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**Datasheet for the decision  
of 28 September 2006**

**Case Number:** T 1138/03 - 3.3.09

**Application Number:** 96203106.8

**Publication Number:** 0779033

**IPC:** A23D 9/00

**Language of the proceedings:** EN

**Title of invention:**  
Edible fat-spread

**Patentee:**  
UNILEVER N.V., et al

**Opponent:**  
Friesland Brands B.V.

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 56  
RPBA Art. 10a,b

**Keyword:**  
"Admission of late requests (yes)"  
"Inventive step (no)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1138/03 - 3.3.09

**DECISION**  
of the Technical Board of Appeal 3.3.09  
of 28 September 2006

**Appellants:**  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 21 July 2003  
revoking European patent No. 0779033 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** P. Kitzmantel  
**Members:** N. Perakis  
K. Garnett

## Summary of Facts and Submissions

I. Mention of the grant of European patent No 0 779 033 in respect of European patent application No 96203106.8 in the name of UNILEVER N.V. and UNILEVER PLC, which had been filed on 8 November 1996 claiming a EP priority of 14 November 1995 (EP 95203111), was announced on 26 September 2001 (Bulletin 2001/39). The patent, entitled "Edible fat-spread", was granted with seven claims, product Claims 1 to 6 and process Claim 7, independent Claims 1 and 7 reading as follows:

"1. Edible fat spread containing a fatphase and optionally an aqueous phase, wherein the fat of the fatphase comprises triglycerides of fatty acid residues of which 0.05-20% by weight consist of conjugated linoleic acid (CLA) residues and of which at most 50% by weight, calculated on the fat of the product, consist of saturated and trans-unsaturated fatty acid residues, other than CLA."

"7. Process for preparing a spread according to claims 1-6 wherein:

- . free CLA is incorporated into triglycerides to obtain a CLA rich triglyceride mixture
- . the CLA rich triglyceride mixture is combined with triglyceride fat to obtain a fat blend
- . a fat phase composition is prepared that includes as fat the fat blend
- . the fat phase composition is subjected to processing, optionally in combination with an aqueous phase composition, to obtain the spread."

Claims 2 to 6 were dependent, directly or indirectly, on Claim 1.

II. A Notice of Opposition was filed against the patent by Friesland Brands B.V. on 26 June 2002. The Opponent requested the revocation of the patent in its full scope, relying on Article 100(a) EPC (lack of novelty of Claims 1 and 2 and lack of inventive step of Claims 1 to 7).

The opposition was *inter alia* supported by the following documents:

- D3 : Bulletin of the International Dairy Federation, Proceedings of the IDF seminar on new dairy foods, Document 107, 1978
- D4 : "Conjugated linoleic acid and atherosclerosis in rabbits", K. N. Lee *et al.*, *Atherosclerosis*, 108, 1994, pages 19 to 25
- D7 : Chemical Abstracts 122 (1995), page 972, 122: 131629x
- D8 : "Mammary Cancer Prevention by Conjugated Dienoic Derivative of Linoleic Acid", C. Ip *et al.*, *Cancer Research*, 1991, 51, pages 6118 to 6124
- D9 : GB-A-1 577 933
- D10: Bailey's Industrial Oil and Fat Products, edited by Daniel Swern, Interscience Publishers, 1964, pages 168 and 226

The Opponent submitted further documents during the opposition proceedings before the Opposition Division:

- D14: "Conjugated Linoleic Acid Concentrations in Dairy Products as Affected by Processing and Storage", N. C. Shantha *et al.*, J. Food Sc., 60(4), 1995, pages 695 to 697 and 720
- D15: "Conjugated linoleic acid: An anticarcinogenic fatty acid present in milk fat", P. W. Parodi, Austr. J. Dairy Techn., 49, 1994, pages 93 to 97
- D16: Praktijkboek voor de margarine-industrie, 1994, pages 40, 41, 60 and 61 (submitted with an English translation).

III. By its decision orally announced on 25 June 2003 and issued in writing on 21 July 2003 the Opposition Division revoked the patent.

The decision was based on granted Claims 1 to 7 (main request), Claims 1 to 6 according to auxiliary request I, Claims 1 to 6 according to auxiliary request II, Claims 1 to 6 according to auxiliary request III, Claims 1 to 6 according to auxiliary request IV and Claims 1-6 according to auxiliary request V. Requests I to IV were submitted with a letter dated 26 May 2003 and request V at the oral proceedings of 25 June 2003.

