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Datasheet for the decision of 17 September 2013

Case Number: T 2620/11 - 3.3.09

Application Number: 03792212.7

Publication Number: 1536695

IPC: A23L 1/22, A23L 1/40

Language of the proceedings: EN

Title of invention:
Savoury food product and process for its preparation

Patent Proprietor:
Unilever N.V.
Unilever PLC

Opponent:
NESTEC S.A.

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56, 83, 100(a),(b),(c), 123(2)
RPBA Art. 13(3)

Keyword:
"Main request - inventive step (no)"
"New auxiliary request 1 - inventive step (no)"
"New auxiliary request 2 (not admitted)"

Decisions cited:
T 0608/07, T 0593/09

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 2620/11 - 3.3.09

D E C I S I O N
of the Technical Board of Appeal 3.3.09
of 17 September 2013

Appellant: (Patent Proprietor)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 21 October 2011 revoking European patent No. 1536695 pursuant to Articles 101(2) and 101(3)(b) EPC.**

Composition of the Board:

Chairman: W. Sieber
Members: N. Perakis
F. Blumer

Summary of Facts and Submissions

I. Mention of the grant of European patent No. 1 536 695 to Unilever N.V. and Unilever PLC was published on 19 September 2007 (Bulletin 2007/38).

Claims 1 and 18 read as follows:

"1. Savoury particle comprising:

- 0.1-80% (wt) salt and/or MSG;
- 20-99% (wt) of one or more sugars and/or polyols,
- 0.05-50% (wt) of a flavouring ingredient,

which particle is in a glassy state and which particle has a volume of at least 2 ml."

"18. Use of a savoury particle comprising:

- 0.1-80% (wt) salt and/or MSG;
- 20-99% (wt) of one or more sugars and/or polyols,
- 0.05-50% (wt) of a flavouring ingredient,

which particle is in a glassy state and which particle has a volume of at least 2 ml, for making a bouillon, broth or soup."

II. An opposition was filed against the patent by Nestec S.A. requiring the revocation of the patent on the grounds of lack of novelty and inventive step (Article 100(a) EPC), insufficient disclosure (Article 100(b) EPC) and added subject-matter (Article (c) EPC).

III. The documents cited in the opposition proceedings included the following:

D1: EP 1 214 895 A1;
D2: US 6 090 419 A;
D8: Hawley's Condensed Chemical Dictionary, 11th ed. 1987, p 174 (filed by the proprietor);
D16a: Wikipedia article regarding "Solubility";
D16b: Wikipedia article regarding "Surface-area-to-volume ratio";
D18: US 4 232 047 A; and
D19: "Wheat flour, whole grain", From USDA National Nutrient Database, http://www.nal.usda.gov/fnic/foodcomp/cgi-bin/list_nut_edit.pl.

Documents D16a, D16b, D18 and D19 were filed by the opponent after the time limit of nine months set by Article 99(1) EPC.

IV. By a decision announced orally on 21 September 2011 and issued in writing on 21 October 2011, the opposition division revoked the patent. It held that claim 1 of the main request (granted claims) lacked an inventive step in view of D18 and that claim 1 of auxiliary requests 1 and 2 (filed during the oral proceedings) lacked clarity.
For the present decision these auxiliary requests are not relevant.
Late-filed documents D16a, D16b, D18 and D19 were admitted into the proceedings.

V. The patent proprietors (in the following: the appellants) filed an appeal against the decision of the opposition division on 13 December 2011 and paid the appeal fee on the same day. The statement setting out

the grounds of appeal was filed on 24 February 2012, along with auxiliary requests 1 to 3.

VI. The opponent (in the following: the respondent) filed observations on the appeal by a letter of 20 April 2012.

VII. Oral proceedings were held before the board on 17 September 2013. During the oral proceedings the appellants maintained their main request, namely that the decision under appeal be set aside and that the patent be maintained as granted, withdrew the previously filed auxiliary requests 1 to 3 and submitted new auxiliary requests 1 and 2.

Claim 1 of new auxiliary request 1 differs from claim 1 as granted in that it refers to a "savoury particle selected from a bouillon or soup particle" instead of a "savoury particle".

