CASE No 245
ARBITRARE- ARBITRATION CENTER FOR INDUSTRIAL PROPERTY, NAME
DOMAIN, FIRMS AND DENOMTNAÇé '> ES
DECISION AnBITRAL
I- LEGAL REQUIREMENTS
Art. 42.0 of Law 0 n.0 63/201 J of 14 December he approving the Arbitration Law
Voluntary, hereinafter referred to as LA V, and Art. 31.0 of the Regulations of 0
"ARBITRARE - Arbitration Center for Industrial Property, Names
Domain, finnas and Designations "(hereinafter referred to as" Regulation
Arbitration ARBITRARE ") L
1. Parties
Parties to this Arbitration;
a) First Applicant -
Portuguese commercial company, with the number of
Legal Entity Identification n. 0 based in
b) Second applicant - commercial company
Portuguese, with the number of Legal Person Identification n. 0
based and
1 Updated with regulatory amendments adopted on December 13, 2010, July 4, 2012 and
March 27, 2014.
1
c) Required - the
hereinafter
based in
represented by the Hon. Mr. Doctor
2. Arbitration Convention
with
here legally
The arbitration agreement, due to the refusal of the patent registration
National 11.0 (PT) 106763 clear from art. 0 0 s 48 and 49.0 of the Property Code
Industrial (approved by Decree-Law 36/2003 of 5 March), hereinafter
designated CPI; Art. 0 1.0 V and her LA art link. 0 6.0 Arbitration Rules
the ARBITRARE.
The constant commitment in the Arbitration process was signed by the parties (in
te1111os and for the purposes set out in art.o 6. "Arbitration Rules link in the
ARBITRARE): - the First Applicant in 20:08:20 15; and the Second
Applicant, 15, 17 and 18/09/2015, in the person of its directors.
As for the Respondent, the the same is generally linked to
jurisdiction of ARBITRARE to compose it worth disputes or less
one million euros and which concern matters relating to property
Industrial (pursuant. "3, Art. 0 1. 0 Parlaria of n.0 I 046/2009 of 15
September and the confonne 0 11. 4 Art. "49." CPI).
Focusing on the present dispute concerning industrial property and has not been
jeopardized because the value assigned to the applicants (Two thousand Euros)
It concludes that the Respondent is effectively bound to accept the submission link
this dispute to the jurisdiction of the arbitral tribunal (also in accordance with paragraph. 0 4
said att. 0 0 49 CPI).
while still as Required by order of 04.09.2015, the Governing Council
appointed the Hon. Mr. Doctor
this process.
In the present case there are no counter-interested.
to represent him in
It follows the unequivocal intention of the parties submitting the resolution
the dispute in question to ARBITRARE in tcm1os the Voluntary Arbitration Law
and accept as a process of arbitration rules to be observed in the constant
ARBITRARE in the Arbitration Rules.
They are, thus, meeting the formal requirements and the necessary conditions
to the judgment and decision of this dispute by this Arbitral Tribunal in
terms set out in art, 0 6.0 of the aforementioned Regulation and out in Articles 1 "and 2.0
LAV.
3. Object of Litigation
The subject of this dispute is the decision by the Required
under application process of the national patent registration no. 0 EN 106763, with
heading "nutritional composition, method of production and its applications", having

Required refused patent registration in consideration for the following reasons:
i) failure to submit the necessary elements for a complete instruction
process (in accordance with paragraph b), no. "1 of Art." 24. "CPI);
ii) the lack of inventive activity (under point a), n. "I Art." 73. "the
CPI).
In particular, the objections are presented in order of the Examination Report
patent in question, dated 03/06/2015, referring to the lack of inventive step
the same.
3
4. Identification Referee
In hatmonia with the provisions of 1 n.0 art. 0 12.0 link it Arbitration Regulation
the ARBITRARE, the Arbitral Tribunal may consist of a sole arbitrator or
three arbitrators.
The expert was nominated by the Applicants as sole Arbitrator, so that, "if a
the parties have indicated sole arbitrator and the other says nothing about this choice,
Arbitral tribunal shall consist of one arbitrator. "(Under n.0 3
said article. 0 12.0 of the Regulation).
