



AGENDA

EFFAB Patent Watch

Tuesday 21 February 2012 15.00h CET / 14.00h GMT

- 1. Welcome, Agenda**
- 2. Patent watch procedures and organisation**
- 3. Minutes 15 November 2011** (Enclosure 1)
- 4. Patents** (Enclosure 2)
- 5. Next call**

Access information

1. Please join my meeting: <https://www3.gotomeeting.com/join/979969446>
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Meeting ID: 979-969-446

Marjolein Neuteboom
Fenna Zeilmaker



Enclosure 1

Minutes

EFFAB Patent Watch
Tuesday 15 November 2011 15.00h CET / 14.00h GMT

Participants: Gerard Albers, Søren Borchersen, Erik Mullaart, Anne-Marie Neeteson, Marjolein Neuteboom, Jens Raabjerg Olesen, Brian Sullivan, Ingela Velandar, Fenna Zeilmaker.

Apologies: Stéphane Barbier, Hanneke Feitsma, Ron Hovenier, Laurent Journaux, Alan Mileham, Brian Wickham

Action list:

- **Marjolein will email Hanneke about WO 2011/032223.**
- **Jens will resend the information on the EPO's decision to refuse EP2118793 of family 15.**

1. **Welcome, agenda**

2. **Minutes September 27, 2011**

Agreed.

Marjolein will e-mail Hanneke about WO 2011/032223 to get a more specific answer to question from the earlier meeting:

Is this only for these 3 genes or more generic than that?

Continue to watch the patent in the next watch, at least once more, until this is clear.

3. **Key word search results**

Semen sexing, one interesting family, include in the watch?

No 6x

Yes 0x

It was agreed not to include this patent in the watch.

It was agreed to continue with the same key words for the next key word search as related words like genome wide selection will also come up with the present words.

4. **Patents in the watch**

- Family 1 identified by WO 2004/088283 (Monsanto Technology LLC, sometimes Inguran LLC)

APPARATUS, METHODS AND PROCESSES FOR SORTING PARTICLES AND FOR PROVIDING SEX-SORTED ANIMAL SPERM

One of the 17 divisional filed on last date possible, EP2357464 did not meet the formal requirements on filing, and a correction was filed two days too late. In principle, the application is then considered never to have been filed. However, Inguran requested re-establishment of the application on the basis that the failure to file a timely correction had occurred in spite of all due care. EPO has accepted the request, and the application is thus deemed to have been correctly filed.

In the US the first examination reports are becoming available for the latest continuation applications (non-final rejection).

In Australia, a response has been filed.

- Family 5 WO 2008/025093

WHOLE GENOME BASED GENETIC EVALUATION AND SELECTION PROCESS

Abandoned in the US as they failed to file a timely response. As it is an Australian organization, it could be that they are only going for the national applications in Australia and New Zealand.



- Family 10 WO 2004/061124/WO 2004/061125

**COMPOSITIONS, METHODS AND SYSTEMS FOR INFERRING BOVINE TRAITS
COMPOSITIONS, METHODS, AND SYSTEMS FOR INFERRING BOVINE BREED**

An extra US application was granted, next to three other US applications that were already granted. As there have been financial problems in the organization earlier this year, it was discussed whether it is possible to see which actions were taken since then. At this moment we can only see that they have paid issue in the US for the recently granted patent. In Australia, a granted patent has been opposed, and the applicant has filed arguments on 31.10.2011. The applications are now assigned to Cargill.

In New Zealand, one application has been declared void, while a divisional application filed 21.1.2011 is still pending.

- Family 12 WO 2007/112490

CHROMOSOMAL BLOCKS AS MARKERS FOR TRAITS

In the US it has lapsed because they did not file a response to a restriction requirement (unity objection) from the USPTO. They are still active in New Zealand and Australia. This is similar to patent 5.

- Family 13 WO 2008/074101

ARTIFICIAL SELECTION METHOD AND REAGENTS

This is the patent on the application for imputation by Mike Goddard. Active in Australia but deemed withdrawn in the EU. However, a request reestablishment can be filed until 19.11.2011, and such request is also granted, if filed correctly. Thus, the application is not yet abandoned. Next time we will know whether they will ask for reestablishment. They could use the same strategy as family 5 and 12 to only go for Australia and New Zealand but we will see this in the future.

- Family 14 WO 2009/011847

METHODS OF IMPROVING A GENOMIC MARKER INDEX OF DAIRY ANIMALS AND PRODUCTS

Is abandoned in the Europe, and can only be revived if the failure to file a timely response accrued in spite of all due care; i.e. revival of the application would require a very good excuse. Especially professional companies like Pfizer need an even better excuse to be accepted for revival. For the other national applications, examination did not yet start, except for Australia.