The wording of Claim 1 of the auxiliary requests I to V was as follows:

*Auxiliary request I*

- "1. Edible fat spread containing a fat phase and optionally an aqueous phase, wherein the fat of the fat phase comprises triglycerides of which at most 50% by weight consist of saturated and trans-

unsaturated fatty acid residues, other than conjugated linoleic acid (CLA) and of which 0.05-20% by weight consist of CLA residues when the fat spread is water continuous and of which 0.5-20% by weight consist of CLA residues when the fat spread is fat continuous."

*Auxiliary request II*

"1. Edible fat spread containing a fat phase and optionally an aqueous phase, wherein the fat of the fat phase comprises triglycerides of which at most 50% by weight consist of saturated and trans-unsaturated fatty acid residues, other than conjugated linoleic acid (CLA) and of which 0.05-20% by weight consist of CLA residues when the fat spread is water continuous and of which 1-20% by weight consist of CLA residues when the fat spread is fat continuous."

*Auxiliary request III*

"1. Edible fat spread containing a fat phase and optionally an aqueous phase, wherein the fat of the fat phase comprises triglycerides of fatty acid residues of which 0.5-20% by weight consist of conjugated linoleic acid (CLA) residues and of which at most 50% by weight consist of saturated and trans-unsaturated fatty acid residues, other than CLA."

*Auxiliary request IV*

- "1. Edible fat spread containing a fat phase and optionally an aqueous phase, wherein the fat of the fat phase comprises triglycerides of fatty acid residues of which 1-20% by weight consist of conjugated linoleic acid (CLA) residues and of which at most 50% by weight consist of saturated and trans-unsaturated fatty acid residues, other than CLA."

*Auxiliary request V*

- "1. Process for preparing an edible fat spread containing a fat phase and optionally an aqueous phase, wherein the fat of the fat phase comprises triglycerides of fatty acid residues of which 0.05-20% by weight consist of conjugated linoleic acid (CLA) residues and of which at most 50% by weight, calculated on the fat of the product, consist of saturated and trans-unsaturated fatty acid residues, other than CLA, in which process
- . free CLA is incorporated into triglycerides to obtain a CLA rich triglyceride mixture
  - . the CLA rich triglyceride mixture is combined with triglyceride fat to obtain a fat blend
  - . a fat phase composition is prepared that includes as fat the fat blend
  - . the fat phase composition is subjected to processing, optionally in combination with an aqueous phase composition, to obtain the spread."

The Opposition Division held in the appealed decision that: (i) the subject-matter of Claim 1 of the main request lacked novelty in view of the disclosure of D3, (ii) the subject-matter of Claim 1 of the auxiliary requests I to IV lacked an inventive step in view of the combination of document D4 with D16, and (iii) the subject-matter of auxiliary request V lacked an inventive step in view of D3.

As to auxiliary requests I to IV, the Opposition Division considered D4 as the closest state of the art, which document disclosed that orally administered conjugated linoleic acid (CLA) improved the blood lipids profile. In the opinion of the Opposition Division, it was obvious to arrive at the claimed solution of the existing technical problem, namely the provision of a fat spread offering the afore-mentioned health benefits together with the further advantages of ease of administration, improved taste and improved stability. On the one hand, the skilled person, being aware of the presence of CLA in butter, would easily turn to a butter-like product, and on the other hand, knowing that taste and stability of unsaturated fatty acids (like CLA) were related, in the sense that enhancing oxidation stability automatically led to a retardation of rancidity, the skilled person was encouraged to use the CLA in the form of a triglyceride, known from D16 to be less susceptible to oxidation. A further hint in that direction was that butter, which contains CLA triglycerides, does not have an unpleasant taste.

Concerning the inventive step of the process of auxiliary request V, the Opposition Division considered



it an alternative process for preparing the products known from D3, which lacked an inventive step because the use of a CLA in the form of a triglyceride was known from D3 and because the use of free CLA as a starting material was a mere routine modification.

IV. On 17 September 2003 the Patent Proprietor (Appellant) lodged an appeal against the decision of the Opposition Division and paid the appeal fee on the same day.

V. With the Statement setting out the Grounds of Appeal filed on 19 November 2003, the Appellant submitted a new main request and new auxiliary requests I to III.

