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**Datasheet for the decision
of 8 September 2010**

Case Number: T 1111/10 - 3.3.09

Application Number: 03761459.1

Publication Number: 1517619

IPC: A23L 1/305

Language of the proceedings: EN

Title of invention:
Satiety inducing composition

Patent Proprietors:
Unilever N.V., et al

Opponent:
N.V. Nutricia

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Relevant legal provisions (EPC 1973):
-

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, T 0124/08

Catchword:
-



Case Number: T 1111/10 - 3.3.09

DECISION
of the Technical Board of Appeal 3.3.09
of 8 September 2010

Appellant: N.V. Nutricia
(Opponent) Erste Stationsstraat 186
NL-2712 HM Zoetermeer (NL)

Representative: van Westenbrugge, Andries
Nederlandsch Octrooibureau
Postbus 29720
NL-2502 LS Den Haag (NL)

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

Unilever PLC
Unilever House Blackfriars London
Greater London
EP4C 4BQ (GB)

Representative: Wurfbain, Gilles L.
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
18 March 2010 concerning maintenance of
European patent No. 1517619 in amended form.

Composition of the Board:

Chairman: W. Sieber
Members: N. Perakis
R. Menapace

Summary of Facts and Submissions

- I. European patent No 1 517 619 was granted in respect of European patent application No 03 761 459.1, which had been filed in the name of Unilever N.V. and Unilever PLC on 13 June 2003. The mention of grant was published on 3 January 2007 in Bulletin 2007/01.
- II. A notice of opposition was filed by N.V. Nutricia on 3 October 2007. The opponent requested the 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. By an interlocutory decision which was announced orally on 9 December 2009 and issued in writing on 18 March 2010 the opposition division maintained the opposed patent in amended form.
- IV. On 10 May 2010 the opponent filed an appeal against the decision of the opposition division and paid the prescribed fee on the same day. The statement setting out the grounds of appeal was filed on 9 July 2010. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- V. By letter of 30 July 2010 the respondents (patent proprietors) stated that they no longer approved the text and the claims of the patent as on file and that no new text and claims would be filed.

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.

With the letter of 30 July 2010, the patent proprietors on the one hand withdrew their agreement to the text of the opposed patent and on the other hand stated that they did not intend to file any amended text on which further prosecution of the appeal could be based.

3. The absence of any agreed text of the patent precludes the board from 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, as well as T 157/85 of 12 May 1986, T 1655/07 of 10 June 2009 and T 124/08, none of them 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