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**Datasheet for the decision  
of 14 April 2011**

**Case Number:** T 0410/09 - 3.3.09

**Application Number:** 01985366.2

**Publication Number:** 1343385

**IPC:** A23D 7/00

**Language of the proceedings:** EN

**Title of invention:**

Food composition suitable for shallow frying comprising sunflower lecithin

**Patentee:**

Unilever N.V., et al

**Opponent 01:**

CARGILL, INCORPORATED

**Former Opponent 02:**

POTTS, KERR & CO.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

"No text agreed by the the patentee - revocation of the patent"

**Decisions cited:**

T 0601/98

**Catchword:**

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Case Number: T 0410/09 - 3.3.09

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.09  
of 14 April 2011

**Appellant:** CARGILL, INCORPORATED  
(Opponent 01) 15407 McGinty Road West  
Wayzata, MN 55391-5624 (US)

**Representative:** Wilkinson, Stephen John  
Stevens, Hewlett & Perkins  
1 St. Augustine's Place  
Bristol BS1 4UD (GB)

**Respondents:** Unilever N.V. and Unilever PLC  
(Patent Proprietors) Weena 455  
NL-3013 AL Rotterdam (NL)

**Representative:** Corsten, Michael Allan  
Unilever Patent Group  
Olivier van Noortlaan 120  
NL-3133 AT Vlaardingen (NL)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
22 December 2008 concerning maintenance of  
European patent No. 1343385 in amended form.

**Composition of the Board:**

**Chairman:** W. Sieber  
**Members:** J. Jardón Álvarez  
K. Garnett

## **Summary of Facts and Submissions**

I. In its interlocutory decision posted on 22 December 2008, the opposition division decided that the European patent No. 1 343 385 could be maintained in amended form according to Article 101(3) EPC.

II. Opponent 01, Cargill, Incorporated, lodged an appeal against this decision on 16 February 2009 and paid the appeal fee on the same day. The statement of grounds of appeal was filed on 22 April 2009.

Opponent 02, Potts, Kerr & Co, withdrew its opposition by letter dated 8 March 2011.

III. In a letter dated 6 April 2011 the joint patent proprietors, Unilever N.V. and Unilever PLC, informed the board that they will not be represented at the oral proceedings scheduled to take place on 6 May 2011 and stated:

"The request for oral proceedings is withdrawn and the text is no longer approved."

## **Reasons for the Decision**

1. The appeal is admissible.
2. Article 113(2) EPC requires that the EPO may decide upon the European patent only in the text submitted to it, or agreed by the proprietor of the patent. Agreement cannot be held to be given if the proprietor, without submitting an amended text, expressly states that he no longer approves the text of the patent as

granted or previously amended. In such a situation a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see, for instance T 601/98).

## **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