Claim 1 of new auxiliary request 2 reads as follows:

"1. Use of a savoury particle selected from a bouillon or soup particle comprising:

- 0.1-80% (wt) salt and/or MSG;
- 20-99% (wt) of one or more sugars and/or polyols,
- 0.05-50% (wt) of a flavouring ingredient,

which particle is in a glassy state and which particle has a volume of at least 2 ml, for making a bouillon or soup;
wherein 3 minutes after adding the particle to boiling water, less than 50% vol., based on the volume of the particle, has dissolved."

VIII. The relevant arguments put forward by the appellants in their written submissions and at the oral proceedings may be summarised as follows:

Main request

- The appellants agreed with the opposition division that granted claims 18 to 23 did not contravene Article 100(c) EPC.

- The invention of the main request was sufficiently disclosed as confirmed by the appealed decision.

- Claim 1 was novel over D1, D2 and D18. The argument based on D1 should not be admitted into the proceedings since such an objection had not been raised before the oral proceedings. Nevertheless, the savoury particles of D1 were not in a glassy state. D2 did not clearly and unambiguously disclose savoury particles combining all the features of claim 1. D18 did not disclose particles with a volume of at least 2 ml.

- Claim 1 involved an inventive step. In the oral proceedings the appellants also considered D18 to represent the closest state of the art.

- D18 did not disclose particles with a volume of at least 2 ml. D18 did not contain any pointer towards the increase of the particles volume to the required 2 ml or more in order to release flavour and aroma, particularly their top notes, during an extended period of time upon usage. The skilled person would rather modify the matrix material.

New auxiliary request 1

– Claim 1 was novel over D1, D2 and D18 for the reasons set out regarding the main request. In particular regarding the particles of D18, they were not particles to make a soup or a bouillon but only flavouring particles.

– D1, which disclosed a cooking aid particle for making a bouillon or soup, was the closest state of the art. D18 which disclosed food supplement concentrates for providing only flavouring was more remote from the claimed particles. The distinguishing feature was the glassy state of the particles instead of a plastic state disclosed in D1. The glassy state provided the effect of slow dissolution upon usage. The technical problem was to provide a savoury particle which upon usage had an extended and long lasting release of the top notes of the aroma when making a soup or bouillon. The skilled person starting from D1 and seeking to solve this problem would not find in the state of the art (D1, D2 or D18) any hint pointing towards the subject-matter of claim 1, which therefore involved an inventive step.

New auxiliary request 2

– This request should be admitted into the proceedings because it was based on the granted claims and took into consideration the arguments put forward during the oral proceedings which related to the slow dissolution of the savoury particles.

IX. The relevant arguments put forward by the respondent in its written submissions and at the oral proceedings may be summarised as follows:

Main request

- Claims 18-23 were not present in the originally filed documents. Support for the use of savoury particles could be found on page 9, lines 9-15. However this passage only described the particles as being used in bouillon or broth but not in soup. Consequently claims 18-23 contravened Article 100(c) EPC.

- The claimed invention was not sufficiently disclosed since the skilled person was not able to assess the desired scope of protection. In particular, the term "glassy state" was not sufficiently defined since no temperature at which the particle had a glassy state was given. Also the term "Maillard flavour" used in claim 8 was not defined in the patent in suit. Furthermore, the feature of claim 14 as granted, in particular heading (c), was also not sufficiently disclosed as the cooling temperature was nowhere disclosed.

- Claim 1 lacked novelty over D1, D2 and D18. The argument based on D1 should be admitted into the proceedings in view of the interpretation given during the oral proceedings of the term "glassy state". D1 (example 1) disclosed all the features of claim 1 of the main request except the glassy state of the particle. However, this feature was implicit in D1 since paragraph [0011] of D1 described this parameter in the same manner as paragraph [0011] of

the patent in suit. Also D2 disclosed all the features of claim 1. Regarding D18, example 5 disclosed an intermediate product - long glassy strips - produced during the manufacture of the savoury particles, which had all the features of the claimed particles except the volume of at least 2 ml. However, this feature was implicit in view of the extruder used, which determined the two dimensions of the intermediate product, and in view of the ordinary interpretation which the skilled person would give to the term "long" characterising the glassy strips and defining the third dimension of the intermediate product.

