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**Datasheet for the decision  
of 10 February 2026**

**Case Number:** T 0865/24 - 3.3.04

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**Language of the proceedings:** EN

**Title of invention:**  
PLANT FRACTIONS HAVING ANTI-PATHOGENESIS PROPERTIES

**Applicants:**  
Savangikar, Chitra Vasant  
Savangikar, Vasant Anantrao

**Relevant legal provisions:**  
EPC Art. 84, 111(1)  
RPBA 2020 Art. 11

**Keyword:**  
Remittal - (no) - fundamental deficiency in first-instance proceedings (no)  
Claims - clarity - all requests (no)



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Case Number: T 0865/24 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 10 February 2026**

**Appellants:**  
(Applicants)

Savangikar, Chitra Vasant  
4, Tapasvi Apartments  
Prasanna Colony  
Indiranagar  
Nashik Maharashtra 422009 (IN)

and

Savangikar, Vasant Anantrao  
4, Tapasvi Apartments  
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Nashik Maharashtra 422009 (IN)

**Representative:**

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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted/electronically  
transmitted on 24 January 2024 refusing European  
patent application No. 17773457.1 pursuant to  
Article 97(2) EPC**

**Composition of the Board:**

**Chair** M. Pregetter  
**Members:** S. Albrecht  
M. Blasi

## **Summary of Facts and Submissions**

- I. This decision concerns the appeal filed by the applicants ("appellants") against the examining division's decision to refuse the European patent application No. 17 773 457.1 ("application").
- II. The decision under appeal is based on a main request and the sets of claims of two auxiliary requests. The set of claims of each of these requests was filed on 22 December 2023.

Independent claims 1 and 2 of the main request read:

"1. Essentially a water insoluble concentrated mass, enriched in boiling juice stable proteins of a plant juice, for use for anti-pathogenesis effect.

2. A composition comprising essentially a water insoluble concentrated mass, enriched in boiling juice stable proteins of a plant juice."

Independent claim 2 of auxiliary request 1 reads:

"2. A composition comprising essentially a water insoluble concentrated mass, the composition is essentially free from components more soluble in the plant juice and, enriched in boiling juice stable proteins of a plant juice."

Independent claim 2 of auxiliary request 2 reads:

"2. A composition comprising essentially a water insoluble concentrated mass prepared from a plant juice solubles, the composition is essentially free from

components more soluble in a plant juice and, enriched in boiling juice stable proteins of a plant juice."

In the decision under appeal, the examining division concluded, *inter alia*, that the claimed subject-matter of each of the main request and auxiliary requests 1 and 2 did not fulfil the requirements of Article 84 EPC.

III. With the statement of grounds of appeal, the appellants resubmitted the sets of claims of the main request and auxiliary requests 1 and 2 considered in the decision under appeal.

IV. The appellants were summoned to oral proceedings to be held on 10 February 2026.

V. In a communication under Article 15(1) RPBA issued on 19 September 2025 ("communication"), the Board informed the appellants that its understanding was as follows.

- The appellants' main request was that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims of the main request underlying the appealed decision.
- The appellants' request for a patent to be granted on the basis of one of the sets of claims of auxiliary requests 1 and 2 considered in the decision under appeal took precedence over the appellants' request for remittal under Article 111(1) EPC and Article 11 RPBA.

Moreover, the Board set out why it was inclined not to remit the case to the examining division under Article 11 RPBA without consideration of the case in substance.

In addition, the Board expressed, among other things, the following preliminary opinion.

- (a) The subject-matter of claims 1 to 14 of the main request lacked clarity, contrary to the requirements of Article 84 EPC.
- (b) The subject-matter of claims 1 to 14 of each of auxiliary requests 1 and 2 suffered from the same deficiencies under Article 84 EPC as claims 1 to 14 of the main request.

