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**Datasheet for the decision
of 11 January 2021**

Case Number: T 1573/20 - 3.3.02

Application Number: 14195416.4

Publication Number: 2856872

IPC: A01N43/80, A01P13/02,
A01N25/02, A01N25/04

Language of the proceedings: EN

Title of invention:

Use of 3-isoxazolidinones as selective herbicides in grass and
brassica crops

Applicant:

FMC Corporation

Headword:

Missing statement of grounds of appeal

Relevant legal provisions:

EPC Art. 108

EPC R. 101(1), 116(1)

Keyword:

Admissibility of appeal - missing statement of grounds
Request for oral proceedings - clearly inadmissible appeal

Decisions cited:

G 0001/97, G 0002/97, G 0002/19

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1573/20 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 11 January 2021

Appellant: FMC Corporation
(Applicant) FMC Tower at Cira Centre South
2929 Walnut Street
Philadelphia, PA 19104 (US)

Representative: Murgitroyd & Company
Murgitroyd House
165-169 Scotland Street
Glasgow G5 8PL (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 7 November 2019
refusing European patent application No.
14195416.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. O. Müller
Members: M. Maremonti
L. Bühler

Summary of Facts and Submissions

- I. The appeal by the applicant (hereinafter "appellant") is directed against the decision of the examining division to refuse European patent application No. 14 195 416.4.
- II. The appellant filed notice of appeal on 7 January 2020 and paid the appeal fee on the same day.
- III. By communication of 17 July 2020, the registry of the board informed the appellant 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.
- IV. No reply was received.
- V. On 7 October 2020 the appellant was reminded that the renewal fee for the ninth year had not been paid.

Reasons for the Decision

Missing statement of grounds of appeal

1. No written statement setting out the grounds of appeal was filed within the time limit provided 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 has to be rejected as inadmissible (Rule 101(1) EPC).

Request for oral proceedings

2. In view of the appellant's request for oral proceedings "in advance of any decision adverse to the Applicant" (see notice of appeal of 7 January 2020, page 2), the board considered the need to hold oral proceedings. Despite the absolute nature of the right to oral proceedings under Article 116 EPC, the board concluded that oral proceedings were not required in the present circumstances.
3. The board notes that the appellant did not file any observations in reply to the communication of 17 July 2020. In particular, the appellant did not contest the finding there that no statement of grounds of appeal had been received, nor did it invoke an extension of the time limit under Rule 134(2) or (5) EPC or file a request for re-establishment into the time limit for filing the statement of grounds of appeal.
4. Therefore, holding oral proceedings would have served no other purpose than confirming the (undisputed) preliminary finding that no statement of grounds of appeal had been filed, and announcing the decision afterwards. There was no contentious matter on which the appellant had to be heard according to Article 113(1) EPC. Oral proceedings would thus have had no legitimate aim. Even more, had the appellant insisted on holding oral proceedings in the absence of any dispute, this would have amounted to a breach of

the duty to act in good faith (G 2/97, Reasons, point 4.2).

5. The situation is therefore comparable to the "clearly inadmissible appeals" considered in decisions G 1/97 and G 2/19. These decisions are concerned with appeals by a non-party or based on non-existing remedies only. Nevertheless, the board is convinced that the Enlarged Board of Appeal did not consider these examples to be exhaustive. Rather, it acknowledged as a matter of principle that there are exceptions to the right to oral proceedings under Article 116 EPC (G 1/97, Reasons, point 6, last paragraph; G 2/19, Reasons, B II 2 and 8, C I). It follows from the rationale of the above decisions that the present case falls in the category of clearly inadmissible appeals and can be rejected without holding oral proceedings.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated