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#### UNITED STATES PATENT AND TRADEMARK OFFICE

### BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION,
Petitioner,

v.

BASF PLANT SCIENCE GMBH, Patent Owner.

U.S. Patent No. 10,301,638

Issued: May 28, 2019

PETITION FOR POST-GRANT REVIEW
PURSUANT TO 35 U.S.C. §§ 321-328 AND C.F.R. § 42.200 et seq.



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		3.	Ground 2: No Written Description for "at least 20% by weight of EPA, at least 2% by weight of docosapentaenoic acid (DPA), and a least 4% by weight of docosahexaenoic acid (DHA) based on the total fatty acids in the transgenic [ <i>Brassica</i> ] plant in the form of triacylglycerides," recited in 1-8, and 17-23	ıt
		4.	Ground 3: No Written Description for "at least 20% by weight of EPA based on the total fatty acids in the transgenic [Brassica] plan in the form of triacylglycerides" recited in claim 11	



5.	Ground 4: No Written Description for "at least 2% by weight of DPA based on the total fatty acids in the transgenic [ <i>Brassica</i> ] plant in the form of triacylglycerides" recited in claim 12
6.	Ground 5: No Written Description for "at least 4% by weight of DHA based on the total fatty acids in the transgenic [Brassica] plant in the form of triacylglycerides" recited in claim 13
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11.	Ground 10: No Written Description for "about 30% by weight of EPA and DHA in the form of triacylglycerides based on the total fatty acids in the transgenic [Brassica] plant" recited in claims 7 and 16
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1.	Legal Standard for Enablement61
2.	Ground 12: Oils, lipids and/or fatty acids produced by a transgenic <i>Brassica</i> plant comprising "at least 54% by weight of polyunsaturated ω3-fatty acids," recited in claims 8-16, are not enabled
3.	Ground 13: Oils, lipids and/or fatty acids produced by a transgenic <i>Brassica</i> plant comprising "at least 20% by weight of EPA, at least 2% by weight of docosapentaenoic acid (DPA), and at least 4% by



C.

	weight of docosahexaenoic acid (DHA) based on the total fatty acids in the transgenic [Brassica] plant in the form of triacylglycerides," recited in claims 1-8 and 17-23 are not enabled
4.	Ground 14: Oils, lipids and/or fatty acids produced by a transgenic <i>Brassica</i> plant comprising "at least 20% by weight of EPA based on the total fatty acids in the transgenic [ <i>Brassica</i> ] plant in the form of triacylglycerides," recited in claim 11 is not enabled72
5.	Ground 15: Oils, lipids and/or fatty acids produced by a transgenic <i>Brassica</i> plant comprising "at least 2% by weight of DPA based on the total fatty acids in the transgenic [ <i>Brassica</i> ] plant in the form of triacylglycerides," recited in claim 12 is not enabled
6.	Ground 16: Oils, lipids and/or fatty acids produced by a transgenic <i>Brassica</i> plant comprising "at least 4% by weight of DHA based on the total fatty acids in the transgenic [ <i>Brassica</i> ] plant in the form of triacylglycerides," recited in claim 13 is not enabled
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10.	Ground 20: Oils, lipids and/or fatty acids produced by a transgenic <i>Brassica</i> plant comprising "about 25% by weight of EPA based on the total fatty acids in the transgenic [ <i>Brassica</i> ] plant," recited in claims 6 and 15, are not enabled
11.	Ground 21: Oils, lipids and/or fatty acids produced by a transgenic <i>Brassica</i> plant comprising "about 30% by weight of EPA and DHA in the form of triacylglycerides based on the total fatty acids in the transgenic [ <i>Brassica</i> ] plant," recited in claims 7 and 16, are not enabled



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