It was commented that some interesting conclusion can be found in an earlier response by the EPO. It mentions that the application would give a monopoly over animal husbandry and there are serious questions of ordre republicque, which is normally used by opponents such as NGOs as arguments against patents but not by patent offices. The document can be found at

<http://www.effab.org/Downloads/Patents/DownloadsPatentWatch.aspx> under family 14.

The patent is probably too broad but it is no longer possible to narrow the application as it is abandoned.

- Family 15 WO 2008/085046

METHOD FOR ESTIMATING A BREEDING VALUE FOR AN ORGANISM WITHOUT A KNOWN PHENOTYPE

The application is finally refused. It was agreed to have this patent will no longer included in the watch. Jens will send the EPO's decision to refuse the application as this can be useful information for the future.

- Family 17 WO 2002/43574

SYSTEM TO SEPARATE FROZEN-THAWED SPERMATOZOA INTO X-CHROMOSOME BEARING AND YCHROMOSOME BEARING POPULATIONS

Family 17 and 18 share priorities. In this patent watch they are analyzed as two separate families based on the two international applications (PCT-application), which have served as basis for different national applications. For family 17 two applications were granted in the US and 1 is pending. USPTO issued a restriction requirement (unity objection), and the applicant must select one single aspect to pursue. In Australia one application was granted and a first divisional application was filed, and a first examination report has been issued.

- Family 19 WO 2006/091717

SPERM CELL SEPARATION METHODS AND COMPOSITIONS

Two national applications, both are under examination.



- Family 20 WO 2010/020252

METHODS FOR DETERMINING A BREEDING VALUE BASED ON A PLURALITY OF GENETIC MARKERS

This application is a genomic selection method for three health traits. There is some difference in opinion whether this is a generic patent application or a specific one. It was agreed this family will stay in the patent watch.

- Family 21 WO 2010/150013

IDENTIFICATION OF SEX-LINKED PROTEINS

No national filings of this international application have been identified yet. They should have been filed by 23.10.2011 but no national applications are published yet. If no national application are identified in the next watch, it is considered to be abandoned.

- Family 22 US20110054246

WHOLE GENOME SCAN TO DISCOVER QUANTITATIVE TRAI LOCI (QTL) AFFECTING GROWTH, BODY COMPOSITION, AND REPRODUCTION IN MATERNAL PIG LINES

The inventor of this patent is Clutter et al. Clutter used to work for Newsham but left to a university. In the US only the inventor can request for a patent. The rights to the application can be assigned to a company. This did not yet happen in this case. No response was filed. In consequence, the application is deemed abandoned on 17.10.2011 due to failure to respond to the restriction requirement. The application may be revived if the failure to respond was unintentional or unavoidable.

- Family 23 WO 2010/012690

A GENETIC MARKER TEST FOR BRACHYSPINA AND FERTILITY IN CATTLE

National applications were only filed for Europe and Australia. National applications should have been filed in January or February 2011. According to the European examination report, EPO is prepared to issue a patent on the specific haplotype disclosed in the application. At the moment the gene test is patented and therefore this patent is not seen as a threat.

5. **Next meeting**

The next meeting will be in February, EFFAB will send a Doodle.

Fenna Zeilmaker and Marjolein Neuteboom



General Patents

Family 1 identified by WO 2004/088283 (Monsanto Technology LLC, sometimes Inguran LLC) APPARATUS, METHODS AND PROCESSES FOR SORTING PARTICLES AND FOR PROVIDING SEX-SORTED ANIMAL SPERM

Europe

EP1608963 Unchanged: granted

Divisional applications:

EP2194379 Unchanged: Response and amended claims filed.

EP2309244 Unchanged: European Search Report issued

EP2357464 Unchanged

EP2305171 Unchanged

EP2308416 Unchanged

EP2305172 Unchanged

EP2305173 Unchanged

EP2308417 Unchanged

EP2305832 Unchanged

EP2298231 Unchanged

EP2332492 Unchanged

EP2308418 Unchanged

EP2308419 Unchanged

EP2308420 Unchanged

EP2309245 Unchanged

EP2309246 Unchanged

EP2306173 Unchanged

EP2306174 Unchanged

USA

US20050112541 Unchanged: granted

US20090176271 Unchanged: granted

US20100248362 Unchanged: granted

US20110269175 **CHANGED** – non-final rejection issued and response filed Appl. No: 13/181,150: **(enclosed)**.

US20110215111 **CHANGED**: accepted.

