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Datasheet for the decision of 21 January 2014

Case Number: T 1607/12 - 3.3.09

Application Number: 05102859.5

Publication Number: 1629722

IPC: A23L1/0524, A23L1/0532, A23L2/06, A23C9/13, A23G3/00

Language of the proceedings: EN

Title of invention:
Pourable composition comprising tasty gelled beads dispersed in a continuous aqueous phase

Patent Proprietor:
CSM Nederland B.V.

Opponent:
Herbstreith & Fox KG,
Pektin-Fabrik

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - revocation of the patent at request of the patent proprietor

Decisions cited:
T 0073/84, T 0186/84

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

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Case Number: T 1607/12 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 21 January 2014

Appellant: (Opponent)	Herbstreith & Fox KG, Pektin-Fabrik Turnstrasse 37 75305 Neuenbürg (DE)
Representative:	Schön, Thilo Patentanwälte Frank Wacker Schön Schwarzwaldstrasse 1A 75173 Pforzheim (DE)
Respondent: (Patent Proprietor)	CSM Nederland B.V. Nienoord 13 1112 XE Diemen (NL)
Representative:	Nederlandsch Octrooibureau P.O. Box 29720 2502 LS The Hague (NL)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 11 May 2012 rejecting the opposition filed against European patent No. 1629722 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman: W. Sieber
Members: M. O. Müller
K. Garnett

Summary of Facts and Submissions

I. This decision concerns the appeal filed by the opponent against the decision of the opposition division to reject the opposition against European patent No. 1 629 722.

II. On 5 July 2012, the opponent (hereinafter: "the appellant") filed an appeal and, on the same day, paid the prescribed fee. The statement setting out the grounds of appeal was filed on 11 September 2012.

The appellant requested that the decision under appeal be set aside and the patent be revoked.

III. With letter of 4 April 2013, the proprietor (hereinafter: "the respondent") filed a response to the appeal together with auxiliary requests 1 to 4.

The respondent requested that the appeal be dismissed and the patent be maintained in unamended form or, subsidiarily, according to one of auxiliary requests 1 to 4.

IV. Further observations were filed by the appellant by its letter dated 27 June 2013.

V. On 22 November 2013, the board summoned the parties to oral proceedings and provided its preliminary opinion.

VI. With its letter of 2 January 2014, the respondent stated the following:

"In response to your summons we would like to inform the Board of Appeal that proprietor no longer approves

the text of the patent as granted. Consequently, there is no need for oral proceedings."

VII. On 14 January 2014, the respondent's representative Mr D. Bot informed the registrar of the board that the patent proprietor also withdrew auxiliary requests 1 to 4 filed on 4 April 2013, since it was not interested in the patent any longer.

VIII. On 15 January 2014, the board cancelled the oral proceedings.

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 eg decisions T 73/84, OJ EPO 1985, 241 and T 186/84, OJ EPO 1986, 79).

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:

M. Cañueto Carbajo W. Sieber

Decision electronically authenticated