The Arbitral Tribunal was constituted on 22.10.2015.
S. Place of Arbitration; Place and date of the decision; .Charges
I. i \ Arbitration took place in Lisbon.
11. This award was done at Lisbon, the business address of the
Referee, on 18/04/2016.
III. Costs resulting from the arbitration proceedings are defined by Regulation
of Procedure Charges ARBITRARE.
II - RELATÓIUO
6. Initial Application
Recalcitrant to decision Patent refusal of registration in
consideration, the Applicants on 10/08/2015 presented along ARBITRARE link,
initial application (relevant documents and proof it links payment
procedural costs) in order to appeal this decision and refer the dispute to
judgment and decision in the Arbitration Court.
4
The Claimants disagree with the reasons adduced by the order for
refusal and granting intended patent in question, arguing,
synthesis, following the initial requirement:
6.1. That there were serious flaws in the examination procedure, by the Reg uerido;
6.2. The Plaintiffs allege also that there was a lack of reasoning and objectivity
Part required to sustain the objection raised against the granting of the patent
cm consideration, in particular as regards the lack of inventive step;
6.3. The Plaintiffs allege also that there was misunderstanding aspects
Important the invention;
6.4. Thus, the Applicants request that the inventive step is acknowledged
of the invention and thus the registration of the patent is granted on the application
in question.
7. Challenge
On 21.08.2015 it was the Respondent duly summoned pel.o center, having
lodging a defense to the initial Application of Plaintiffs.
8. Subsequent Processing
8.1. Since in this case there are no opposing parties (under
n.
0 4 arl. 0 7 0 of ARBITRARE the Arbitration Rules) was not,
it appears necessary to notify other stakeholders to if they had
Darling, present their observations (under Art. 21 0 0 n. "4c art."
23.0, both of the Regulation).
5
8.2. After the deadline for the submission of the defense, ARBITRARE invited
parties to resolve the dispute through mediation, taking the notified cm
09.22.2015 the date of the mediation session (in accordance with Art. 26.0 0
the Arbitration Rules).
8.2.1. The mediation session was scheduled for the ll 0.2015, to be held
in ARBITRARE headquarters. Since the Plaintiffs did not respond and
Required, on 09/23/2015, refused the invitation to the mediation session.
Therefore, for this reason, the attempt to solve the dispute through
the mediation has failed.
8.3. The parties signed the Arbitration Convention, which implies the acceptance of the

ARBITRARE the Arbitration Rules, in accordance with the provisions of
8.4. On 10/22/2015, as mentioned above, was the Arbitral Tribunal
validly constituted (for estatuídos effects of art. "32.0 of Regulation
Arbitration of ARBITRARE), composed of a single arbitrator, the expert.
8.5. On that date, the Arbitrator informed the ARBITRARE he considered that
met the necessary conditions are met to act as referee
the procedure at issue and enabling it to fulfill this function,
and to this effect, provided written declaration of acceptance, independence and
impartiality, which was communicated by the parties ARBITRARE.
8.6. The Arbitration Court found to be in possession of the necessary elements that
enables to make a decision in the present case, therefore, cm 15.04.2016
the hearing dispensed (in tem1os the provisions of n.0 5, Art. 0 29. 0
the Arbitration Rules). The parties were duly notified by
Center.
In view of the above, it must decide.
6
III - RATIONALE
A - From Facts
9. documentary evidence to the face presented by the parties and evidence
available to the general public, are considered based the following facts:
9.1 The patent in question was filed on 02.04.2013 by the Applicants
in under the heading "NUTRITIONAL COMPOSITION, METHOD
OBTAINING AND APPLICATIONS ", having been awarded the n.0 EN 106763;
9.2 Summary of the request for patent has been filed with the following
drafting and consists of the following:
"The present invention provides a nutritional composition comprising a
aqueous solution of magnesium to water which may also be added by
least one of the following: nitrogen, iron, phosphorus or mixtures thereof. THE
Said composition may be presented in liquid Fonna. The composiçcio
nutritive can also be used as culture media, in particular for
produçcio microalgae and macroalgae with possible application also
agriculture, including hydroponics. ";
9.3 The application of the patent cm consideration is duly published in the Bulletin
Industrial property henceforth BPI, n. 0 147/2014 of 08/04/2014, for the purpose of
any third party oppositions. There were no formal notifications or
third-party oppositions;
9.4 03.11.2014 patent application was registration in consideration of a first objcto
notification cm forum for substantive examination under n. "5 of Art." 68.0, the CPI, the
which was accompanied by the respective examination report objctando "lack of
inventive activity "," lack of clarity of the claims "c" of the support
7
(_ ~).