Furthermore, the Board explained why it did not intend to grant the appellants' request for the case to be remitted to the examining division in a different composition for further prosecution by reason of substantial procedural violations.

VI. By letter dated 28 January 2026, received on 4 February 2026, the appellants provided further substantive submissions on the main request and auxiliary requests 1 and 2 and filed three further sets of claims, labelled as auxiliary requests 3, 4 and 5, respectively.

Independent claim 2 of auxiliary request 3 reads:

"2. A composition comprising essentially a water insoluble concentrated mass, enriched in proteins stable in boiling juice ~~stable proteins of thea~~ plant juice coagulated by heating at 80-100 degrees celcius [sic]."

Independent claim 2 of auxiliary request 4 reads:

"2. A composition Comprising [sic] essentially a water insoluble concentrated mass, the composition is essentially free from components more soluble in the plant juice and, enriched in proteins stable in ~~boiling juice stable proteins of the~~ plant juice coagulated by heating at 80-100 degrees celcius [sic]."

Independent claim 2 of auxiliary request 5 reads:

"2. A composition comprising essentially a water insoluble concentrated mass prepared from the plant juice solubles, the composition is essentially free from components more soluble in the plant juice and, enriched in ~~boiling juice~~ proteins stable in ~~proteins of the~~ plant juice, coagulated by heating at 80-100 degrees celcius [sic]."

VII. By letter dated 5 February 2026, the appellants informed the Board that they would not be attending the oral proceedings.

VIII. Oral proceedings took place before the Board on 10 February 2026 in the absence of the appellants. The Chair indicated how the Board understood the appellants' requests and noted that the Board could not further clarify whether its understanding was correct. Moreover, the Chair indicated that, due to the appellants' absence, the Board could not discuss matters with them, for example:

- the alleged substantial procedural violations and the potential implications for the current case
- how the skilled person would understand the claims of the main request and auxiliary requests

- the use of the term "essentially" in one or more claims, on which the appellants did not seem to have provided comments in their letter dated 28 January 2026

At the end of the oral proceedings, the Chair announced the Board's decision.

IX. The Board understands the appellants' final requests relevant to this decision to be, in hierarchical order:

- that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims of the main request underlying the appealed decision or, alternatively, on the basis of one of the sets of claims of auxiliary requests 1 and 2 underlying the decision under appeal or, further alternatively, on the basis of one of the sets of claims of auxiliary requests 3 to 5 filed with the letter dated 28 January 2026
- that the case be remitted to the examining division in a different composition for further prosecution "via further Article 94(3) communications" by reason of substantial procedural violations (see statement of grounds of appeal, e.g. page 6, point b.; paragraph bridging pages 8 and 9; page 11, first and second full paragraphs; paragraph bridging pages 12 and 13; page 151)

X. The appellants' written submissions relevant to this decision are referred to in the reasons for the decision set out below.

## **Reasons for the Decision**

1. The appeal is admissible.

*Absence of the appellants from the oral proceedings*

2. The appellants had been duly summoned but chose not to attend the oral proceedings, as announced in their letter dated 5 February 2026.
3. In accordance with Rule 115(2) EPC and Article 15(3) RPBA, the Board decided to continue the proceedings in the appellants' absence and to treat the appellants as relying on their written case. By not attending the oral proceedings, the appellants deprived themselves of the opportunity to make any further submissions on the relevant issues of the case.
4. Hence, the Board was in a position to announce a decision at the conclusion of the oral proceedings, as provided for in Article 15(6) RPBA.

*No remittal of the case under Article 11 RPBA without consideration of the case on substance*

5. Pursuant to Article 11 RPBA the Board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so. As a rule, fundamental deficiencies which are apparent in the proceedings before that department constitute such special reasons.
6. In its communication (see point 1), the Board noted, *inter alia*, the appellants' complaint about procedural

violations having been committed by the examining division.

