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**Datasheet for the decision  
of 4 December 2015**

**Case Number:** T 0664/13 - 3.3.09

**Application Number:** 05849867.6

**Publication Number:** 1971215

**IPC:** A23G4/06, A23G3/34, A23G4/10,  
A23G4/20

**Language of the proceedings:** EN

**Title of invention:**  
Coated chewing gum

**Patent Proprietor:**  
Wm. Wrigley Jr. Company

**Opponent:**  
Cadbury Holdings Limited

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 56

**Keyword:**  
Novelty - (yes)  
Inventive step - (yes)

**Decisions cited:**  
T 0153/85, T 0939/92

**Catchword:**



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Case Number: T 0664/13 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 4 December 2015**

**Appellant:** Cadbury Holdings Limited  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
4 January 2013 maintaining European patent  
No. 1971215 in amended form.**

**Composition of the Board:**

**Chairman** W. Sieber  
**Members:** J. Jardón Álvarez  
E. Kossonakou

## Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the opponent against the interlocutory decision of the opposition division that European patent No. 1 971 215 as amended met the requirements of the EPC.
- II. The opponent had requested revocation of the patent in its entirety on the grounds of Article 100(a) (lack of novelty and inventive step) and 100(b) EPC.

The documents cited during the opposition proceedings included:

D1: WO 95/07625 A1;

D2: US 2003/0190397 A1;

D4: CA 1 329 891;

D6: Comparative data filed by the patent proprietor on 14 January 2011 (one page);

D6': Comparative data filed by the patent proprietor on 16 October 2012 (one page); and

D7': "Hydrogenated Starch Hydrolysates" from webpage <http://www.caloriecontrol.org/sweeteners-and-lite/polyols/hsh> (two pages).

- III. The opposition division maintained the patent in amended form on the basis of the set of claims filed on 14 January 2011 as main request. This request included 16 claims, independent claims 1 and 16 reading as follows:

"1. A chewing gum product with improved crunch comprising:

a) a center portion comprising a polyol component, gum base, an intense sweetener, a flavoring agent, and between 0% and 1% glycerin, wherein the polyol component comprises a first polyol selected from the group consisting of isomalt, maltitol, and erythritol, and less than 5% any polyols other than the first polyol and wherein the center portion comprises less than 1% higher hydrogenated oligosaccharides; and

b) a coating portion comprising the first polyol and covering the center portion wherein the coating portion comprises less than 5% any polyols other than the first polyol."

"16. A method of preparing a chewing gum product with improved crunch, as defined in any one of the preceding claims comprising:

a) mixing a polyol component, gum base, an intense sweetener, and a flavoring agent to form a center portion, wherein the polyol component comprises a first polyol selected from the group consisting of isomalt, maltitol, and erythritol, and less than 5% any polyols other than the first polyol and wherein the center portion comprises less than 1% higher hydrogenated oligosaccharides; and

b) coating the center portion with a coating composition comprising the first polyol to substantially cover the center portion, wherein the coating portion [sic] less than 5% of any polyols other than the first polyol, thus forming a chewing gum product."

Claims 2 to 15 were dependent claims.

IV. The opposition division's decision can be summarised as follows:

- The opposed patent was sufficiently clear and complete to be carried out by the skilled person.
- The claimed subject-matter was novel over D1, which did not clearly and unambiguously disclose the feature "less than 1% higher hydrogenated oligosaccharides". The claimed subject-matter was also novel over D2 because at least two selections from the disclosure of D2 were necessary to arrive at the subject-matter of claim 1.
- The claimed subject-matter involved an inventive step starting from D4 as the closest prior art.

V. On 12 March 2013 the opponent (in the following: the appellant) lodged an appeal. The statement setting out the grounds of appeal was filed on 14 May 2013 and included the following document:

D8: US 4 671 967 A.

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

VI. In its reply dated 29 September 2013, the patent proprietor (in the following: the respondent) requested that the appeal be rejected as inadmissible or unfounded (main request), or that the patent be maintained on the basis of the claims of one of

- auxiliary requests I to IV, as filed with the reply to the statement of grounds of appeal.
- VII. In a communication dated 15 July 2015, the board expressed its preliminary view that the appeal appeared to be admissible and indicated the points to be discussed during the oral proceedings.
- VIII. In a letter of 28 September 2015, the appellant elaborated on its objections, and informed the board that it did not intend to be represented at the oral proceedings.
- IX. In a letter of 28 October 2015, the respondent stated that "We will not maintain our arguments on the admissibility point any further", and filed new auxiliary request V.
- X. On 4 December 2015, oral proceedings were held before the board in the absence of the appellant. At the beginning of the oral proceedings, the respondent confirmed that its request that the appeal be rejected as inadmissible had been withdrawn by letter of 28 October 2015.
- XI. The arguments of the appellant, insofar as they are relevant for the present decision, may be summarised as follows:
- Documents D1 and D2 clearly and unambiguously disclosed a chewing gum product having all the features of claim 1 of the patent. The subject-matter of at least claim 1 of the main request lacked novelty in view of the disclosures of both documents.