Description of the same order. "" Lack unit he invention "was subsequently
also indicated;
9.5 In response to the above notification, the Applicants submitted
in time, the 05/01/2015, a new set of claims;
9.6 The second background notification, accompanied by the new report and examination, had
30.01.2015 place, showing how the object of the invention to patcntcabilidadc
"Lack inventive step" thereof;
9.7 The reply to that letter was presented to 27/02/2015, including a new
set of claims c notes in support of the patentability
the instant invention;
9.8 Finally, the patent application has been refused by the dispatch Refusal
given by the dated 06/05/2015, reading this refusal was
based on subparagraph b) n.0 Art 1 0 0 24 CPI: -. not
presentation of the necessary elements for a complete investigation of the case
with reference to n.0 8 68. 0 Art.0 CPI, namely, with the reasoning that
invention does not meet the requirements for patentability as "lack of activity
inventive "by c" insufficient description of the main characteristics of
invention in the dependent claims ";
9.9 The said order of refusal was published in the BPI n.0 112/2015, of 06.11.2015;
9.10 Applicants complained about the refusal decision by via link
mechanism provided for in art. 0 23. "CPI: · presenting a request on 08/03/2015
mod (unofficially fication of decisclo refusal, refuting and stated
mentioned reasons given by in his refusal, to

reverse the decision (for a decision to grant);
8
9:11 did not respond to the allegations made by the Plaintiffs by rejecting the said
unofficial modification request of the refusal, by ofído sent to
Applicants, dated 09/10/2015, keeping dedsão refusal;
9:12 This refusal was also published in the BPI n.0 180/2015,
of 15/09/2015;
9:13 recalcitrant with this decision, the Applicants appealed against that the
ARBITRARE, performing at 08/10/2015 Initial Application, in which
They contested the refusal to Respondent's decision of the patent application, with
following grounds:
i) Serious failure by the Respondent in the examination process;
ii) failure to understand the invention and the closest state of the art;
iii) lack of technical arguments show that sustain the objection
patentability;
requesting, so that the application for patent registration was granted on the basis of
last set of claims, ie brought to claims 2 7 02.2015.
B - Do Right
1 O. juridical and legal framework:
I O I Patents: According to paragraph. 1 0 the art. 0 51.0, the CPL, may be subject to
patent new inventions involving an inventive step and application
industrial; wherein: i) an invention is considered novel when it is not
understood in the art (n. 1 0 Art. 55 0 0 CPI) and the prior art
is considered to be everything, inside or outside the country, it has been made accessible
to the public before the date of the patent application, by description, use or any
otherwise (n <> 1 of art <> 56.0 CPI..); and ii) a ~ invention involves actividad
inventive if, for a skilled in the art will not result in a clear way
the prior art (2 n.0 art.0 55.0 CPJ.);
9
10.2 The patent process: For the purpose of filing a patent application, it c
According to the art. 0 62.0 CPI, it is necessary to refer to the PTO: i)
application; ii) the claims to what is considered novel and inventive; iii)
Description of all that is objcto of the invention; and iv) a summary of the
invention;
10.3 The date of the patent application is thus established that the requirements of Art. 0s. 61.0 and
CPI 62.0 are fulfilled. Any addition of new matter is therefore not
admissible. new material is considered the whole matter added as a result of
changes to the patent application, which is not directly and unambiguously
resulting from the matter originally disclosed in the patent at issue. THE
presentation of information, such as calculations c notes,
sent by Plaintiffs and defense-related inventive step,
It is not considered adding new material. Likewise, it is not considered
adding new material reformulation of the problem that the invention aims to solve,
based on the objections raised by the examination authorities in the Notifications and
Examination Report presented;
10.4 Examination of the request as to the limitations and (formal examination), which
It includes assigning a rating to the invention according to Rating
International Patent, is made within one month from the date of presentation
the application (no. 1 mt 0. 0 65.0 CPI), and if the requirements set out in Articles
52.0, 53.0, 61.0, 62.0 and 63.0, all CPI, they are not met, the PTO
notifies the applicant to make your correction (n.0 2 of Art. 65.0 0 CPI).