7. As a result of this complaint, the Board addressed the question of whether the appeal case should be remitted to the examining division (in the current or another composition) under Article 11 RPBA without any consideration of the appeal case on substance.
8. The Board's preliminary view was that such remittal would not be appropriate. Specifically, the Board stated the following.

*"2. However, the Board does not intend to remit the case without any consideration of patentability issues in light of the following considerations.*

*2.1 In as far as the appellants submit that the examining division did not properly understand the facts of the case, the applicable law or English language used in the application under consideration, these complaints do not seem to be associated with a 'procedural' violation, but rather relate to the question of whether or not the relevant substantive law was correctly applied by the examining division to the case in hand. Reviewing whether the decision was correct on substance, i.e. whether the relevant legal provisions were correctly applied to the specific case in hand, is the very object of appeal proceedings.*

*2.2 In as far as the appellants complain that the examining division issued the summons prematurely instead of issuing one or more communications pursuant to Article 94(3) EPC, the Board notes that the term 'if appropriate' in Article 94(3) EPC gives a certain leeway to the examining division for assessing the*

*specific circumstances. The Board, having considered the examining division's reasoning given in point 77 of the reasons for the decision under appeal, cannot find fault with the examining division's decision on its way to proceed.*

*2.3 In as far as the appellants' submissions relate to a violation of Article 113(1) EPC for the reason that grounds were allegedly raised for the first time in the decision under appeal, the Board notes that Article 113 EPC provides that decisions may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments. This does, however, not mean that a party must be given the opportunity to provide comments on the detailed reasoning of the future decision to be taken, i.e. does not require that the deciding body sends its draft decision for comment. Moreover, for a remittal under Article 11 RPBA a violation of Article 113(1) EPC would have to be 'fundamental', i.e. in the sense that the outcome of the final decision hinged on said violation.*

*2.4 At least in relation to the issues addressed in this communication, in particular the issues under Article 123(2) EPC and Article 84 EPC set out under points 6. and 9. below, respectively, the Board considers that no fundamental violation of Article 113(1) EPC has occurred as these issues were already raised in the examining division's communication accompanying the summons (for details see points 15. to 17. below). While further claim amendments were submitted in reply to the summons, it was foreseeable that these issues could still be relevant for those amendments and, hence, the decision would be based on them."*

9. In their letter of reply to the Board's communication, the appellants made additional submissions (see pages 7 to 18 of that letter).
10. However, the Board maintains its view, expressed in points 2.1 to 2.4 of its communication, that remittal of the case to the examining division under Article 11 RPBA without consideration of the case on substance would not be appropriate.
  - 10.1 The wording of Article 94(3) EPC does not include the expression "if appropriate" but uses the expression "as often as necessary" instead. Notwithstanding this difference in terminology, both expressions give the examining division a certain amount of leeway for assessing the specific circumstances of the case before it. As a consequence, the Board does not see any reason to change its preliminary view expressed in point 2.2 of its communication (see point 8. above).
  - 10.2 With regard to the appellants' submissions that grounds had allegedly been raised for the first time in the decision under appeal in violation of Article 113(1) EPC, the Board maintains that no fundamental violation of Article 113(1) EPC has occurred in relation to, *inter alia*, the issue under Article 84 EPC set out under point 11. below.
    - 10.2.1 As noted in point 2.4 of the Board's communication (see point 8. above) and further elaborated on in points 17. to 20. below, the issue under Article 84 EPC set out under point 11. below had already been raised in the examining division's communication accompanying the summons to oral proceedings. Moreover, it was foreseeable that this issue could still be relevant for

the further claim amendments submitted in reply to the summons and, hence, that the examining division's decision would be based on them. The Board considers that assessing whether amendments to the application as filed comply with the requirements of Articles 123(2) and 84 EPC is part of an examining division's duty to ensure that a patent application meets the requirements of the EPC. In the case in hand, it was therefore both appropriate and necessary for the examining division to perform this assessment on the claim amendments submitted in reply to the summons, and the appellants could have reasonably expected the examining division's decision to be based on this assessment. By deciding to withdraw their request for oral proceedings before the examining division, the appellants deliberately deprived themselves of the opportunity to present comments in respect of, *inter alia*, the issue under Article 84 EPC set out under point 11. below.