The Appellant further submitted for the first time documents D17 (EP 1 135 996) and D18 (WO 01/78531) and argued that, although post-published, they should be taken into consideration because they only showed inherent properties of CLA and CLA triglycerides.

The Appellant contested the conclusions of the Opposition Division and argued that the masking of the previously unknown bad taste of CLA by converting it into a triglyceride derivative before introducing it into food for humans was not obvious. Furthermore, using the fat phase of a fat containing spread as an edible carrier for the esterified CLA in the claimed therapeutic concentration range was also not obvious.

VI. The Respondent (Opponent) in written submissions dated 18 June 2004 presented its counter-arguments, raised formal objections under Articles 84 and 123(3) EPC with regard to some of the proposed amendments in the new requests of the Appellant and submitted new documents

D19 (Sieber, Ernährung/Nutrition, Vol. 19/Nr. 6, 1995, pages 265 to 270) and D20 ("Biotechnology and fatty acids: new perspectives for agricultural production?" Ed. J.A.M. de Bont, 1990, pages 16 to 17) in order to further support its argument that the subject-matter of all requests lacked an inventive step.

VII. In response to the afore-mentioned formal objections, the Appellant, with a letter dated 12 July 2006, filed revised sets of amended requests: a main request and auxiliary requests I to III. The Appellant also announced that it would not attend the scheduled oral proceedings on 28 September 2006 and requested a decision to be taken on the basis of the facts, evidence and arguments on file.

The wording of Claim 1 of the main request and auxiliary requests I to III was as follows:

*Main request (revised)*

"1. Edible fat spread containing a fat phase and optionally an aqueous phase, wherein the fat of the fat phase comprises triglycerides of fatty acid residues of which at most 50% by weight, calculated on the fat of the product, consist of saturated and trans-unsaturated fatty acid residues, other than conjugated linoleic acid (CLA) and of which 0.05-20% by weight consist of CLA residues when the fat spread is water continuous and of which 0.5-20% by weight consist of CLA residues when the fat spread is fat continuous."

*Auxiliary request I (revised)*

- "1. Process for preparing an edible fat spread containing a fat phase and optionally an aqueous phase, wherein the fat of the fat phase comprises triglycerides of fatty acid residues of which at most 50% by weight, calculated on the fat of the product, consist of saturated and trans-unsaturated fatty acid residues, other than conjugated linoleic acid (CLA) and of which 0.05-20% by weight consist of CLA residues when the fat spread is water continuous and of which 0.5-20% by weight consist of CLA residues when the fat spread is fat continuous, in which process
- . free CLA is incorporated into triglycerides to obtain a CLA rich triglyceride mixture
  - . the CLA rich triglyceride mixture is combined with triglyceride fat to obtain a fat blend
  - . a fat phase composition is prepared that includes as fat the fat blend
  - . the fat phase composition is subjected to processing, optionally in combination with an aqueous phase composition, to obtain the spread."

*Auxiliary request II (revised)*

- "1. Edible fat spread containing a fat phase and optionally an aqueous phase, wherein the fat of the fat phase comprises triglycerides of fatty acid residues of which 0.5-20% by weight consist of conjugated linoleic acid (CLA) residues and of which at most 50% by weight, calculated on the fat

of the product, consist of saturated and trans-unsaturated fatty acid residues, other than CLA."

*Auxiliary request III (revised)*

- "1. Process for preparing an edible fat spread containing a fat phase and optionally an aqueous phase, wherein the fat of the fat phase comprises triglycerides of fatty acid residues of which 0.5-20% by weight consist of conjugated linoleic acid (CLA) residues and of which at most 50% by weight, calculated on the fat of the product, consist of saturated and trans-unsaturated fatty acid residues, other than CLA, in which process:
- . free CLA is incorporated into triglycerides to obtain a CLA rich triglyceride mixture
  - . the CLA rich triglyceride mixture is combined with triglyceride fat to obtain a fat blend
  - . a fat phase composition is prepared that includes as fat the fat blend
  - . the fat phase composition is subjected to processing, optionally in combination with an aqueous phase composition, to obtain the spread."

VIII. The arguments presented by the Appellant in its written submissions may be summarized as follows:

- The state of the art did not disclose either the use of CLA in human food products or a method for preparing CLA-enriched human food products.
- The problems related to the incorporation of CLA into human food products were: (i) the previously

unknown offensive taste of free CLA which had to be masked, and (ii) the provision of an edible carrier for the CLA.

