

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 9 January 2026**

Case Number: T 0883/24 - 3.3.08

Application Number: 10734716.3

Publication Number: 2451962

IPC: C12P7/10

Language of the proceedings: EN

Title of invention:

FERMENTATIVE PRODUCTION OF ETHANOL FROM GLUCOSE, GALACTOSE AND ARABINOSE EMPLOYING A RECOMBINANT YEAST STRAIN

Patent Proprietor:

DSM IP Assets B.V.

Opponent:

Lesaffre International

Headword:

fermentative production of ethanol/DSM IP ASSETS

Relevant legal provisions:

EPC Art. 113(2), 116(1)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/84, T 0186/84, T 1182/17, T 0774/20, T 1995/21

Catchword:

-



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 0883/24 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 9 January 2026

Appellant: Lesaffre International
(Opponent) 101 rue de Menin
59700 Marcq-en-Baroeul (FR)

Representative: Bandpay & Greuter
11 rue Christophe Colomb
75008 Paris (FR)

Respondent: DSM IP Assets B.V.
(Patent Proprietor) Wilhelminasingel 39
6221 BE Maastricht (NL)

Representative: J A Kemp LLP
80 Turnmill Street
London EC1M 5QU (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 May 2024 concerning maintenance of the
European Patent No. 2451962 in amended form**

Composition of the Board:

Chair T. Sommerfeld
Members: B. Claes
D. Rogers

Summary of Facts and Submissions

1. The appeal lodged by the opponent (appellant) lies from the interlocutory decision of the opposition division that European patent No. 2 451 962 with the set of claims of an auxiliary request and the invention to which it relates met the requirements of the EPC.
2. The board summoned the parties to oral proceedings and informed them of its preliminary opinion in a communication pursuant to Article 15(1) RPBA.
3. With a submission dated 30 December 2025 the patent proprietor declared the following:

"The Patentee hereby withdraws its approval of the text in which the above-referenced patent was maintained by the Opposition Division, and confirms that it will not be submitting an amended text.

It is understood that the patent will be revoked without a substantive decision (Article 113(2) EPC)."
4. In view of this declaration the oral proceedings were cancelled.

Reasons for the Decision

5. Pursuant to Article 113(2) EPC, the EPO will examine, and decide upon, the European patent only in the text submitted to it, or agreed by the applicant or patent proprietor.

6. Since the text of the patent is at the disposition of the patent proprietor, their patent cannot be maintained against their will. In the present case the patent proprietor withdrew their approval of the text of the patent as maintained by the opposition division. Further, by declaring that they will not be submitting any amended text of the patent and requesting that the patent be revoked, they also unequivocally declared that all pending auxiliary requests were at the same time withdrawn. Consequently, there is no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC.

7. In these circumstances, as there is no approved text, the patent is to be revoked without assessing issues relating to patentability (see e.g. decisions T 73/84 (OJ EPO 1985, 241), T 186/84, (OJ EPO 1986, 79), decisions T 1182/17, T 774/20, T 1995/21 and Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, sections III.B.3.3 and IV.D.2). There is no reason to deviate from this consistent approach of the Boards of Appeal, with the consequence that the patent is to be revoked.

8. Revocation of the patent also complies with the request of the appellant. The present decision can therefore be taken without holding oral proceedings (Article 116(1) EPC and Article 12(8) RPBA).

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:



C. Rodríguez Rodríguez

T. Sommerfeld

Decision electronically authenticated