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**Datasheet for the decision
of 25 October 2011**

Case Number: T 1707/09 - 3.3.09

Application Number: 01984770.6

Publication Number: 1343384

IPC: A23D 7/00

Language of the proceedings: EN

Title of invention:
Fat continuous food product

Patentee:
Unilever N.V., et al

Opponent:
Raisio Nutrition Ltd.

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 0601/98

Catchword:
-



Case Number: T 1707/09 - 3.3.09

D E C I S I O N
of the Technical Board of Appeal 3.3.09
of 25 October 2011

Appellant 01: Unilever N.V., et al
(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)

Appellant 02: Raisio Nutrition Ltd.
(Opponent) P.O. Box 101
FIN-21201 Raisio (FI)

Representative: -

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
5 June 2009 concerning maintenance of the
European patent No. 1343384 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 5 June 2009, the opposition division decided that the European patent No. 1 343 384 as amended met the requirements of the EPC.

II. Two appeals were filed against this decision:

On 5 August 2009, by the joint patent proprietors (appellants 01), Unilever N.V. and Unilever PLC; and

On 14 August 2009, by the opponent (appellant 02), Raisio Nutrition Ltd.

The respective appeal fees and statements of grounds of appeal were filed in due time.

III. In a letter dated 21 July 2011 the proprietors informed the board that they would not be represented at the oral proceedings scheduled to take place on 14 October 2011 and stated:

"The request for oral proceedings is withdrawn and the text is no longer approved."

IV. Having regard to the proprietors' non-approval of the text, the board informed the parties in a communication dated 1 August 2011 that it intended to terminate the appeal proceedings by a decision ordering the setting aside of the decision and revocation of the patent, without going into the substantive issues.

The parties were also informed that, subject to any further requests, the oral proceedings would be cancelled and a decision revoking the patent would be issued.

- V. No further submissions and/or requests were filed within the set time limit. Consequently the oral proceedings were cancelled on 12 October 2011.

Reasons for the Decision

1. The appeals are 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 deemed 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