- A distinction should be made between the unpleasant taste of free CLA and the unpleasant taste of CLA derivatives resulting from the oxidation of CLA.
- The documents disclosing the natural occurrence of CLA in butter were silent about the taste of CLA.
- D16 did not disclose that esterification of unsaturated fatty acids, let alone CLA, was a means to mask the acids' bad smell and taste.
- The deliberate conversion of CLA into a glyceride, which resulted in its taste improvement, while retaining its therapeutic effect, was therefore far from obvious for the man skilled in the art.
- Nor was the use of a fat spread as an appropriate edible carrier for CLA glycerides obvious.
- The process for the preparation of a fat spread, the fat portion of which was artificially enriched with a CLA derivative, was not obvious. Even if the last three steps of the process were known as such from the general prior art relating to the preparation of triglyceride fat spreads, it was not obvious to use in this process a CLA-containing triglyceride synthesised from free CLA.

IX. The arguments presented by the Respondent in its written submissions and at the oral proceedings held on 28 September 2006 may be summarized as follows:

- The requests submitted with the letter dated 12 July 2006 were not admissible under Article 10a of the Rules of Procedure of the Boards of Appeal, because

the new sets of claims were not accompanied by an appropriately amended description.

- The reasoning of the Opposition Division in the contested decision with regard to lack of inventive step was adopted both for the claimed products and the claimed processes.
- D4 represented the closest state of the art for the claimed products because it disclosed the beneficial effect of CLA on the blood lipids profile.
- The beneficial effect of CLA on rabbits' blood lipids profile, disclosed in D4, could be presumed to be transferable to humans.
- The technical problem of the patent in suit was the provision of a human food providing the known beneficial effect of the CLA on the human blood lipids profile. The improvement of the taste of the CLA, its stability and the selection of a suitable carrier were partial problems linked to the main problem.
- The incorporation of CLA containing triglycerides into human food was obvious: in view of D16, which disclosed that triglycerides had an improved stability compared to unsaturated free acids; in view of D14 and D15, which disclosed that CLA triglycerides occurred in natural products such as dairy products which were consumed by humans; and in view of D9, which disclosed triglycerides used in edible fat spreads such as margarines.
- The skilled person facing the problem of the unpleasant taste of the free acid CLA knew how to overcome it.

- A fat spread was one of the possible carriers for CLA, and one which the person skilled in the art would select without exercising inventive skill.
  - The claimed processes lacked an inventive step. The use of synthetically produced CLA containing triglycerides was an obvious alternative to naturally occurring products and their formulation into a spread required only routine manipulations.
- X. The Appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request or one of auxiliary requests I to III, filed with letter of 12 July 2006.

The Respondent requested that the appeal be dismissed.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Admission of late requests*

The revised amended requests (main request and auxiliary requests I to III) submitted by the Appellant with letter dated 12 July 2006 are admissible under Article 10b(1) of the Rules of Procedure of the Boards of Appeal (RPBA) in spite of their late submission and in spite of the fact that appropriately amended pages of the description had not also been submitted.

On the one hand the amendments carried out in the new requests are of formal nature, do not substantially change the claimed subject-matter and effectively deal

with the objections raised in the Respondent's previous submission, and on the other hand the absence of appropriately amended description pages would have had no impact on the case with which the Respondent was confronted. It would run counter to the purpose of Rule 10 RPBA, namely not only to completely, precisely and concisely establish a party's case, but also to offer the opportunity for reacting appropriately to circumstances as they alter in the course of the prosecution, if a patentee was regularly required each and every time he filed amended claims to also file an adapted description. It is, *inter alia*, for these reasons that the boards, on a case by case basis, avail themselves of their power under Article 111(1) EPC to remit a case to the department of first instance for adaptation of the description to claims found allowable (Case Law of the Boards of Appeal of the EPO, 4<sup>th</sup> editions 2001, VII.D.10.2.1).

3. *Formal requirements (Articles 84 and 123(2) and (3) EPC)*

The Respondent did not raise any objections under these Articles against the wording of the valid requests on file and the Board is satisfied that the respective requirements are met.

4. *Novelty (Article 54 EPC)*

The Respondent announced at the oral proceedings before the Board that it acknowledged the novelty of the subject-matter of all operative requests. The Board sees no reason to decide otherwise.