If the flaws are not corrected, the request is not refused
there is place for its publication in BPI (n. 3 0 art. 0 0 65. CPT). In
particular, the requirements of Art. 0 0 62. CPI state that claims
should be clear, concise (n.0 3) and that the description should indicate soon n1aneira
and clear, without reservations or omissions everything that constitutes the object of the invention
(Disclosure fill) containing at least one embodiment of the
invention so that any person skilled in this field to be able to perform
(4 n.0 the abovementioned article);
10
10.5 After executing the Fonnal test is performed a survey to the prior art,
based on all elements of the process (65. 0 -A art.0 CPL) estabelecendo-
if they Preliminary Research Report normally within 6 months
after the filing date of the patent application. That report contains the
indication of the relevant documents to the invention patentcabilidade cm

Because, lying categorized by codes, for their relevance
patentcabilidade relation to the invention;
10.5.1 In particular, it highlights the following codes:
X - relevant to the novelty and inventive step;
Y ·· relevant to inventive step; and
A - belonging to the same technical field of the invention, but not capable of
the same object to patentability.
Other objections and comments can be noted in the Research Report
Preliminary, for example, be cited in the case of an intermediate document
(Publication date between the priority date of the application in question and its
date of submission) in which the validity of the priority date can not yet be
confirmed. The establishment of this report may be delayed until any
doubts about aspects of the process have been clarified. The Applicant may,
at any time, respond to the Preliminary Research Report or
changing the application or sending clarification in order to remove the
objections raised in this report;
10.6 Once the request in accordance with the provisions of Articles cited above, is then
published in BPI (no. 1 0 Art. 66.0 0 CPI). Having been publication of the application
the BPI and there is no opposition, the patent process continues with the examination of the
invention (Exam Fund) (68.0 art.0 CPI) for verification of compliance
patcnteabilidade the requirements (novelty, inventive step c app
industrial) with the introduction of the respective Examination Report;
J 0.7 If there are objections to patcnteabilidade in particular (i) for lack of novelty,
(Ii) lack inventive step, and / or (iii) lack of industrial activity, it is
sent notification to the applicant accompanied Examination Report (no. 0 5
art. 0 0 68. CPI), giving thus the opportunity to respond to this observation and
11
objections indicated herein, in defense of the patentability of the application, either by
amendment to the claims and / or presentation of explanatory notes;
10.8 If after the Claimant's response is found that there are still objections to
grant of the patent, the law provides for the issuance of a new notification to be
clarified the points still in doubt (n.0 6 0 art 68.0 of the CPI.);
10.9 If the response to the notifications to be insufficient, is published
denial notice or partial concession, in accordance with the Examination Report,
in BPI (8 art n.0 0 68.0 CPI.);
10.1 It is therefore clear that in the framework of national law, particularly in the CPI,
there is no concrete and detailed deJinição to the concept of "person skilled in the
specialty "," general knowledge of the skilled person "nor the concept
of "obvious to the skilled person." Additionally, there is omission in that
With regard to the procedure of the novelty and inventive step
selection of inventions, and for this reason it is common practice to reconer to the
case law and the regulations of the European Patent Office as lines
guiding this matter, in particular reconer the decisions of the courts and technical
the Boards of Appeal and the Examination Guidelines (Guidelines
Examination is now GL);
I 0:11 In this sense "inventions selection" are defined as inventions
They relate to individual components, sub-assemblies, sub-class, sub-ranges or
sub-sets of values, which are not explicitly mentioned in
together class, range or original values. In the case of selection of inventions, the
assessment of patentability must meet the following three criteria, according
with the decision T279 / 89 of the Council of the European Patent Office Feature:
(I) the range of the invention (selccionada range) must be narrower than the
presented in the prior art,
(Ii) the selected range must be sufficiently restricted and limits
away from the prior art range, and
12
It is'; .