- 10.2.2 The Board is not convinced that the decision under appeal contains further grounds on which the appellants did not have an opportunity to present their comments. Even if it were accepted, for the sake of argument, that the decision under appeal did contain such grounds, the outcome of the examining division's decision would still have been the refusal of the application under Article 84 EPC for lack of clarity of the term "essentially" in claim 1 of the main request, claims 1 and 2 of auxiliary request 1 and claims 1 and 2 of auxiliary request 2 (see points 32, 33, 68, 69, 74 and 75 of the decision under appeal). In other words, the outcome of the decision under appeal does not hinge on the procedural violations of Article 113(1) EPC allegedly committed by the examining division. As a consequence, these alleged violations are not

fundamental and therefore do not justify remittal under Article 11 RPBA (see point 5. above).

*Main request and auxiliary requests 1 and 2  
Clarity (Article 84 EPC)*

11. In its preliminary opinion set out in points 9.2 to 9.4 of the communication, the Board considered that the term "essentially" recited in, *inter alia*, independent claims 1 and 2 of the main request lacked clarity, contrary to the requirements of Article 84 EPC. Specifically, the Board stated the following.

*"9.2 In the case at issue, the Board considers that the examining division was correct in finding that the term 'Essentially' in claim 1 casts doubt on the scope of this claim, thereby rendering the subject-matter of this claim unclear (see point 32 of the appealed decision).*

*9.2.1 As correctly observed by the examining division, claim 1 is drafted as an independent claim. In accordance with Article 84 EPC in combination with Rule 43(1) and Rule 43(3) EPC, an independent claim defines the essential features of an invention.*

*9.2.2 In the Board's preliminary view, the use of the term 'Essentially' in claim 1 conveys the opposite meaning, i.e. that the features inserted after this term (i.e. a water insoluble concentrated mass, enriched in boiling juice stable proteins of a plant juice for use for anti-pathogenesis effect) do not represent all the essential features of the invention defined in claim 1.*

9.2.3 As a consequence, the skilled person reading claim 1 would be left in doubt as to what constitutes the matter for which protection is sought, contrary to the requirements of Article 84 EPC.

9.2.4 In the statement of grounds of appeal, the appellants criticise the examining division's interpretation of the term 'Essentially' in claim 1 as illogical and not making technical sense. In the appellants' view, a person skilled in the art would understand this term in the context of claim 1 to mean that the claimed concentrated mass is by and large a water insoluble mass that may still contain small quantities or traces of water soluble matter (see page 49, last paragraph, of the statement of grounds of appeal).

9.2.5 The Board observes that the interpretation of the term 'Essentially' in claim 1 adopted by the appellants appears to be based on a combined reading of this term with the feature 'water insoluble' in this claim ('by and large a water insoluble mass'). The Board does not dispute that this interpretation is a technically sensible one in the claimed context. However, claim interpretation not only involves the appraisal of technical facts but also that of linguistic facts, including the way in which a claim is drafted.

9.2.6 For this reason, the appellants' arguments are not found convincing. Furthermore, even if the Board were to accept the interpretation of the term 'Essentially' in claim 1 espoused by the appellants as a further possible interpretation of this term, this would have the consequence that this term gives rise to two possible, contradictory interpretations of the subject-matter of claim 1, rendering the subject-matter

*of claim 1 ambiguous and therefore unclear (Article 84 EPC).*

*9.3 In the Board's preliminary view, the considerations set out in points 9.2 to 9.2.6 above equally apply to the term 'essentially' recited in independent claims 2, 8, 11 and to the term 'essentially' last mentioned in claim 14.*