– Claim 1 did not involve an inventive step. The problem relied upon by the appellants, namely the provision of a savoury particle with release of the flavour over an extended period of time, was not solved over the whole breadth of the claim since leafy or straw-like shapes of the savoury particle did not solve the problem of slow release of the aroma top notes upon usage (patent: column 3, lines 7-9). The lower limit of 2 ml for the particle volume was also arbitrary since there was no technical evidence substantiating the criticality of this value. Thus, the objective technical problem in view of D18, which disclosed slower, extended and more controlled flavour release, was the provision of an alternative particle. Such a particle was, however, obvious to the skilled person, since it was a law of nature that bigger particles dissolve more slowly than smaller particles. Therefore, the skilled person on the basis of his ordinary technical knowledge would consider it obvious to

increase the volume of the savoury particles of D18 in order to reduce the release of the aroma encapsulated therein during their dissolution.

But even if the objective technical problem had to be seen in the provision of savoury particles with extended flavour release, it would have been obvious to the skilled person that slower dissolution of the matrix extended the release of the enclosed flavour. Again, the skilled person would have increased the size of the particle in order to get slower dissolution and consequently extend flavour release.

New auxiliary request 1

– This request lacked inventive step considering D18 as the closest state of the art. The skilled person would have considered D18 since it described a solid concentrate which upon hydration gave a soup. In fact "solid concentrate" was the technical term for the product of claim 1. D18, example 5, disclosed the addition of the manufactured savoury particle to stews and soups (column 12, lines 42-43) and the solid concentrate could be called a soup particle in the same manner as the particle of claim 1. D1 was more remote since it did not disclose the glassy state of the soup/bouillon particle. Thus the claimed particle differed from the particle of D18 only as regards its volume. This was not considered to involve an inventive step for the reasons set out in the context of the inventive step of claim 1 of the main request. Thus new auxiliary request 1 was not allowable.

New auxiliary request 2

– This request should not be admitted into the proceedings because claim 1 contained a feature taken from the description. This request was filed very late and the respondent could not have foreseen that the proceedings would take this unexpected turn.

X. The appellants (patent proprietors) requested that the decision under appeal be set aside and that the patent be maintained as granted (main request), or, alternatively, that the patent be maintained according to either the new auxiliary request 1 or new auxiliary request 2, both auxiliary requests as filed during the oral proceedings before the board.

XI. The respondent (opponent) requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.

Main request (claims as granted)

2. Added subject-matter

According to the respondent, claim 18 (point I above) and dependent claims 19 to 23 of the main request contravene Article 100(c) EPC. Such claims were not present in the originally filed documents, and the passage on page 9, lines 9-15 described savoury particles only as being used in a bouillon or broth but not in a soup.

The board, however, considers that the subject-matter of these claims is clearly and unambiguously derivable from the originally filed application as page 5, lines 10 to 12, discloses the particle "being a bouillon-, broth-, soup- or seasoning particle". A similar wording can be found in claim 4 as filed. This clearly and unambiguously means to the skilled person that the particle is also used to make a soup.

Consequently the objection under Article 100(c) EPC against claims 18 to 23 must fail.

3. Sufficiency of disclosure

3.1 The respondent contested the sufficiency of disclosure on the ground that the skilled person was not able to assess the desired scope of protection. In particular the term "glassy state" in claim 1 was not sufficiently defined. Normally a glassy state is defined in the art by its glass transition temperature. Such a temperature was not given in the patent in suit. Also the term "Maillard flavour" in claim 8 was not defined in the contested patent.

3.1.1 It is true that the patent in suit does not refer to a glass transition temperature when referring to the term "glassy state". However paragraph [0011] of the patent specification provides the following definition:

"Glassy state is herein to be understood as preferably non-deformable when a particle according to the invention is squeezed by hand (contrary to e.g. normal bouillon cubes which deform as a paste or crumble when squeezed by hand); glass-like appearance; preferably

transparent or translucent; film-like non-grainy surface; one object not composed of other elements processed together."

It is not disputed that the disclosed definition is broad. It cannot, however, be ignored that this passage provides the skilled person with a clear teaching of the what is meant by "glassy state" and thereby enables him to reproduce the invention. The skilled person would be able on the basis of this disclosure and using his common general knowledge to identify without undue burden the technical measures necessary to solve the problem underlying the patent at issue. This rationale underlies the case law of the boards of appeal of the EPO (e.g. T 608/07 and T 593/09) that for an insufficiency arising out of ambiguity it is not enough to show that an ambiguity exists, e.g. at the edges of the claims. It will normally be necessary to show that the ambiguity deprives the person skilled in the art of reaching the promise of the invention. The respondent did not provide any technical evidence in this context.

