decision concerns the appeals filed by the patent proprietor and the opponent against the interlocutory decision of the opposition division that European patent No. 1 753 302 as amended met the requirements of the EPC.

II. By communication of 8 September 2014, received by the appellant on 15 September 2014, the Registry of the Board informed the appellant/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 appellant was informed that any observations had to be filed within two months of notification of the communication.

No reply to this communication was received.

III. Since no written statement setting out the grounds of appeal has been filed within the time limit, and neither the notice of appeal nor any other document filed contained anything that could be regarded as a statement of grounds pursuant to Article 108 EPC and Rule 99(2) EPC, the board held in its communication dated 19 September 2016 that the patent proprietor's appeal was inadmissible. Consequently, the patent proprietor had the status of a respondent in relation to the admissible appeal of the opponent.

IV. In a letter dated 23 January 2017, the patent proprietor informed the board that:

"The patent proprietor, Virginia Tech Intellectual Properties, Inc. hereby withdraws all requests in the appeal proceedings, no longer approves the text upon which the patent was granted and will not be submitting an amended text."

### **Reasons for the Decision**

1. Article 113(2) EPC requires that the European Patent Office shall decide upon the European patent only in the text submitted to and agreed on by the proprietor of the patent.
2. Agreement is not given if the proprietor expressly states that it no longer approves the text upon which the patent was granted and that it will not be submitting an amended text. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will.
3. In the present situation, where there is no text of the patent on which basis the board can consider the appeal of the appellant/opponent, the only possibility available to the board is to terminate the proceedings and to revoke the patent as envisaged in Article 111(1) EPC together with Article 101 EPC. In this context reference is made to T 2405/12 and the decisions cited therein.

## 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:



M. Cañueto Carbajo

W. Sieber

Decision electronically authenticated