

Interlocutory Decision to maintain the patent in amended form pursuant Art. 101 (3)(a) EPC

I. Summary of Facts and Submissions

- 1 European patent No EP-B12 430 454 is based upon European patent application No EP 10 748 195.4, filed on 23.08.2010 and claiming priority of US 236085 P and US 332651 P filed on 22.08.2009 and 07.05.2010, respectively.
- 2 The mention of the grant was published in European Patent Bulletin 13/04 of 23.01.2013. Proprietor of the patent is the Board of Trustees of the University of the Leland Stanford Junior University.
- 3 Notice of opposition has been filed by Unisense FertiliTech A/S (O1) on 18.02.2014. O1 requested revocation of the patent as a whole on the grounds that the subject-matter of the patent is not novel and does not involve an inventive step (A.100(a) EPC, A.54 EPC, A.56 EPC), the European patent does not disclose the invention in a manner sufficiently clear and complete to be carried out by a person skilled in the art (A. 100(b) EPC) and that the subject-matter of the claims extends beyond the content of the application as filed (A. 100(c) EPC). The validity of the priority was contested, both as to the entitlement and as to the "same invention" requirement.
- 4 Notice of opposition has also been filed by a joint opposition (O2) with the European Society of Human Reproduction, Sigrid Sterckx, Julian Cockbain and Guido J.G. Pennings on 11.10.2013. O2 requested revocation of the patent in its entirety on the ground that the subject-matter of the patent is excepted from patentability (A. 53(c) EPC) is not novel (A. 54 EPC), does not involve an inventive step (A. 56 EPC) and is not susceptible of industrial application (A. 57 EPC) (A.100(a) EPC), the European patent does not disclose the invention in a manner sufficiently clear and complete to be carried out by a person skilled in the art (A. 100(b) EPC) and that the subject-matter of the claims extends beyond the content of the application as filed (A. 100(c) EPC).
- 5 With the letter dated 07.04.2014, the proprietor (P) requested that the patent be maintained on the basis of the claims as granted, or alternatively on the basis of Auxiliary request 1, 2 or 3 (AR1-AR3).
- 6 All three parties requested oral proceedings.