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**Datasheet for the decision
of 12 February 2019**

Case Number: T 1288/18 - 3.3.09

Application Number: 09769822.9

Publication Number: 2289347

IPC: A23K10/30, A23K50/00

Language of the proceedings: EN

Title of invention:
FEED COMPRISING RAPESEED MEAL

Patent Proprietor:
J-Oil Mills, Inc.

Opponent:
Cargill, Incorporated

Headword:

Relevant legal provisions:
EPC Art. 101, 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84, T 2405/12

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1288/18 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 12 February 2019

Appellant: Cargill, Incorporated
(Opponent) 15407 McGinty Road West
Wayzata, MN 55391 (US)

Representative: Elseviers, Myriam
Cargill R&D Centre Europe BVBA
Bedrijvenlaan 9
2800 Mechelen (BE)

Respondent: J-Oil Mills, Inc.
(Patent Proprietor) 8-1, Akashi-cho
Chuo-ku
Tokyo 104-0044 (JP)

Representative: Takeuchi, Maya
Fédit-Loriot
38, avenue Hoche
75008 Paris (FR)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 29 March 2018
rejecting the opposition filed against European
patent No. 2289347 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman W. Sieber
Members: A. Veronese
F. Blumer

Summary of Facts and Submissions

- I. This decision concerns the appeal of the opponent/appellant against the decision of the opposition division rejecting the opposition filed against European patent EP 2 289 347.
- II. The opponent/appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- III. By letter dated 21 November 2018, the patent proprietor/respondent declared:

"We kindly inform you that the patentee no longer approves the text of the above-identified patent as granted and has no intention of submitting any further amended text. The patentee hereby requests that the patent be revoked."

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO shall consider, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. Such an agreement cannot be deemed to exist if the proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted and declares that it will not be submitting an amended text.
3. 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 revoke the patent as envisaged by Article 101 EPC. In this context reference is made to T 73/84 (OJ EPO 1985, 241) as well as 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