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**Datasheet for the decision
of 20 February 2024**

Case Number: T 0815/23 - 3.3.09

Application Number: 18179282.1

Publication Number: 3398449

IPC: A23K20/142, A23K20/22,
A23K20/24, A23K50/80

Language of the proceedings: EN

Title of invention:

A METHOD FOR SMOLTIFICATION IN SALMONIDAE

Patent Proprietor:

STIM. AS

Opponent:

Cargill, Incorporated

Headword:

Method for smoltification in Salmonidae/STIM

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked - revocation of the patent
at request of the patent proprietor

Decisions cited:

T 0459/88, T 1268/21



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Case Number: T 0815/23 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 20 February 2024

Appellant: STIM. AS
(Patent Proprietor) P.O. Box 344
8376 Leknes (NO)

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Appellant: Cargill, Incorporated
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
9 March 2023 concerning maintenance of the
European Patent No. 3398449 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: C. Meiners
N. Obrovski

Summary of Facts and Submissions

- I. The appeals were filed by the patent proprietor and the opponent (both appellants) against the interlocutory decision of the opposition division finding that, on the basis of the second auxiliary request (then on file), the patent in suit ("the patent") met the requirements of the EPC.
- II. With its letter dated 26 January 2024, the patent proprietor requested that the patent be revoked.
- III. The opponent requested in its notice of appeal that the decision under appeal be set aside and that the patent be revoked.

Reasons for the Decision

1. The board understands the patent proprietor's request to revoke the patent made during the appeal proceedings as a statement that it no longer approves the text of the patent in any form and that no amended text will be submitted (see e.g. T 459/88, Reasons 4, and T 1268/21, Facts and Submissions IV and Reasons 3).
2. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be strictly observed also in opposition and opposition appeal proceedings. As the patent proprietor withdrew its agreement to the text of the patent in any form, there is no text of the patent on which the board can base its consideration of the opponent's appeal.

3. In such a situation, the patent is to be revoked without any preceding substantive examination (Case Law of the Boards of Appeal of the EPO, 10th edition 2022, IV.D.2, in particular third and fifth paragraphs, and III.B.3.3, first paragraph).

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