*9.4 In view of the foregoing considerations, the Board considers that the subject-matter of independent claims 1, 2, 8, 11, 14, and, by the same token, that of dependent claims 3 to 7, 9, 10, 12, and 13 lacks clarity, contrary to the requirements of Article 84 EPC."*

12. Moreover, in the Board's preliminary view, claims 1 to 14 of each of auxiliary requests 1 and 2 appeared to suffer from the same deficiencies under Article 84 EPC as claims 1 to 14 of the main request (see point 13 of the Board's communication).
13. In their letter of reply to the Board's communication, the appellants did not comment in substance on the Board's preliminary view expressed in points 9.2 to 9.4 and 13 of its communication.
14. Given these circumstances, the Board does not see any reason to change its preliminary view. The Board therefore concludes that the subject-matter of claims 1 to 14 of each of the main request and auxiliary requests 1 and 2 lacks clarity contrary to the requirements of Article 84 EPC.

*Auxiliary requests 3 to 5  
Clarity (Article 84 EPC)*

15. Like claim 2 of the main request, claim 2 of each of auxiliary requests 3 to 5 is directed to a composition comprising "*essentially a water insoluble concentrated mass*" (see point VI. above).
16. As a consequence, the subject-matter of claim 2 of each of auxiliary requests 3 to 5 lacks clarity for the same reasons as set out for claim 2 of the main request.

*Appellants' request for remittal of the case to the examining division in a different composition (see point IX. above)*

17. In points 15 to 17 of its communication, the Board expressed the preliminary view that the examining division had not based its decision on new grounds on which the appellants had not had the opportunity to present their comments.
18. In particular, with regard to the objection of lack of clarity in relation to the feature "Essentially" in claim 1 of the main request, which the examining division had raised in points 32 and 33 of the decision under appeal, the Board stated the following.

*"16.2 As regards the examining division's objection of lack of clarity of the feature 'Essentially' referred to in point 7.(a) above, the examining division had raised this objection already in its communication under Article 94(3) EPC dated 24 September 2021 (see points 23 and 24 of this communication). Subsequently, the examining division upheld this objection in the communication accompanying the summons to attend oral proceedings dated 22 May 2023 ('communication dated*

22 May 2023') and gave reasons why it was not convinced by the appellants' submissions (see points 28 and 29 of this communication).

16.3 The appellants contend (see page 48, first full paragraph of the statement of grounds of appeal) that the following two statements of the examining division had been made for the first time in the decision under appeal:

(a) 'an independent claim is normally taken to set out the essential features of the invention' ('statement (a)')

(b) 'the word "Essentially" is being used in a non-standard way' ('statement (b)')

16.4 However, the examining division's communication under Article 94(3) EPC dated 24 September 2021 already includes statement (a) (see point 24, first sentence of this communication).

16.5 Statement (b) was made for the first time in the decision under appeal. However, in the Board's preliminary opinion, this statement merely reflects the view taken by the examining division in point 29 of its communication dated 22 May 2023 (see in particular first sentence [sic] of this point) in slightly different terminology, i.e. a view expressed by the examining division on which the appellants had an opportunity to comment on and on which they had indeed commented (see appellants' letter dated 22 December 2023, paragraph bridging pages 50 and 51). In line with the Case Law of the Boards of Appeal (see Case Law of the Boards of Appeal, 11th edition 2025, IV.B.2.6.5), an examining division is not limited in

*its decision to repeat verbatim its view or reasoning put forward in one or more of its previous communications."*

19. In their letter of reply to the Board's communication, the appellants did not comment in substance on the Board's preliminary view expressed in points 15 to 17 of its communication.
20. Given these circumstances, the Board sees no reason to change its preliminary view that remittal of the case to the examining division for further prosecution under Article 111(1) EPC and Article 11 RPBA would not be appropriate.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



I. Aperribay

M. Pregetter

Decision electronically authenticated