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**Datasheet for the decision  
of 25 February 2022**

**Case Number:** T 1659/18 - 3.3.08

**Application Number:** 06075318.3

**Publication Number:** 1688500

**IPC:** C12N15/55, C12N9/16, A23K1/165,  
A23L1/015

**Language of the proceedings:** EN

**Title of invention:**  
Overexpression of phytase genes in yeast systems

**Patent Proprietor:**  
Cornell Research Foundation, Inc.

**Opponent:**  
Kaesler Nutrition GmbH

**Headword:**  
Uses of AppA phytase/CORNELL RESEARCH FOUNDATION

**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Basis of decision - text or agreement to text withdrawn by  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 2080/13, T 1182/17

**Catchword:**



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

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Case Number: T 1659/18 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 25 February 2022**

**Appellant I:**  
(Patent Proprietor)  
Cornell Research Foundation, Inc.  
Cornell Center for Technology Enterprise  
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**Appellant II:**  
(Opponent)  
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**Representative:**  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
17 April 2018 concerning maintenance of the  
European Patent No. 1688500 in amended form.**

**Composition of the Board:**

**Chairman**            B. Stolz  
**Members:**            M. Montrone  
                              D. Rogers

## **Summary of Facts and Submissions**

- I. European patent no. 1 688 500 is based on European patent application No. 06075318.3 (the "patent application"), which is a divisional application of European patent application No. 99935340.2 published as International patent application WO 99/67398.
- II. The opposition division took the view that the main request (claims as granted) and auxiliary request 1 comprised subject-matter extending beyond the content of the application as filed (Article 100(c) EPC). Auxiliary request 2 filed during the oral proceedings was held to comply with the EPC.
- III. Appeals were lodged by the patent proprietor and opponent 01, referred to hereinafter as appellants I and II, respectively.
- IV. With their statement of grounds of appeal, appellant I relied on a main request and auxiliary requests 1 and 2 that were all filed during the first instance proceedings.
- V. With their statement of grounds of appeal, appellant II submitted arguments under added subject-matter, insufficiency of disclosure, lack of novelty and inventive step against the subject-matter of auxiliary request 2 as maintained by the opposition division.
- VI. In reply, appellant I provided counter arguments to appellant II's submissions.
- VII. Appellant II submitted with letter dated 12 January 2022 that they will neither attend nor be

represented at the oral proceedings scheduled for 25 February 2022.

- VIII. In a communication in preparation of oral proceedings, the parties were informed of the board's provisional, non-binding opinion.
- IX. In reply, appellant I announced in the letter dated 22 February 2022 that they would not attend the oral proceedings and that they withdrew their approval of the text in which the European patent was granted. They further withdrew all requests on file.
- X. Appellant II requested that the decision under appeal be set aside and that the patent be revoked.

### **Reasons for the Decision**

1. Article 113(2) EPC requires that the European Patent Office decides upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. The patent proprietor (appellant I) explicitly disapproved the text of the patent without filing any other amended text on which further prosecution could be based.
3. Thus, appellant I unequivocally expresses that they are no longer interested in the continuation of the appeal proceedings and a decision on the appeal under Article 111 EPC.
4. It is established case law of the Boards of Appeal that in these circumstances, the proceedings are to be terminated by a decision ordering revocation of the

patent, without going into the substantive issues (see, inter alia, T 2080/13 of 8 September 2017; T 1182/17 of 22 October 2020 and the case law cited in point 4 of the Reasons of this decision).

## 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:



L. Malécot-Grob

B. Stolz

Decision electronically authenticated