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**Datasheet for the decision
of 10 August 2011**

Case Number: T 0599/07 - 3.3.02

Application Number: 01200011.3

Publication Number: 1090553

IPC: A21D 8/04

Language of the proceedings: EN

Title of invention:
Dry yeast compositions

Applicant:
DSM IP Assets B.V.

Opponent:
-

Headword:
Dry yeast compositions/DSM IP ASSETS B.V.

Relevant legal provisions:
EPC Art. 113(2)
EPC R. 137(2)(3)
RPBA Art. 12(4)

Keyword:
"Admissibility - (no): addition of new dependent claims cannot overcome the grounds for refusal"

Decisions cited:
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Catchword:
-



Case Number: T 0599/07 - 3.3.02

D E C I S I O N
of the Technical Board of Appeal 3.3.02
of 10 August 2011

Appellant: DSM IP Assets B.V.
Het Overloon 1
NL-6411 TE Heerlen (NL)

Representative: Monaco, Vania
DSM Intellectual Property
P.O. Box 130
NL-6100 AC Echt (NL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 7 November 2006
refusing European patent application
No. 01200011.3 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: U. Oswald
Members: A. Lindner
L. Bühler

Summary of Facts and Submissions

- I. European patent application No. 01 200 011.3 was refused by a decision of the examining division pronounced on 16 October 2006 on the basis of Article 97(1) EPC 1973 on the grounds that the subject-matter claimed in the main and sole request lacked inventive step and that the subject-matter of claim 5 was not clear.
- II. The applicant (appellant) lodged an appeal against this decision.
- III. With the statement of the grounds of appeal dated 19 March 2007, the appellant filed a new main request. The independent claims read as follows:

"1. A dry granular yeast composition having a moisture content of not more than about 8% (w/w) and containing about 0.1 to 8% (w/w) of a bread-improving agent, wherein the dry yeast and the bread-improving agent are present in granular form and said bread-improving agent is present as a granulate having substantially the same granule size as the dry yeast.

6. A process according to claim 5 wherein the bread-improving agent in granular form is prepared by mixing granules of dry yeast with microfine bread-improving particles and an adhesive, to obtain a bread-improving agent in granular form wherein bread-improving agent particles are stuck on to granules of dry yeast.

9. Use of a composition as claimed in any one of claims 1 to 4 for incorporation into a dough or for fermentation of a beverage."
- IV. In the annex to the summons to oral proceedings issued by the board pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), the board in its preliminary opinion raised objections regarding the admissibility of the new main request, arguing that the introduction of new dependent claims did not appear to be suitable for overcoming the grounds for refusal. Moreover, the board concurred with the reasoning of the examining division in connection with lack of inventive step.
- V. With a letter dated 6 July 2011, the appellant informed the board that he would not attend the oral proceedings.
- VI. Oral proceedings were held on 10 August 2011, in the absence of the duly summoned appellant, in accordance with Rule 115 EPC and Article 15(3) RPBA.
- VII. The appellant requested in writing that the decision under appeal be set aside and that the case be remitted to the examining division for further prosecution on the basis of the main request filed with the statement of the grounds of appeal dated 19 March 2007.

Reasons for the decision

1. Admissibility of the main and sole request

Except for the addition of dependent claims 2 and 6 to 8, the present main request is identical to the set of claims filed with a letter dated 17 September 2003, on which the decision under appeal is based. All independent claims of the present main request (claims 1, 5 and 9) literally correspond to the independent claims (claims 1, 4 and 5) of the set on which the decision under appeal is based.

The appellant did not give any explanation for the introduction of new dependent claims. The board concludes that if the independent claims are not amended, the introduction of new dependent claims into a given set of claims cannot overcome the grounds for refusal. The board further notes that Rule 137(2) EPC does not apply, as an amended set of claims had already been filed with a letter dated 17 September 2003.

As a consequence, the main and sole request is not admitted into the proceedings (Article 12(4) RPBA together with Rule 137(3) EPC).

2. According to Article 113(2) EPC, the EPO shall decide upon an European patent application only in the text submitted to it, or agreed, by the applicant for a patent. In view of the fact that the sole request was found inadmissible, there is no text of the patent application on the basis of which the board could consider the appeal and the application could proceed to grant.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman

N. Maslin

U. Oswald