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**Datasheet for the decision
of 22 June 2010**

Case Number: T 0124/08 - 3.3.09

Application Number: 98401124.7

Publication Number: 0958747

IPC: A23G 1/00

Language of the proceedings: EN

Title of invention:
Chocolate formulation process

Patentee:
Doveurope S.A.

Opponent:
NESTEC S.A.

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Relevant legal provisions (EPC 1973):
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Keyword:
"No text agreed by the patentee - Revocation of the patent"

Decisions cited:
T 0073/84, T 0186/84, T 0157/85, T 1655/07

Catchword:
-



Case Number: T 0124/08 - 3.3.09

DECISION
of the Technical Board of Appeal 3.3.09
of 22 June 2010

Appellant: NESTEC S.A.
(Opponent) Avenue Nestlé 55
CH-1800 Vevey (CH)

Representative: Marchant, James Ian
Elkington and Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks
Kent TN13 1XR (GB)

Respondent: Doveurope S.A.
(Patent Proprietor) Zone Industrielle
Route de Saverne/B.P. 3
F-67790 Steinbourg (FR)

Representative: Cornish, Kristina Victoria Joy
Kilburn & Strode LLP
20 Red Lion Street
London WC1R 4PJ (GB)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office announced orally on
8 October 2007 and issued in writing on
16 November 2007 rejecting the opposition filed
against European patent No. 0958747 pursuant to
Article 102(2) EPC 1973.

Composition of the Board:

Chairman: W. Sieber
Members: M. O. Müller
M-B. Tardo-Dino

Summary of Facts and Submissions

- I. European patent No. 0 958 747 was granted in respect of European patent application No. 98401124.7, which was filed in the name of Doveurope S.A. on 11 May 1998. The mention of grant was published on 3 November 2004 in Bulletin 2004/45.
- II. A notice of opposition was filed by NESTEC S.A. on 3 August 2005 requesting revocation of the patent in its entirety on the grounds that the claimed subject-matter was neither novel nor inventive (Article 100(a) EPC) and that the patent did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC).
- III. In its decision which was announced orally on 8 October 2007 and issued in writing on 16 November 2007, the opposition division decided to reject the opposition.
- IV. By letter of 18 January 2008, the appellant (opponent) filed a notice of appeal against the above decision and paid the prescribed fee on the same day. A statement setting out the grounds of appeal was filed by letter of 26 March 2008.

The appellant (opponent) requested that the decision of the opposition division be set aside in its entirety and that the European patent be revoked.

- V. By letter of 4 June 2010, the respondent (patent proprietor) stated that "he no longer approves the text of the above European patent and therefore the patent should be unconditionally revoked".

Reasons for the Decision

1. The appeal is admissible.
2. Article 113(2) EPC requires that the EPO may only decide on the text of the European patent "submitted to it, or agreed" by the proprietor.

In its letter of 4 June 2010, the proprietor has clearly withdrawn its agreement to the text of the opposed patent without filing any amended text on which further prosecution of the appeal could be based.

3. The absence of any agreed text of the patent precludes any examination as to whether the grounds for opposition laid down in Article 100 EPC prejudice the maintenance of the opposed patent (see decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79; T 157/85 of 12 May 1986, not published in OJ EPO; and T 1655/07 of 10 June 2009, equally not published in OJ EPO).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

G. Röhn

W. Sieber