(Iii) the selected range must have a technical effect, demonstrating that
It was not chosen at random (T198 / 84 and T279 / 89).
Fom1a Thus, an invention having various ranges of values, such as
such a composition which comprises several elements on a
variables, the assessment of patentability should be carefully carried out
first comparing element by element with the state composition
technique and then comparing said combination of elements with
prior art composition, it is sufficient that the amount of at least two

element is distinct from prior art composition (TL2 / 8l) which ~
meet the three criteria mentioned above, so that the invention is patentcável
(T2 / 8 I, T666 / 89 and T925 / 98);
10.12 assessing the inventive step of the invention lies diretamcntc
related to the fact that the proposed solution that invention or may not be obvious to
one skilled in the art, in view of the prior art at the time of
patent or its priority, where applicable; an invention is obvious
when the skilled person comes to the solution proposed in the claims of the
patent (see GL O ~ VII, 4). The assessment of inventive step must be
objectively based on the results presented in patent application (Tl / 80
T20 / 8.1, T24 / 81, T248 / 85). Technical progress is not a requirement for a
invention is patentable (T181 / 82, Tl64 / 83, T317 / 88 and T850 / 02) ie a
invention may provide an alternative solution for a given problem
Technical known c solved otherwise;
10:13 For assessment purposes the existence of inventive step of the method
"Problem-solution approach", starting from the prior art document most
next, in order to exclude the analysis ex post jet that makes use of inadmissible
knowledge provided by the invention (T564 / 89, T645 / 92, T730 / 96 and T63l / O);
10:14 The method "problem-solution" involves nine steps, including the choice of
starting document, the first document or her technical document status
closest (T967 / 97, T558 / 00), the comparison and analysis of differences between
the technical features disclosed therein and the invention, the verification of the effect
13
Technical associated with these differences (I T64 / 00, T931 / 95), the problem definition
It is solved by the invention (TL84 / 82, T87 / 08 and T229 / 85), identifying a
second document that when combined with the first document allows
achieve the described technical solution as well as the reasons for choosing these
c motivation for documents matching by the skilled
(T2 / 83, T257 / 98 and T35 / 04).
11. Analysis of the examination to the patent
11.1 The present application entitled "nutritional composition, method
obtaining and their applications "was presented by the Applicants to 04.02.2013, and
the filing date been established that day, which means that have been met
art.os the requirements of 61.0 and 62. 0 CPI and which followed up on instruction
patent process, as noted in this paragraph 10.6
document;
11.2 description discloses a nutritional composition based on water from
saliniculturas (also known as magnesium waters) for use in
microalgal culture. magnesium salt waters released by iniculturas
bio produce toxic effect due at least to its high salt content. Per
Furthermore, also can not be used alone in aquaculture because
It does not contain the nutrients necessary for the growth of various organisms
suitable amounts. This Fonna, according to claim 1 of the application
patent, the date of 27/02/2015, the present invention proposes to make
magnesium change the composition of water of the medium to be possible to be
reuse in aquaculture organisms in culture patiicularmente
photosynthetic, particularly microalgae, as well as to avoid the harmful effects
discharges from saliniculturas the environment, even when there
Magnesium treatment of the liberated water;
11.3 Examination made by the Respondent, it was determined that the document D (Lozano
JAF, et al. - "Multinutrient phosphate-based fertilizers from seawater bitterns,
Interciencia, "Vol. 27, n.0 9, pp. 496-499, Sep.2002) would be regarded as
14
first document, representing the closest state of the art of the invention,
although the Respondent has not substantiated this escoli1a. They were detected
differences between the compositions described Dl and claims compositions
I of the invention at issue. In particular, the compositions described contain Dl
larger percentages of potassium (K), boron (B) and phosphate (P04) of the
compositions of claim 1, in particular comprising approximately 54% of
phosphates, while this element is absent in Claim compositions
I. Moreover, the inventive compositions comprise sodium chloride (NaCl)
up to 35% and a sulfur content (S) variable between 2 and 4%, these elements not
