

**DECISION OF THE BOARD OF APPEAL  
OF THE EUROPEAN CHEMICALS AGENCY**

**8 November 2011**

**Application to intervene**

*(Interest in the result of the case – Joint registrant)*

<b>Case number</b>	A-005-2011
<b>Language of the case</b>	English
<b>Applicant</b>	DuPont de Nemours (Nederland) B.V. The Netherlands  <b>Represented by:</b>  Mr. Terrence A. Vandeveld and Ms. Teny Nicoghossian DuPont de Nemours International Sarl 2, Chemin du Pavillon CH-1218 Le Grand-Saconnex Geneva Switzerland
<b>Contested decision</b>	CCH-D-0000001396-72-03/F of 22 March 2011 adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to Article 41 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 396, 30.12.2006, p.1; corrected by OJ L 136, 29.5.2007, p. 3; hereinafter the 'REACH Regulation')
<b>Appellant</b>	Honeywell Belgium N.V. Belgium  <b>Represented by:</b> Herbert Estreicher and Marcus Navin-Jones Keller and Heckman LLP Avenue Louise 523 B-1050 Brussels Belgium

## THE BOARD OF APPEAL

composed of Mercedes ORTUÑO (Chairman), Andrew FASEY (Technically Qualified Member and Rapporteur) and Mia PAKARINEN (Legally Qualified Member)

Registrar: Sari HAUKKA

gives the following

### Decision

#### SUMMARY OF THE FACTS

1. On 21 June 2011, the Appellant filed an appeal with the Registry of the Board of Appeal of the European Chemicals Agency (hereinafter the 'Registry') against the contested decision.
2. On 14 September 2011, an announcement of the notice of appeal was published on the Agency's website in accordance with Article 6(6) of Commission Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 206, 2.8.2008, p. 5; hereinafter the 'Rules of Procedure').
3. On 28 September 2011, the Applicant filed an application with the Registry seeking to intervene in the proceedings in support of the Appellant.
4. On 30 September 2011, the application to intervene was served on the Appellant and the Agency.
5. On 14 October 2011, the Appellant and the Agency submitted their respective observations on the application to intervene.

#### ARGUMENTS

6. The Applicant claims an interest in the result of the case brought before the Board of Appeal as it is a co-registrant of the substance which is the subject of the contested decision. As such it claims that any decision on the registration dossier may affect its rights and obligations.
7. The Agency indicated that it had no objection to the application to intervene. The Agency added that the Applicant may have an interest in the result of the case as it is a co-registrant for the joint submission of the substance which is the subject of the contested decision.
8. The Appellant supports the application to intervene. The Appellant claims that as a co-registrant of the substance at issue, the Applicant has an interest in the result of the case. The Appellant claims that the result of the present appeal will directly affect the Applicant's rights and obligations as regards the substance; in particular its ability to comply with the REACH registration obligations and, ultimately, to continue to manufacture and/or place on the market the substance.

**REASONS**

9. In accordance with Article 8(1) of the Rules of Procedure, any person establishing an interest in the result of a case submitted to the Board of Appeal may intervene in that case.
10. Article 8(2) of the Rules of Procedure provides that an application to intervene must state the circumstances establishing the right to intervene and it must be submitted within two weeks of publication of the announcement of the notice of appeal on the Agency's website. Further, pursuant to Article 8(3) of the Rules of Procedure, an application to intervene must be limited to supporting or opposing the remedy sought by one of the parties. In addition, Article 8(4) of the Rules of Procedure lists the information an application to intervene shall contain.
11. In the present case, the application complies with Articles 8(2), (3) and (4) of the Rules of Procedure.
12. The Board of Appeal must therefore examine whether the application also complies with Article 8(1) of the Rules of Procedure, in other words whether the Applicant has established an interest in the result of the present case.
13. For the purposes of the present application, an interest in the result of the case must be understood as being a direct and existing interest in the form of order sought by the Appellant, the party the Applicant wishes to support. To that end, it is necessary, in order to grant leave to intervene, to determine that the Applicant is directly affected by the contested decision and that its interest in the result of the case is established (see, by analogy, for example the Order of the President of the First Chamber of the General Court of 6 December 2007 in Case T-111/07 *Agrofert Holding a.s. v. Commission*, paragraph 26).
14. In that respect it should be recalled that by the contested decision, which was adopted following a check on the compliance of the dossier submitted by the Appellant for the registration of a substance, the Agency requested the Appellant to submit additional information. In particular, the Agency requested the Appellant to submit information following the conduct of the test method 90-day repeated dose toxicity study in the rabbit, by inhalation. The Appellant brought an appeal before the Board of Appeal seeking the annulment of the portion of the contested decision that requires the Appellant to perform that study.
15. It is also necessary to bear in mind that both the Applicant and the Appellant are registrants of the substance which is the subject matter of the contested decision.
16. Furthermore, under the REACH Regulation, all registrants of the same substance have to cooperate in the preparation of a joint submission including information on the properties of the substance such as the results of testing, the appropriate classification and labelling, and any testing proposals. A lead registrant then submits the lead registration dossier containing the joint submission. The other joint registrants of the substance subsequently confirm their membership of the joint submission and make a registration which, amongst other things, refers to the content of the lead registration dossier. In the present case, the Appellant is the lead registrant for the substance concerned and the Applicant is a joint registrant.

17. Since the Appellant and the Applicant have cooperated in the preparation of the joint submission for the substance which is the subject of the contested decision and since the Applicant is required in its own submission to refer to the lead registration dossier submitted by the Appellant in its capacity as lead registrant, the Board of Appeal considers that the Applicant is directly affected by the decision taken by the Agency regarding the studies to be carried out in relation to that substance.
18. Furthermore, it should be remembered that the REACH Regulation requires data on the properties of substances to be shared with registrants of the same substance. In addition, it is likely that the Applicant, as a joint registrant, will have to pay a share of the costs incurred as a result of the carrying out of the additional testing required by the contested decision.
19. In view of the above reasoning, the Board of Appeal considers that the Applicant has an interest in the Board of Appeal's final decision regarding the request to annul the part of the contested decision requiring the Appellant to submit information following the conduct of the test method 90-day repeated dose toxicity study in the rabbit, by inhalation.
20. In those circumstances, the application to intervene submitted by the Applicant must be granted.

**ORDER**

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Grants the application to intervene in Case A-005-2011 in support of the Appellant.**
- 2. Instructs the Registrar to arrange for a copy of the procedural documents to be served on the intervener after any confidentiality issues have been resolved.**
- 3. Allows the intervener a period of one month to lodge further observations on the pleas in law and arguments upon which it relies after copies of the procedural documents have been served.**

Mercedes ORTUÑO  
Chairman of the Board of Appeal

Sari HAUKKA  
Registrar of the Board of Appeal