5. *Inventive step of the Main request(Article 56 EPC)*

5.1 Closest state of the art

The Board considers that D4, a scientific study from the Food Research Institute of the University of Wisconsin-Madison (USA), represents the closest state of the art, since it relates to the beneficial effect of orally administered conjugated linoleic acid (CLA) on the blood lipids profile and hence the development of atherosclerosis of rabbits (page 19, abstract). These animals were fed a semi-synthetic high fat diet containing 0.1% cholesterol for a fixed period of time in combination with a CLA-treatment of 0.5g CLA per day, and showed 30% less cholesterol deposition in the aorta than the control group (table 1: paragraph bridging pages 19 and 20; page 22, right-hand column, 2<sup>nd</sup> paragraph) and had therefore an improved blood lipids profile.

It is noted that this document had been mentioned in the originally filed European patent application (page 2, lines 9-14) and that the Patent Proprietor (Appellant) considered it as the starting point for the claimed invention.

5.2 Problem to be solved and its solution

The technical problem set out in the opposed patent (paragraphs [0006] and [0007]) is the provision of an edible product for humans which provides the beneficial effects of CLA on the blood lipids' profile. An edible product for humans is understood as a product containing the CLA in a form that becomes an integral

part of the human diet without detracting from the pleasure derived from using and eating the product.

While D4, which is itself concerned with the provision of a product which provides these beneficial effects, discloses the use of CLA, there is no disclosure of any particular attention paid to the organoleptic properties of the food product for animals. There are, however, concerns with regard to such properties of food products for humans since they influence the ease of administration, the taste and the stability.

Consequently, the objective technical problem underlying the claimed invention with respect to D4 can be seen in the provision of an edible product suitable for humans, which on the one hand provides the beneficial effects of CLA on the blood lipids profile and on the other hand contains the CLA in a form that is acceptable by humans. The Board acknowledges that the latter part of the problem deals with the avoidance of the offensive taste of pure CLA, the improvement of its stability and the finding of a carrier for it which could be used as a food ingredient.

### 5.3 Obviousness

5.3.1 The question which remains to be decided is whether the prior art suggests to a person skilled in the art the solution of the technical problem in the way proposed by Claim 1.

As explained above, the claimed product is distinguished from that of D4 on the one hand in that it is an edible fat spread, which implies that it is

directed to humans, whereas D4 discloses a semi-synthetic diet for rabbits, and on the other hand in that the CLA is in the form of a specific triglyceride, whereas D4 discloses CLA in its free acid form.

In the Board's judgment, these distinguishing features are obvious for a skilled person taking D4 as the closest state of the art and aiming at solving the technical problem set out above.

- 5.3.2 As the Respondent plausibly argued at the oral proceedings before the Board, the authors of D4 carried out the experiments on rabbits with the intention of exploiting any detected beneficial effect of the free CLA in relation to the blood lipids of humans.

The Board remarks that the Appellant did not contest before the Board the extrapolation of the CLA's therapeutic effect from the rabbits of D4 to humans. It had, however, done so before the Opposition Division. In the Board's view, it cannot reasonably be questioned that the ultimate purpose of carrying out such tests on animals was to get information about the suitability of the tested matter on humans.

- 5.3.3 Furthermore, the incorporation of free CLA into food for humans was part of the state of the art. Indeed, D7 discloses the use of CLA in food as an additive in view of its anti-oxidant and colour-change preventive properties and D19 discloses the use of CLA, in the form of its potassium salt, in food such as mayonnaise in order to prevent the growth of heterofermentative lactobacilli (page 269, last paragraph of section 7).

These documents thus already suggest the use of CLA in food for human consumption.

The Appellant argued, however, that the objection to this approach was the unpleasant taste of free CLA in the human foodstuff, which had not previously been remarked upon when the CLA was fed to animals, which were insensitive to this phenomenon. The Respondent did not contest this fact and the Board has no reason to do so.

- 5.3.4 The Board concludes, however, that the solution to the problematic aspect of the unpleasant taste of free CLA, namely by its incorporation into a triglyceride, would be obvious to the skilled person because the natural occurrence of CLA comprising triglycerides in human food was known in the art, where triglycerides were not reported to be the origin of any unpleasant taste.

There is a plethora of prior art documents such as D5 (column 10, lines 57-59; column 12, lines 39-40), D10 (page 168, table 6.1), D14 (page 696, tables), D15 (summary), D16 (section 4.3.2) and D19 (page 266, tables 1-3), which disclose CLA triglycerides as occurring in dairy products such as butter, cheese (D5, D10, D14, D15), in fats and oils, such as fat from meat of ruminant animals, fish oil and soy oil (D16, D19) and in meat (D19).