3.1.2 Regarding the term "Maillard flavour" in claim 8, the board concurs with the appellants that this term has a clear meaning to the skilled person as Maillard reaction, Maillard colour and Maillard flavour are terms common in this art. This is substantiated by the disclosure of D8, page 174, which is a technical dictionary and illustrates the general technical knowledge of the skilled person.

3.2 Claim 14 as granted reads as follows:

"A process for preparing a particle according to claim 1-11, the process comprising the steps of:

(a) providing a mixture of melted or dissolved sugar(s) and/or polyols with the salt and/or MSG
(b) adding the flavouring ingredients to said mixture and mix
(c) cooling the mixture to solidify.

The respondent's objection against the process of claim 14 was that the cooling temperature of step (c) was nowhere disclosed in the contested patent. It would amount to an undue burden to find out the cooling temperature for a mixture so that it solidifies.

However, the board agrees with the appellants that the skilled person is aware up to which temperature the various ingredients must be heated in order to melt/dissolve the sugars and/or polyols and down to which temperature the mixture should be cooled in order to obtain particles in a glassy state. Further guidance can be found in example 1 of the patent in suit, where the heated mixtures were poured into moulds and cooled in a refrigerator (see also point 4, first paragraph of the decision under appeal).

3.3 In view of the above considerations the objection under Article 100(b) EPC must fail.

4. Novelty

4.1 During the oral proceedings the respondent requested to admit a novelty objection based on D1 into the proceedings. The board decided to admit this argument

into the proceedings despite the fact that a lack of novelty objection on the basis of this document had neither been raised in the reply to the statement of the grounds of appeal nor at any stage before the oral proceedings took place. The decision of the board is based on the fact that D1 had always been in the proceedings and had initially been considered by the appellants in their statement of grounds of appeal to represent the closest state of the art within the context of inventive step. Thus, the appellants were familiar with the document and in a position to deal with the new argument.

4.2 D1 (example 1) discloses a cooking aid in the form of a tablet comprising:

- 7,2 wt% salt and MSG,
- 48,8 wt% of sugars and polyols in view of the content in sugar, tomato powder, wheat flour and potato starch - considering on the basis of D19 that wheat flour comprises 58 wt% starch,
- 1,5 wt% of flavouring ingredients in view of the content in onion and garlic powder,

which tablet has a volume of 31,5 ml.
In view of its ingredients the cooking aid of D1 is savoury. However it is not in a glassy state. According to the respondent, this feature is implicit in the cooking aid of D1. In this context, the respondent referred to paragraph [0011] of D1. This passage discloses:

"... l'aide culinaire selon la présente invention présente une surface lisse, brillante et uniforme et non pas terne et dont le toucher n'est ni poisseux ni rugueux. Enfin l'aide culinaire selon la présente

invention présente une bonne résistance aux manipulations à température ambiante, ne s'effrite pas et ceci particulièrement au niveau des arêtes de ses angles les plus fins".

Although this passage is very similar to that of paragraph [0011] of the patent in suit, the two passages are not identical. For example, the passage in D1 does not disclose that the cooking aid has a "glass-like appearance". Therefore D1 does not clearly and unambiguously disclose that the cooking aid has a glassy state. Furthermore, as pointed out by the appellants, if the invention of D1 related to cooking aids in a glassy state, this would have been mentioned in D1 as this had been done in other documents of the state of the art such as D2 and D18. On the basis of the above considerations, D1 does not disclose the subject-matter of claim 1 of the main request.

4.3 D2 discloses salt compositions which contain 10-90 wt% of salt and 10-90 wt% of a binding matrix (column 2, lines 18-25), the binding matrix comprising sugars and/or polyols (column 3, lines 24-28). In view of their ingredients the compositions of D2 are savoury. According to D2 the salts may comprise a flavouring ingredient without any disclosure of its amount (column 5, lines 39-40); indeed, example 2 does not contain any flavouring agent. The binding matrix may exist in a glassy state (column 2, line 42) but this is not a prerequisite either since example 1 discloses an amorphous matrix. At an intermediate stage of the production of the salt composition of D2, a plastic mass comes out of the extruder in the form of a rope whose dimensions are however not disclosed (column 6,

lines 17-18). Only the dimensions of the final product are given since D2 discloses that it will typically have a size of 0.2 to 10 mm (column 2, lines 52-54), which means that the volume will typically be lower than 2 ml and thus different from the volume of the particle of claim 1 of the main request. Consequently, D2 does not clearly and unambiguously disclose a savoury particle combining all the features of claim 1 of the main request.