A response and amended claims were filed on 9.12.2011. A notice of allowance was issued on 6.1.2012. App. No.: US 13/106,727. **(enclosed)**

US20110256575 **CHANGED**: accepted.

A response and amended claims were filed on 15.12.2011. A notice of allowance was issued on 12.1.2012 **(enclosed)**. App. No.: US 13/109,640

US20110217722 **CHANGED**: final rejection issued.

A response and amended claims were filed on 10.11.2011, and a final rejection was issued by the USPTO on 2.12.2011 **(enclosed)**. App. No.:13/106,671.

US20110217723 **CHANGED**: final rejection issued

A response and amended claims were filed on 23.11.2011, and a final rejection was issued by the USPTO on 6.12.2011 **(enclosed)**.

Other countries

AU2004225436 Unchanged: granted.

AU2010200961 **CHANGED: Accepted.**

This application was accepted on 30.11.2011, which was published on 15.12.2011. Notice of opposition may be given within three months of the publication of the acceptance of an application, i.e. within 15.3.2012. Re-examination may also be requested in some situations, and furthermore, revocation of the patent may be applied for with the competent court.

CA2518882 Unchanged



CA2752218 Unchanged
CA2752244 Unchanged
CA2752247 Unchanged
CA2752312 Unchanged
CA2752218 Unchanged

CN1795382 Unchanged: granted
CN101614731 Unchanged
JP2006-524054 Unchanged: granted
JP2010-207240 Unchanged
NZ542547 Unchanged: void
NZ564309 Unchanged: granted
NZ577678 Unchanged: granted
NZ587918 Changed – accepted. The application was accepted on 15.11.2011, which was published on 22.12.2011. The patent documents can be retrieved here:
http://www.iponz.govt.nz/pls/web/DBSIPEXT.IP_Extract_Validation?p_access_no=565CC0E3A23FCE0E946681AA834DA131&p_division=&p_ip_number=587918
An opposition to the grant of the application should be filed within three months from publication, i.e. within 22.3.2012 (one month extension is possible on request). If no opposition or appeal is filed, the patent will be sealed on 22.4.2012 (4 months from publication of grant).

Family 5 identified by WO 2008/025093 (Innovative Dairy Products Pty Ltd)
WHOLE GENOME BASED GENETIC EVALUATION AND SELECTION PROCESS

US 20080163824 Unchanged: abandoned.
AU 2007214360 Unchanged:
NZ575131 Unchanged: under examination

Family 10 identified by WO 2004/061124 and WO 2004/061125 (MI Genomics Inc., now partly Cargill, Inc. and Metamorphix)

**COMPOSITIONS, METHODS AND SYSTEMS FOR INFERRING BOVINE TRAITS
COMPOSITIONS, METHODS, AND SYSTEMS FOR INFERRING BOVINE BREED**

EP1590471 Unchanged: response and claims filed
US20070031845 Unchanged: granted
US20090221432 Unchanged: granted (**enclosed**)
US20050287531 Unchanged: granted
US20080268454 Unchanged: granted
US20110212441 **CHANGED** – non-final rejection was issued on 9.11.2011 (**enclosed**). Application no.: 12/719,275
US20050260603 Unchanged: abandoned
CN101405404 Unchanged: Please note that there is a time delay of several months for legal status information provided by the Chinese Patent Authorities in English.
CA 2512134 **CHANGED** – 8th annual fee paid
CA 2512110 **CHANGED** – 8th annual fee paid
AU 2003303599 Unchanged
AU 2010202253 **CHANGED** – examination report issued (**enclosed**).
NZ 541566 Unchanged: abandoned
NZ 541561 Unchanged: Under examination.

Family 12 identified by WO 2007/112490 (Innovative Dairy Products Pty Ltd as Trustee for The Participants of the Cooperative Research Centre for Innovative Dairy Products)

CHROMOSOMAL BLOCKS AS MARKERS FOR TRAITS

EP1996722 Unchanged: abandoned – The application can no longer be revived.
US20090246774 Unchanged: abandoned.
AU2007233564 Unchanged: under examination
CA2643593 Unchanged: abandoned.
NZ571875 **CHANGED** – Abandoned. Voided Pre-Acceptance published 27.1.2012, i.e. the applicant did not overcome or address the objections within the prescribed time limits.



Family 13 identified by WO 2008/074101 (Agriculture Victoria Services PTY Limited)

ARTIFICIAL SELECTION METHOD AND REAGENTS

EP2120543 **CHANGED:** The application was deemed to be withdrawn on 9.9.2011. A request for re-establishment can be filed until 19.11.2011. A request for further processing/reviving the application was filed on 8.11.2011 with a response to the outstanding examination (**enclosed**).

