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**Datasheet for the decision  
of 9 January 2009**

**Case Number:** T 1136/07 - 3.3.09

**Application Number:** 02250320.5

**Publication Number:** 1226759

**IPC:** A23C 9/15

**Language of the proceedings:** EN

**Title of invention:**

Method for preparing solid milk product

**Applicant:**

Kraft Foods Global Brands LLC

**Opponent:**

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**Headword:**

-

**Relevant legal provisions:**

EPC Art. 54, 56

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Process Claims: Novelty, inventive step (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 1136/07 - 3.3.09

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.09  
of 9 January 2009

**Appellant:** Kraft Foods Global Brands LLC  
Three Lakes Drive  
Northfield, Illinois 60093 (US)

**Representative:** Smaggasgale, Gillian Helen  
W.P. Thompson & Co,  
55 Drury Lane  
London WC2B 5SQ (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office orally announced  
18 January 2007 and posted 6 February 2007  
refusing European application No. 02250320.5  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** P. Kitzmantel  
**Members:** W. Ehrenreich  
W. Sekretaruk

## Summary of Facts and Submissions

- I. European patent application No. 02 250 320.5 entitled "*Method for preparing solid milk product*" filed on 17 January 2002 in the name of *Kraft Foods Holdings, Inc.*, now *Kraft Foods Global Brands LLC* and published as EP 1 226 759, was refused by the Examining Division with its decision orally announced on 18 January 2007 and issued in writing on 6 February 2007.

The decision was based on a set of Claims 1 to 19 according to the main request, a set of Claims 1 to 19 according to auxiliary request 1 and a set of Claims 1 to 18 according to auxiliary request 2.

All sets of claims included identical process Claims 1 to 12, which were directed to a method for preparing a solid milk product, and subsequent product claims comprising an independent product Claim 13 directed to a solid milk product differently characterised in each of the requests.

- II. In its decision the Examining Division acknowledged novelty and inventive step of the process claimed in Claims 1 to 12 according to the main, first and second auxiliary requests but considered the product of Claims 13 of all requests to be unclear, contrary to the provisions of Article 84 EPC.
- III. On 10 April 2007 the Applicant (hereinafter: the Appellant) filed an appeal against the decision of the Examining Division. The Statement of the Grounds of Appeal was submitted on 15 June 2007. A corrected page 6 of the appeal grounds was filed with the letter dated 18 June 2007.

With its letter dated 2 January 2009 the Appellant filed four new sets of claims as bases for a main request and auxiliary requests 1 to 3.

The main, first and second auxiliary requests essentially corresponded to the respective requests submitted during the examination proceedings including identical process Claims 1 to 12, an independent product Claim 13 and subsequent dependent product claims.

The set of claims according to the third auxiliary request consisted only of the process Claims 1 to 12.

- IV. In the oral proceedings, held on 9 January 2009, the issue of lack of clarity of the product claims according to the main request and auxiliary requests 1 and 2 was discussed. In the course of the discussion, the Board informed the Appellant that these requests were not allowable because of lack of clarity of the product claims.
- Thereafter, the Appellant withdrew the main request and the auxiliary requests 1 and 2 and requested that the decision under appeal be set aside and that a patent be granted on the basis of auxiliary request 3 filed on 2 January 2009.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The Board concurs with the view of the Examining Division taken in the appealed decision that the process claimed in Claims 1 to 12 according to the

third request is novel over the cited documents and is also non-obvious over the disclosure therein; the main reason being that these citations neither disclose nor suggest the manufacture of a solid milk product as claimed by the specified high shear treatment at the specified temperature conditions.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division with the order to grant a European patent on the basis of Claims 1 to 12 filed as auxiliary request 3 on 2 January 2009, after any necessary consequential amendments of the description.

The Registrar

The Chairman

C. Moser

P. Kitzmantel