4.4 D18 discloses food supplement concentrates in a dense glass-like extrudate melt with an agent encaged in a polymer matrix (column 4, lines 5-16). In particular, example 5 discloses a particle which comprises:

- 1,5 wt% salt and MSG,
- 54,2 wt% sugars and polyols in view of the content in cane sugar and wheat flour comprising 58 wt% starch (in this context see D19),
- 0,7 wt% of a flavouring agent, namely artificial green bell pepper flavour.

In view of its ingredients the particle of example 5 is savoury. It is also explicitly disclosed that it is in a glassy state. In fact, the mixture comes out from a Brabender extruder in long glossy strips requiring no additional cooling. The extruded 1/8" ribbons were flattened to 1/32" using smooth compaction rolls, dried and screened to pass a 1/4" screen and remain on a 10 mesh screen. It was not contested by the respondent that the end product of example 5 has a volume which is much lower than that claimed.

However, the respondent argued that the intermediate product coming out of the extruder as a long glassy

strip implicitly had the claimed volume in view of the dimensions of the extrusion die used (column 8, lines 47-48 discloses an extrusion die flattened to 1/8" x 5/8") and the interpretation the skilled person would give to the term "long strip". In order to have a volume of 2 ml or more, the long glassy strip must have a length of only about 4 cm, i.e. a length that is roughly two times the width of the strip. Thus, the terms "long" and "strip" were believed to implicitly and unambiguously disclose the required volume.

However, the board does not consider that this intermediate product clearly and unambiguously has the claimed volume of at least 2 ml, because the term "long" used for the definition of the glassy strips has no particular meaning for the skilled person in the art. Consequently D18 does not deprive claim 1 of novelty either.

5. Inventive step

5.1 The invention relates to an edible solid providing a controlled and long lasting release of flavour and/or flavour top notes (paragraph [0001] of the patent specification).

5.2 Closest prior art

The opposition division and the respondent considered D18 to represent the closest state of the art. During the oral proceeding before the board the appellants also took this view. The board concurs with the parties since D18 discloses a food supplement in a glassy state whose slow dissolution/disintegration reduces the

release of flavour over an extended period of time (column 5, lines 39-46; column 6, lines 26-32 and 52-58). D1 discloses a cooking aid which dissolves quickly and easily, contributes to the rapid reconstitution of soups, broths and sauces and therefore does not provide any control or extension of the flavour release. D1 is consequently more remote from the subject-matter of claim 1.

5.3 The technical problem

5.3.1 According to the patent in suit the technical problem is to provide a savoury particle which gradually disperses its flavouring ingredients, and particularly its top notes into the environment over the time such particle disintegrates or dissolves upon usage (paragraphs [0001], [0008], [0010], [0018] and [0020]).

5.3.2 In the light of D18 the objective technical problem underlying the patent can be seen in the provision of a savoury particle which further reduces the gradual dispersion of the top notes of the flavouring ingredients into the environment upon usage. In this context, it is pointed out that, contrary to the allegations of the appellants, D18 does relate to the release of the encapsulated flavouring ingredients upon usage (i.e. solubilisation/hydration of the particle) as this is clearly and unambiguously disclosed in various parts of this document (e.g. column 4, lines 16-18: "The release of the encased agent is ultimately effected through hydration or through digestion of the enveloping matrix."). D18 even recognizes the correlation between reduced solubility of the matrix and reduced control of flavour (column 5,

lines 39-46). Thus, the interpretation of the appellants that D18 concerns only the storage stability of the savoury particles is wrong.

5.3.3 There is no doubt that the objective technical problem is solved by the savoury particle according to claim 1, which is distinguished from the particle of D18 (example 5) only as regards the particle volume. This is demonstrated by the technical evidence in the patent in suit, namely example 2.

5.4 Obviousness

5.4.1 The skilled person starting from the particles of example 5 of D18 and seeking to reduce further the gradual dispersion of the top notes of the flavouring ingredients into the environment upon usage would obviously envisage the increase of the particle volume dimension and would provide savoury particles with a volume of at least 2 ml. Apart from the fact that no criticality can be attributed to the lower limit volume of 2 ml, it belongs to the general technical knowledge of the skilled person that an increase of particle size requires a longer dissolution time and therefore automatically provides an extended and long lasting release of the flavouring agents. In this context reference can be made to D16a (page 2, under the headnote "Factors affecting solubility") and D16b (page 1, under the headnote "Physical chemistry"). In the end, this effect is based on a law of nature, as pointed out by the respondent. The reduced release due to the larger volume of the particle affects of course top and basic notes.