Dl are present in the compositions. Furthermore, the compositions have D 1
application in crop plants in tropical soils typically acyclic and are obtained
magnesium by mixing water with sodium dihydrogenphosphate (NaH2P04)

followed by neutralization with sodium hydroxide (NaOH). Consequently, the
above, the composição DI-S are not suitable. cul ture for rnicroalga,
(Not provide the same technical effect of the invention), contrary to what is
referred to in the examination report. Matters here know that nutrient media for
plant growth may be specific for inducing growth
specific parts of the same plant or plant growth induction
different, or that is the same nutrient medium is not suitable for induction
growth of all plants;
11.4 Furthermore, to be considered that the invention is obvious to one skilled in
specialty is necessary that, when the pmtir disclosed in D, ie when
modify or change the elements D 1 compositions disclosed in another
document (and only one) is reached the inventive composition of claim
1, as described in paragraph hereof 10:14;
11.5 In that Test Report are also presented other documents
belonging to the state of the art (D2 to D7), which disclose compositions
nutrition with application to the crop plants;
11.6 However, it is not explained how that cfetua combination of the elements
compositions described DI with the elements of any of the compositions
15
of at least one side of the document (D2 to D7) in order to conseg11ir
get the composition of reivindkação 1 nor the reasons leading expert in
expertise to perform this combination and this specific form. So encontra-
It is missing necessary and mandatory arguments for determining the lack of
inventive step of claim 1;
11.7 In addition, it is found that the test of the invention was not made with a
considering that it was a selection of invention, namely, the examination was
done by simply comparing the overall composition of the nutrient medium it
invention with the general compositions understood in the art, then
indicating that there was misunderstanding of the invention and its failure to approach
study and its assessment of patentability;
11.8 The burden of proof of demonstrating the lack of inventive step of the application
patent lies with the Respondent, which of course did not happen in this
case, it could not happen, since you can not get to the
composition of claim I by the combination of the composition of the elements
D 1 with the elements of any of the compositions of each of the documents
secondary D2-D7 is thus proving that to claim 1 and its dependent
involve an inventive step.
12. Conclusion
12.1 It appears that serious enos were committed by the Respondent, in exam
patent application concerned, in particular by:
i) consider the documents required for instruction were not delivered
patent process, according to the mentioned Dispatch
Refusal (see b), n.0 J art. 0 0 24. CPI) · - the request n. PT 106763 was 0
properly instructed and given him the date of application 02.04.2013
corresponding to the date of submission;
16
ii) If you object to the patentability specifically with regard to
lack of inventive step without properly present evidence and
reasons leading to the rejection of the patent, in particular how the
skilled in the art can arrive at the solution proposed in the invention, a
nutritional composition to water modified magnesium base form
They can be used in the culture of microalgae, guided by combining
and the specific elements of D 1 with the compositions elements
least one of the compositions disclosed in the documents D2 side
D7;
iii) For the study of the invention based on perception rather than the Examiner
Facts and technical characteristics described in the patent, with
additional comment and unsubstantiated claims that the lack
essential elements;
iv) By disregarding the arguments and notes provided by
Applicants.
IV DECISION
From the above, the Arbitral Tribunal decides to grant the application, not
confirming and reversing, as a result, the refusal decision by
on the national invention patent n.0 106763 entitled "Composition

nutritious, obtaining method and its applications. "Tennos cm decides grant recording thereof.
Notify the parties of this decision within a maximum of 5 days per copy, and the original will be deposited on ARBITRARE (pursuant to Art. 31.0 0 n. 4 0 ARBITRARE the Arbitration Rules).
17
After the traffic cm trial of this Decision, copy reference is made in the same for the TNPI c endorsement publication in the Bulletin she Industrial Property (under 11 0 3 art.o 48.0 and 11.0 3 link the art. 35.0 0 both CPI).
Lisbon, April 18, 2016.
The Referee
This iexlo was not written under the new Spelling Agreement
18