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**Datasheet for the decision  
of 10 December 2025**

**Case Number:** T 0729/24 - 3.3.09

**Application Number:** 10719080.3

**Publication Number:** 2410871

**IPC:** A23K1/18, A23K1/16, C11C3/02

**Language of the proceedings:** EN

**Title of invention:**

COMPOSITIONS CONTAINING C1 TO C7 ORGANIC ACID MONOGLYCERIDES  
AND GLYCEROL, THEIR PREPARATION AND USE AS ANTIBACTERIALS AND  
ANTI-MOULD AGENTS

**Patent Proprietor:**

BASF SE

**Opponents:**

Perstorp Waspik B.V.  
Framelco B.V.  
Perstorp AB

**Headword:**

C1 to C7 organic acid monoglycerides/BASF

**Relevant legal provisions:**

EPC Art. 100(c), 128(4)

**Keyword:**

Grounds for opposition - added subject-matter (yes)  
Inspection of files

**Decisions cited:**

G 0002/21



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Case Number: T 0729/24 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 10 December 2025**

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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
26 March 2024 concerning maintenance of the  
European Patent No. 2410871 in amended form.

**Composition of the Board:**

**Chairman** A. Haderlein  
**Members:** F. Rinaldi  
G. Decker  
C. Meiners  
R. Romandini

## Summary of Facts and Submissions

- I. This decision concerns the appeals filed by the patent proprietor and opponents 2 and 3 against the opposition division's interlocutory decision.
- II. During the opposition proceedings, the opponents requested that the patent be revoked. The grounds invoked included Article 100(c) EPC.
- III. On appeal, after notification of the board's communication under Article 15(1) RPBA, the patent proprietor withdrew all requests on file, apart from the request that the patent be maintained as granted.
- IV. Relevant to this decision is claim 1 of the patent as granted which reads as follows:

*"Compositions containing C<sub>1</sub> to C<sub>7</sub> organic acid monoglycerides in percentages between 10% and 90% by weight calculated on the total composition weight for use as antibacterial and antimould compositions for treating animals characterised in that such composition contains glycerol in percentages between 10% and 90% by weight calculated on the total composition weight"*.
- V. During the proceedings before the opposition division, the patent proprietor requested that certain documents filed by opponent 2 be excluded from file inspection. In the decision under appeal, the opposition division rejected the request for exclusion from file inspection, noting that the documents remained excluded from file inspection until the decision on it became final. By withdrawing all requests on file, apart from

the request that the patent be maintained as granted, the patent proprietor no longer maintains the request for exclusion from file inspection. Consequently, the opposition division's decision on this matter becomes final and the documents at issue are to be made available to the public for file inspection, Article 128(4) EPC.

VI. Final requests

The patent proprietor requested that the decision under appeal be set aside and that the patent be maintained as granted.

Opponents 2 and 3 requested that the decision under appeal be set aside and that the patent be revoked.

**Reasons for the Decision**

1. *Ground for opposition under Article 100(c) EPC*

1.1 The opposition division concluded that claim 1 of the patent as granted comprised subject-matter which extended beyond the content of the application as filed.

1.2 According to the opposition division's assessment, there was no basis for the amendment that the composition comprising a mixture of C<sub>1</sub> to C<sub>7</sub> organic acid monoglycerides and glycerol could be used to treat animals contaminated by moulds, or upon ingestion of feed contaminated by moulds. The passage on page 2, lines 11 to 13 of the application as filed provided basis for treating an animal feed in order to avoid

mould contamination. Example 5 of the application as filed simply showed that the composition of claim 1 was a potent anti-mould agent. However, the use of such a composition to treat animals against mould contamination was not disclosed.

1.3 The patent proprietor contested this conclusion. In its view, the *in vitro* data showing anti-mould activity (Example 5 of the application as filed) was an indicator of the effectiveness *in vivo*. Given that the application as filed showed antibacterial effectiveness *in vitro* (Tables 1 to 5) that were confirmed *in vivo* (Examples 2 to 4), the same should be concluded for the anti-mould effect. The patent proprietor's opinion was also that the opponents had not demonstrated that the data in the patent was wrong or unreliable. The skilled person would have understood that the "new compositions" mentioned on page 2, lines 11 to 13 of the application as filed were not described merely as anti-mould compositions for the treatment of feedstuffs but as anti-mould compositions for treating animals. This teaching was encompassed by the application as filed, in accordance with G 2/21.

1.4 In assessing whether an amendment complies with the requirement of Article 123(2) EPC, the "gold standard" has to be applied. To be allowable, the amendment has to be directly and unambiguously derivable from the application as filed. G 2/21 is less relevant in this context, as this Enlarged Board of Appeal decision does not relate to Article 123(2) EPC.

1.5 As opponent 3 correctly observed, further considerations, for instance as to what would be a reliable indicator of an effect *in vivo*, are not relevant for assessing whether an amendment is

allowable. Such aspects go well beyond assessing what is the direct and unambiguous disclosure of the application as filed.

- 1.6 Neither Example 5 nor the passage on page 2 of the application as filed discloses the specified compositions for use as "antimould compositions for treating animals".
- 1.7 The passage on page 2, lines 11 to 13 of the application as filed relates to the background of the invention. Even if considered as part of the disclosure of the invention as such, all that is stated in this passage is that "*there is an evident need to develop new compositions able to counteract the effects of moulds and bacteria present in animal feeds*". No direct effect on animals is disclosed.
- 1.8 Example 5 of the application as filed discloses an *in vitro* experiment with a specific concentration of propionic and butyric acid glycerides. At best, this example can be seen to support the aforementioned disclosure on page 2 regarding the prevention of moulds in animal feed but it does not support the use of such a composition to treat animals as such against mould contamination.
- 1.9 Therefore, the opposition division's conclusion that claim 1 of the patent as granted extends beyond the content of the application as filed is confirmed (Article 100(c) EPC).
- 1.10 There is no other claim request on file on which examination of the appeal case is to be carried out. Therefore, the patent has to be revoked.

## 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