The Board therefore concludes that in the light of the well-known existence of CLA containing triglycerides in human food, including eg dairy products, it was an obvious choice to the skilled person seeking to make use of the health benefits of CLA disclosed in D4 to

use CLA as part of a triglyceride; there was no reason which would have deterred the skilled person from doing so, since none of the afore-mentioned CLA triglyceride containing food products had an unpleasant taste.

With regard to the taste stability, the Board considers that in view of D16 (see the translation, bridging paragraph of pages 3-4 and bridging paragraph of pages 5-6), which discloses that triglycerides of unsaturated fatty acids are more resistant to oxidation than the free acids, and therefore more resistant to taste changes and to rancidity, the skilled person would obviously prefer this CLA form over the free acid one in the preparation of a food product.

With regard to the therapeutic effect of the CLA triglyceride, the Board remarks that the Appellant did not contest it as it had done before the Opposition Division. The Board accepts the Respondent's explanation that there is no reason to doubt the equivalency of free and esterified CLA in this respect, since orally administered CLA triglyceride will hydrolyse in the human digestive tract releasing the active acid form which will develop its effect on the blood lipids profile.

- 5.3.5 Furthermore, the Board also considers that it would be obvious to the person skilled in the art to incorporate the CLA containing triglycerides in the fat phase of edible fat spreads because the prior art already discloses edible fat spreads, the fat phases of which contain CLA containing triglycerides. D3 discloses low fat margarines, ie fat spreads, which contain butter fat, which butter fat in the light of D10 (page 168,

table 6.1) contains as a constituent CLA triglycerides (albeit in amounts lower than in the claimed product).

5.3.6 Finally the Board considers that the specific amounts of CLA residues and saturated and trans-unsaturated fatty acid residues other than CLA in the triglycerides are obvious to the skilled person since these amounts are related to the targeted calorific content of the spread, which is varied according to circumstances and can be adjusted by routine manipulations. As the Opposition Division remarked in the appealed decision, the Proprietor (Appellant) did not provide any arguments to show that the particular amounts of esterified CLA would be associated with any unexpected effect.

5.3.7 Consequently the person skilled in the art starting from D4 and aiming at conferring the beneficial effect of CLA on humans by providing a suitable edible food product will find in the art the motivation to replace the free CLA by a CLA containing triglyceride, which has no unpleasant taste, which is more resistant to taste changes during storage and which retains the therapeutic effect. This replacement lacks therefore an inventive step. Additionally the incorporation of the CLA triglyceride into an edible fat spread is an obvious alternative, as is the determination of the amount of the CLA residues in the triglycerides and of the further spread constituents. Therefore, the subject-matter of Claim 1 of the main request lacks an inventive step.

- 5.4 Inventive step of Auxiliary request I (*Article 56 EPC*)
- 5.4.1 In the Board's judgment, the process for the preparation of an edible fat spread, such as claimed in the main request, also lacks an inventive step.
- 5.4.2 The steps of the preparation of a fat blend, the fat phase composition and its processing into a spread are incontestably conventional in the art of margarine production (cf D3: page 129, lines 12 to 18 and page 131, lines 4 to 11). No particular steps are specified, nor required, to apply this conventional technique to CLA containing triglycerides (which are in fact fats). Nor can an inventive step be based on the synthetic preparation of the CLA containing triglycerides because, as admitted in paragraph [0016] of the patent specification, this step makes use of an analogous process known from D9 and thus does not involve anything more than routine adaptations.
- 5.4.3 Consequently the subject-matter of Claim 1 of auxiliary request I lacks an inventive step.
- 5.5 Inventive step of Auxiliary request II (*Article 56 EPC*)

There is no technical advantage related to the more restricted content of the CLA fatty acid residues and therefore the reasoning in relation to the main request applies *mutatis mutandis* to the subject-matter of auxiliary request II, which therefore does not involve an inventive step (*Article 56 EPC*).

5.6 Inventive step of Auxiliary request III (*Article 56 EPC*)

Likewise, the reasoning in relation to auxiliary request I applies *mutatis mutandis* to the subject-matter of auxiliary request III, which therefore does not involve an inventive step (*Article 56 EPC*).

6. In summary none of the Appellant's requests is allowable.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

G. Röhn

P. Kitzmantel