- The claimed subject-matter lacked inventive step starting from example 2 of D4 as the closest prior-art document. The problem underlying the patent, namely the provision of an alternative chewing gum product having improved crunchiness and an extended shelf life was solved in an obvious manner. The experiments filed by the respondent showed that the technical effect claimed was not observed over the full scope of the claim. In any case, the selection of isomalt, maltitol or erythritol instead of the sorbitol used in example 2 of D4 was an entirely routine design option available to the skilled person attempting to solve the problem posed. Alternatively, the claimed subject-matter was obvious in view of D4 in combination with D1 and/or D2.

XII. The arguments of the respondent may be summarised as follows:

- The claimed subject-matter was novel over the disclosure of D1 because there was no information on file that the HSH (hydrogenated starch hydrolysates) used therein fulfilled the requirement of claim 1 that the chewing gum product contained less than 1% higher hydrogenated oligosaccharides.
- The claimed combination of a low level of glycerol, a low level of secondary polyols, a low content of higher hydrogenated oligosaccharides, and a coating step, and in particular a coating step covering a centre portion as defined in claim 1, ensured novelty over D2.

- Example 1 and not example 2 of D4, as argued by the appellant, represented the closest prior art. Comparative example 1 in the patent showed that where a sorbitol centre was coated with an isomalt layer the crunch deteriorated rapidly. In contrast, when using erythritol, isomalt or maltitol in both the gum centre and the coating, no loss of crunch was observed over a prolonged period of time. This teaching was not derivable from the cited prior art.

XIII. The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

The respondent requested that the appeal be dismissed, or that the patent be maintained on the basis of the claims of auxiliary requests I to IV filed on 29 September 2013 with the reply to the statement of grounds of appeal, or those of auxiliary request V filed with letter of 28 October 2015.

## **Reasons for the Decision**

### MAIN REQUEST

#### 1. *Novelty*

1.1 Claim 1 is directed to a chewing gum product comprising:

- (a) a centre portion comprising:
  - (a1) a polyol component, comprising
  - (a11) a first polyol selected from the group consisting of isomalt, maltitol, and erythritol, and



- (a12) less than 5% any polyols other than the first polyol;
  - (a2) gum base,
  - (a3) an intense sweetener,
  - (a4) a flavouring agent,
  - (a5) between 0% and 1% glycerin, and
  - (a6) less than 1% higher hydrogenated oligosaccharides; and
- (b) a coating portion covering the centre portion comprising:
- (b1) the first polyol and
  - (b2) less than 5% any polyols other than the first polyol.

1.2 The novelty of the subject-matter of this claim has been contested by the appellant in view of D1 and D2.

1.3 Document D1

1.3.1 D1 relates to a chewing gum product comprising a gum pellet covered by a hard coating containing erythritol (see claim 1). The novelty attack relied on the "Center Formula S" in table V on page 19 of D1. Center Formula S contains gum base, erythritol, 2 wt% of HSH (hydrogenated starch hydrolysate), peppermint flavour and encapsulated aspartame. There is no glycerin in this formulation. The centre portion is coated. Example 5 of D1 states that any of the centre formulae from tables I to V - thus including Center Formula S from table V - can be coated with an erythritol solution. The same polyol is thus the primary polyol in both the centre and the coating, as required by claim 1, and no other polyol is used in the coating.

While further subsequent coating with a maltitol solution is said to be possible, it was the position of the appellant that the product, once it has been coated with the erythritol solution, falls within the scope of claim 1.