AU 2007335195 Unchanged: request for examination filed

CA 2673174 **CHANGED:** 4th annual fee paid.

NZ577870 Unchanged

Family 14 identified by WO 2009/011847 (Pfizer Inc.)

METHODS OF IMPROVING A GENOMIC MARKER INDEX OF DAIRY ANIMALS AND PRODUCTS

EP2178363 Unchanged: abandoned.

US20100304353 Unchanged: awaiting examination.

AU2008276488 Unchanged: first examination report issued

CA2693941 Unchanged

JP2010517006 Unchanged: awaiting examination

NZ582604 Unchanged: under examination

Family 17 identified by WO 2002/43574 (XY Inc)

SYSTEM TO SEPARATE FROZEN-THAWED SPERMATOZOA INTO X-CHROMOSOME BEARING AND YCHROMOSOME BEARING POPULATIONS

US20040049801 Unchanged: granted

US20070042342 Unchanged: granted

US20100304354 **CHANGED:** A response and amended claims were filed on 3.11.2011, and a final rejection was issued on 1.12.2011 (**both enclosed**).

AU2002237689 Unchanged: granted

AU2008200810 Unchanged: granted

AU2011201281 **CHANGED:** the application was accepted on 13.12.2011, which was published on 12.1.2012 (**accepted claims are enclosed**).

CA2468772 **CHANGED:** maintenance fee paid

Family 18 identified by WO 2002/043486 (XY Inc.)

SYSTEM FOR IN-VITRO FERTILIZATION WITH SPERMATOZOA SEPARATED INTO X-CHROMOSOME AND YCHROMOSOME BEARING POPULATIONS

US20040132001 Unchanged: granted

US20060281176 **CHANGED:** The application was accepted on 1.12.2011.

CA2468774 **CHANGED:** maintenance fee paid.

Family 19 identified by WO 2006/091717 (BIOCERN, INC)

SPERM CELL SEPARATION METHODS AND COMPOSITIONS

US20100121135 Unchanged: examination report issued.

CA2598805 **CHANGED:** Maintenance fee paid.

Family 20 identified by WO 2010/020252 (Viking Genetics and Aarhus University)

METHODS FOR DETERMINING A BREEDING VALUE BASED ON A PLURALITY OF GENETIC MARKERS

The 30 months time limit for conversion into national applications was 19.2.2011. A national filing of this international application has been identified in Europe (EP2342665), (Australia (AU2009284493), Canada (CA2733718).

EP2342665 **CHANGED** – a response to the Internationals Search report was filed on 21.11.2011 (**enclosed**).

US 13/059,455 Unchanged: Awaiting examination.

AU2009284493 Unchanged: Awaiting examination.

CA2733718 Unchanged: Awaiting examination.

NZ591236 Unchanged: Awaiting examination.

Family 21 identified by WO 2010/150013

IDENTIFICATION OF SEX-LINKED PROTEINS



The application was filed by Ovasort Ltd. on 19.8.2009, and published on 23.6.2010. The application claims priority of a GB application (GB20090010826) filed 23.6.2009. The 30 months time limit for conversion into national applications was 23.9.2011. No national filings of this international application have been identified yet.

It is unlikely that this application has been converted into national application. However, we recommend that the family is monitored in the next quarter too, before being removed from the patent watch.

Family 22 identified by US20110054246

WHOLE GENOME SCAN TO DISCOVER QUANTITATIVE TRAI LOCI (QTL) AFFECTING GROWTH, BODY COMPOSITION, AND REPRODUCTION IN MATERNAL PIG LINES

US application number: 12/550,269. The application was published on 3.3.2011. No priorities are claimed.

US20110054246 Unchanged – abandoned.

Family 23 identified by WO 2010/012690

A GENETIC MARKER TEST FOR BRACHYSPINA AND FERTILITY IN CATTLE

The application was filed by Université de Liège; Belgium and University of Copenhagen, Denmark on 27.7.2009, and published on 4.2.2010. The application claims priority from an international application (PCT/EP2009/058190) filed 30.6.2008 and an EP application (EP08013608.8) filed 29.7.2008. The priority founding applications are not pending.

The 30 month time limit for conversion into national applications was 29.1.2011. National filings of this international application have been identified in Europe (EP2310528) and Australia (AU2009275988).

EP2310528

CHANGED – Amended claims and a response was filed on 13.1.2012 (**enclosed**)

AU2009275988

Unchanged: under examination.

The search results were received on 13.1.2011. No request for examination has been filed.

NZ590567

NEW – national entry date 18.1.2011. The application is currently under examination.