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**Datasheet for the decision
of 25 March 2026**

Case Number: T 0438/24 - 3.3.04

Application Number: 18198460.0

Publication Number: 3530740

IPC: C12N15/82, C12R1/89, C12N1/12,
C12P7/64

Language of the proceedings: EN

Title of invention:

THRAUSTOCHYTRIDS, FATTY ACID COMPOSITIONS, AND METHODS OF
MAKING AND USES THEREOF

Patent Proprietor:

DSM IP Assets B.V.

Opponents:

ELKINGTON AND FIFE LLP
Fermentalg
Algal Omega 3 Limited
Mara Renewables Corporation

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Basis of decision - text or agreement to text withdrawn by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 0186/84, T 0646/08, T 2434/18



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Chambres de recours

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Case Number: T 0438/24 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 25 March 2026

Appellant: DSM IP Assets B.V.
(Patent Proprietor) Wilhelminasingel 39
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Representative: Hoyng Rokh Monegier B.V.
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Appellant: ELKINGTON AND FIFE LLP
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Appellant: Mara Renewables Corporation
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Representative: Reddie & Grose LLP
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Party as of right: Algal Omega 3 Limited
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Representative: Reddie & Grose LLP
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 23 January 2024
concerning maintenance of the European Patent
No. 3530740 in amended form

Composition of the Board:

Chair M. Pregetter
Members: S. Albrecht
A. Bacchin

Summary of Facts and Submissions

- I. European Patent No. 3 530 740 ("patent") was opposed by two opponents under Article 100 (a), (b) and (c) EPC on the grounds that the claimed subject-matter lacked novelty and inventive step, was not regarded as an invention under the EPC (Article 52(1) and (2) (a) EPC), was not sufficiently disclosed and extended beyond the contents of each of the application as filed, the earlier application as filed (i.e. European patent application No. 16 180 878.7 as filed), and the earliest application as filed (i.e. European patent application No. 09 841 993.0, filed as an international application under the PCT and published as WO 2010/107415).
- II. In the course of the opposition proceedings, opponent 2 withdrew its opposition.
- III. Thereafter, two third parties, Algal Omega 3 Limited and Mara Renewables Corporation (opponents 3 and 4, respectively), filed a notice of intervention under Article 105 EPC before the opposition division. The interventions were based on the grounds for opposition pursuant to Article 100(a) in conjunction with Articles 52(2) (a), 54 and 56 EPC, Article 100(b) and (c) EPC.
- IV. The opposition division decided that the patent as amended according to auxiliary request 2 and the invention to which it related met the requirements of the EPC. The decision was based on a main request, and auxiliary requests 1 and 2. The set of claims of each of these three requests was filed on 21 September 2023.

- V. The patent proprietor ("appellant-patent proprietor"), opponent 1 ("appellant-opponent 1") and opponent 4 ("appellant-opponent 4") filed an appeal against the opposition division's decision.
- VI. The appellant-patent proprietor requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of auxiliary request 1 underlying the appealed decision (main request). Alternatively, the appellant-patent proprietor requested that the patent be maintained in amended form on the basis of one of the sets of claims of auxiliary requests 1 to 31, all filed in opposition proceedings and refiled with the appellant-patent proprietor's statement of grounds of appeal.
- VII. Appellant-opponents 1 and 4 and opponent 3 requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- VIII. The Board appointed oral proceedings in conformity with the parties' requests and, in a communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeals.
- IX. Oral proceedings were held on 24 and 25 March 2026 in the presence of the appellant-patent proprietor, opponent-appellant 1 and opponent-appellant 4. During the oral proceedings, the appellant-patent proprietor stated that they withdrew the consent to the text of the patent and all requests on file, and did not intend to file any new requests. At the end of the oral proceedings, the Chair announced the Board's decision.

Reasons for the Decision

1. In application of the principle of party disposition established by 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.
2. Such an agreement is deemed not to exist if the patent proprietor - as in the current case - expressly declares that it no longer approves the text of the patent, withdraws all requests on file, and will not be filing any new requests.
3. There is therefore no longer any text of the patent in the proceedings on the basis of which the Board can consider the appeal and examine whether a ground for opposition under Article 100 EPC prejudices the maintenance of the patent (T 186/84, point 5 of the Reasons; T 646/08, point 4 of the Reasons; T 2434/18, point 4 of the Reasons). No other issues are to be decided upon in the present appeal case.
4. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent under Article 101 EPC without substantive examination as to patentability (Case Law of the Boards of Appeal of the European Patent Office, 11th edn. 2025, III.B.3.3 and IV.D.2).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



I. Aperribay

M. Pregetter

Decision electronically authenticated