

Summary: Grounds for opposition against European Patent EP1965658 B1

**Title: FEEDSTUFFS FOR AQUACULTURE COMPRISING STEARIDONIC ACID
FEEDSTUFFS FOR AQUACULTURE**

Application number: **06817510.8**

Proprietor: Commonwealth Scientific and Industrial Research Organization

Date of publication of grant of the patent: 03.10.2018

Date of filing opposition: 26.6.2019

Opponent:

No Patents on Seeds!

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The opposition is supported by:

AGU - Arbeitsgemeinschaft der Umweltbeauftragten in der EKD

Arbeitsgemeinschaft bäuerliche Landwirtschaft (AbL)

ARCHE NOAH - Gesellschaft für die Erhaltung der Kulturpflanzenvielfalt und ihre Entwicklung

Bauernbund

Bundesverband Deutscher Milchviehhalter e.V.

biorespect

Brot für die Welt

BUND Naturschutz in Bayern e.V.

EDL - Evangelischer Dienst auf dem Lande

FIAN Deutschland

Gen-ethisches Netzwerk

Genussgemeinschaft Städter und Bauern e.V.

Gesellschaft für ökologische Forschung

GLOBAL 2000

IG Nachbau – Gegen Nachbau-Gebühren

Kein Patent auf Leben!

Landbauschule Dottenfelderhof e.V. - Forschung & Züchtung

Menschen für Tierrechte - Bundesverband der Tierversuchsgegner e.V.

Oxfam

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Slow Food Deutschland

SWISSAID

Umweltinstitut München

Verband Katholisches Landvolk

WeMove Europe

Zivilcourage Bad Tölz-Wolfratshausen und Miesbach

Zukunftsstiftung Landwirtschaft

and 5000 individual supporters.

Grounds for opposition (summary):

1. The patent is a violation of Article 53 (b), EPC, because it claims ‘essentially biological processes’ for the production of animals and fish derived thereof. Furthermore, animal varieties such as salmon and trout are claimed.
2. The patent is not inventive and is therefore a violation of Article 56, EPC.
3. The patent is a violation against Article 53 (a), EPC, because animals are simply treated as technical inventions.

Content of the patent and inventiveness

The patent claims salmon and trout reared using selected feed that supposedly increases the content of polyunsaturated fatty acids (PUFA) in their muscle tissue.

Especially relevant in this context are wild herbs and flowering plants e.g. borage *Borago officinalis* or *Echium* sp. which belong to the plant family *Boraginaceae*. These plants are known to produce naturally high concentrations of stearidonic acid (SDA).

It has long been known that fish and other vertebrates can use SDA to produce polyunsaturated fatty acids (PUFA), such as omega-3 fatty acids. Further, it was already known that the concentration of PUFA in the muscle and fat tissue of fish depends on their feed. Finally, it was also known that feeding plants such as *Echium plantagineum* mentioned in the patent, can indeed lead to higher PUFA levels in fish tissue.

Furthermore, as described in the patent, transgenic plants engineered to produce higher levels of SDA might also be used for feeding the fish. However, the use of such plants for this purpose were described before the patent was filed.

The patent does not claim transgenic plants or fish, but instead claims the rearing of the salmon and trout as well as the resulting fish and food. Such a process is in no way technical but – in the sense of patent law – ‘essentially biological’. Patents on such processes for the production of animals are prohibited by law.

In short, the ‘invention’ as claimed is for rearing fish in aquaculture with feedstuff already known to show a high content of desirable compounds. In addition, the result of the application of this “essentially biological process” was known already before the patent application was filed.

Consequently, the patent is not inventive, but is based on essentially biological processes for the production of fish. There is no technical or inventive effort. It must, therefore, be considered to be some kind of fake invention that is also ethically unacceptable.