6. In view of the above considerations the subject-matter of claim 1 does not involve an inventive step with the consequence that the main request is not allowable.

New auxiliary request 1

7. The subject-matter of claim 1 of auxiliary request 1 derives from that of claim 1 of the main request with the limitation that the savoury particle is selected from a bouillon or soup particle. The respondent did not raise any objection under Article 123 EPC and the board is satisfied that the claimed subject-matter is disclosed in the application as filed (Article 123(2) EPC) and does not extend the scope of protection beyond that conferred by the granted patent (Article 123(3) EPC).

8. Regarding sufficiency of disclosure, the board considers that the invention of claim 1 of auxiliary request 1 also satisfies the criteria of Article 83 EPC and makes reference to point 3 above, which equally applies to this request. It is remarked that the respondent did not raise any objection in this context to auxiliary request 1.

9. Novelty

Since the subject-matter of claim 1 of auxiliary request 1 is a limitation of the subject-matter of claim 1 of the main request, the reasoning set out in point 4 above with regard to the main request also applies to auxiliary request 1. It is therefore concluded that the claimed subject-matter is novel over

the cited prior art. It is remarked that the respondent did not raise any objection regarding the novelty issue.

10. Inventive step

10.1 Interpretation of claim 1

The board concurs with the respondent that claim 1 of auxiliary request 1 should be interpreted broadly and essentially concerns a solid food concentrate of ingredients which, upon hydration, is part of a bouillon or a soup, and that such a bouillon or soup may or may not comprise further ingredients. This interpretation is corroborated by claims 10 and 11 of this request, which read as follows:

"10. Food product comprising one or more particles of any one of the preceding claims."

"11. Food product according to claim 10 wherein the food product is one of the following: instant meals, instant soups, soup concentrates, bouillon cubes, sauce concentrates."

Claim 11 contradicts the appellants' argument that a "bouillon or soup particle" provides any implicit limitation. In fact the savoury particles of claim 1 can be used alone (as a bouillon cube to make bouillon) or in combination with other ingredients (in instant meals or sauce ingredients). Therefore the savoury particles of claim 1 are considered in their broadest definition as food supplement concentrates.

10.2 Closest state of the art

The appellants argued that for the subject-matter of claim 1 of auxiliary request 1 D1, and no longer D18, had to be considered the closest prior art.

However, the board agrees with the respondent that D18 still represents the closest state of the art. Firstly, this document belongs to the technical field of food supplement concentrates (see title) and secondly, it discloses particles whose composition is very similar to that of the claimed particles (see point 4.4 above, in relation to novelty over D18). In particular, example 5, which is considered the most relevant part of this document, discloses the use of particles -in the form of food supplement concentrates - for the preparation of soups (column 12, lines 42-43). Thus these solid concentrate particles can be called soup particles. As set out for the main request, the only difference in the claimed savoury particles over those of D18 is limited to the volume of the particles, which is clearly larger than those of D18.

10.3 With regard to the definition of the technical problem to be solved, the effective solution of the problem, the means used for the solution and the question of obviousness, the board refers to sections 5.2 to 5.4 which equally apply to auxiliary request 1.

11. In view of the above considerations, the board comes to the conclusion that claim 1 of new auxiliary request 1 does not involve an inventive step ant that this request is not allowable.

New auxiliary request 2

12. Auxiliary request 2 was submitted during the oral proceedings before the board. Not only was it filed at a very late stage of the proceedings but it also contained subject-matter which was not part of the granted claims. Incidentally, claim 1 comprised a feature taken from the description (bridging sentence of columns 6 and 7). The board concurs with the respondent, who considered that this request, by the addition of a feature taken from the description, created an unexpected situation and raised issues which it was unable to deal with during the oral proceedings.

The board was not convinced by the argument of the appellants, that the filing of new auxiliary request 2 was the consequence of the arguments put forward during the oral proceedings concerning the slow dissolution of the savoury particles. As pointed out by the board during the oral proceedings, these arguments had already been brought forward by the respondent in its reply to the statement of grounds of appeal.

Under these circumstances, the board did not admit this request into the proceedings (Article 13(3) RPBA).

13. Consequently none of the requests of the appellants are allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

M. Canueto Carbajo W. Sieber