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**Datasheet for the decision  
of 14 March 2024**

**Case Number:** T 0119/22 - 3.3.09

**Application Number:** 13733582.4

**Publication Number:** 2800476

**IPC:** A23K40/20, A23K20/168,  
A23K20/189, A23K10/14,  
A23K50/75, A23K50/80,  
A23K50/60, A23K40/25,  
A23K50/30, C12N9/16, A61K38/46

**Language of the proceedings:** EN

**Title of invention:**  
METHOD OF FEEDING

**Patent Proprietor:**  
DuPont Nutrition Biosciences ApS

**Opponent:**  
Novozymes A/S

**Headword:**  
Method of feeding/DUPONT NUTRITION

**Relevant legal provisions:**  
EPC 1973 Art. 113(2)

**Keyword:**

Basis of decision - text submitted or agreed by patent  
proprietor (no) - revocation of the patent at request of the  
patent proprietor



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 0119/22 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 14 March 2024**

**Appellant:** DuPont Nutrition Biosciences ApS  
(Patent Proprietor) Langebrogade 1  
1411 Copenhagen K (DK)

**Representative:** D Young & Co LLP  
3 Noble Street  
London EC2V 7BQ (GB)

**Appellant:** Novozymes A/S  
(Opponent) Krogshøjvej 36  
2880 Bagsværd (DK)

**Representative:** Potter Clarkson  
Chapel Quarter  
Mount Street  
Nottingham NG1 6HQ (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
9 November 2021 concerning maintenance of the  
European Patent No. 2800476 in amended form.**

**Composition of the Board:**

**Chairman** A. Haderlein  
**Members:** F. Rinaldi  
N. Obrovski

## **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 the European patent as amended met the requirements of the EPC.
- II. With its statement setting out the grounds of appeal the patent proprietor filed several auxiliary requests.
- III. At the oral proceedings, the patent proprietor withdrew its agreement to the text of the patent as granted and all auxiliary requests, and indicated that it would not file any further requests.
- IV. The opponent requested that the decision under appeal be set aside and that the patent be revoked.

## **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle, according to which the text of the patent is at the disposition of the proprietor, has to be strictly observed also in opposition and opposition appeal proceedings.
2. As the proprietor of the patent no longer approves the text of the patent as granted (main request) and does not pursue the patent according to the auxiliary

requests on file, there is no text of the patent on which the board can base its consideration of the opponent's appeal.

3. If the proprietor of a European patent states in opposition or appeal proceedings that it no longer approves the text in which the patent was granted, and does not submit any amended text, the patent is to be revoked (Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2, third paragraph and III.B.3.3, first paragraph). Therefore, the patent must be revoked, without any preceding substantive examination.

## 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:



K. Götz-Wein

A. Haderlein

Decision electronically authenticated