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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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		<ol> <li>Binary vectors used for transformation of plant cells</li></ol>			

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# Petition for Post-Grant Review of U.S. Patent No. 10,301,638

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		4.	Ground 3: No Written Description for "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		

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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 Ground 14: Oils, lipids and/or fatty acids produced by a transgenic 4. Brassica plant comprising "at least 20% by weight of EPA based on the total fatty acids in the transgenic [Brassica] plant in the form of triacylglycerides," recited in claim 11 is not enabled......72 Ground 15: Oils, lipids and/or fatty acids produced by a transgenic 5. Brassica plant comprising "at least 2% by weight of DPA based on the total fatty acids in the transgenic [Brassica] plant in the form of triacylglycerides," recited in claim 12 is not enabled......72 Ground 16: Oils, lipids and/or fatty acids produced by a transgenic 6. Brassica plant comprising "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 is not enabled......72 7. Ground 17: The amounts of EPA, DPA and DHA at the sn-1, sn-2 or sn-3 positions recited in claim 2 are not enabled......73 Ground 18: The amounts of EPA, DPA and DHA at the sn-2 8. position recited in claim 3 are not enabled ......74 9. Ground 19: Oils, lipids and/or fatty acids produced by a transgenic Brassica plant comprising "at least 30% long chain polyunsaturated fatty acids (LCPUFAs) based on the total fatty acids in the transgenic [Brassica] plant," recited in claims 5 and 14, are not enabled ......75 10. Ground 20: Oils, lipids and/or fatty acids produced by a transgenic Brassica plant comprising "about 25% by weight of EPA based on the total fatty acids in the transgenic [Brassica] plant," recited in claims 6 and 15, are not enabled ......77 11. Ground 21: Oils, lipids and/or fatty acids produced by a transgenic Brassica plant comprising "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, are not 

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