- 1.3.2 It was common ground that Center Formula S, once coated with erythritol, discloses a chewing gum product having all the features of the chewing gum according to claim 1 except feature (a6). It was however a matter of dispute whether the centre portion of Center Formula S comprises less than 1% higher hydrogenated oligosaccharides, as required by claim 1.
- 1.3.3 The appellant maintained that Center Formulation S was novelty-destroying because the use of 2.0 wt% of HSH implied that it contained less than 1% higher hydrogenated oligosaccharides.
- 1.3.4 The question is therefore whether the disclosure of 2.0 wt% HSH in Center Formula S of D1 is indeed an implicit disclosure of an embodiment falling within the scope of claim 1. This would be the case if the 2.0 wt% HSH contained 50 wt% or less of oligosaccharides having a degree of polymerisation of 3 or more (see paragraph [0013] of the patent specification for the definition of the term "higher hydrogenated oligosaccharides").
- 1.3.5 As pointed out in D7', hydrogenated starch hydrolysates (HSH) are produced by the partial hydrolysis of corn, wheat or potato starch, and subsequent hydrogenation of the hydrolysate at high temperature under pressure. The end product is an ingredient composed of sorbitol, maltitol and higher hydrogenated saccharides. By varying the conditions and extent of hydrolysis, the relative occurrence of various mono-, di-, oligo- and

polymeric hydrogenated saccharides in the resulting product can be obtained. Thus, the term HSH is commonly used to describe the broad group of polyols that contain substantial quantities of hydrogenated oligo- and polysaccharides in addition to any monomeric or dimeric polyols (sorbitol/mannitol or maltitol, respectively). The broad term HSH does not distinguish between polyols having, for example, different levels of sweetness nor does it identify the main polyol in the HSH (see D7' paragraphs 2 to 4). Thus, the term HSH itself is not associated with a particular percentage of higher hydrogenated oligosaccharides.

- 1.3.6 D1 likewise does not identify the actual composition of the HSH used in Center Formula S (or in any other formula). The only indication D1 gives about the nature of the HSH is that aqueous syrups may be used, and that hydrogenated starch hydrolysates are preferred. In this context, on page 11, lines 24 to 33 D1 states the following:

"Aqueous syrups, such as corn syrup and hydrogenated corn syrup may be used, particularly if their moisture content is reduced. This can preferably be done by coevaporating the aqueous syrup with a plasticizer, such as glycerin or propylene glycol, to a moisture content of less than 10%. Preferred compositions include hydrogenated starch hydrolysate solids and glycerin. Such syrups and their methods of preparation are discussed in detail in US 4 761 967 [D8 in these proceedings], incorporated herein by reference."

- 1.3.7 Based on this cross-reference to D8, the appellant argued that the HSH of D8 was used in D1, and in particular the "Lycasin HSH" used in example 2 with a

content of higher hydrogenated oligosaccharides of 0.84 wt%.

D8 discloses that a "preferred hydrogenated starch hydrolysate syrup is the "LYCASIN" brand hydrogenated starch hydrolysate syrup" (column 7, lines 9 to 13) and indicates the composition of this syrup, which does indeed contain 0.84 wt% higher hydrogenated oligosaccharides (column 7, lines 13 to 21).

- 1.3.8 Apart from the fact that D1 refers to hydrogenated starch hydrolysate solids and glycerin (see the passage of D1 cited above), there is no indication whatsoever in D1 that the HSH used in Center Formulation S is this "Lycasin HSH" of D8. "Lycasin HSH" is merely a preferred option in D8. The disclosure of D8 covers further syrups for which the amount of polyols with a degree of polymerisation of three or higher is not given (see, for instance, column 7, lines 1 to 8) and which could also have been used in D1 as HSH for Center Formulation S.

Thus, the cross-reference to D8 in D1 cannot fill the gap in relation to the actual higher hydrogenated oligosaccharides present in Center Formulation S.

- 1.3.9 This conclusion is not at odds with T 153/85 (OJ EPO 1988, 1), cited by the appellant in support of its arguments. In T 153/85 it is stated that where there is a specific reference in one prior document (i.e. D1 here) to a second prior document (D8), when construing the primary document and determining its meaning to the skilled person, the presence of such specific reference may mean that some or all of the disclosure of the second document has to be considered as part of the disclosure of the primary document.

This has been done by the board in the present case. However, D1 refers in the context of hydrogenated starch hydrolysates to the whole content of D8, without prioritising the hydrolysate of example 2 cited by the appellant. Hence, it cannot be said that the "Lycasin HSH" of example 2 is the HSH of 'Center Formula S' of D1. In fact, it could be any of the hydrogenated starch hydrolysates covered by D8.

1.3.10 Also the further argument of the appellant that the Lycasin<sup>®</sup> 80/55 syrup used in the patent in suit would have resulted, if used in Center Formulation S of D1, in a product with less than 1% higher hydrogenated oligosaccharides is irrelevant. There is no information in D1 that this specific Lycasin had been used.

1.3.11 For these reasons the board concludes that there is no clear and unambiguous disclosure in D1 of a chewing gum product falling within the scope of claim 1.

1.4 Document D2

1.4.1 D2 relates to a specific liquid maltitol composition comprising 94 to 98% of maltitol, 0.2 to 3% of sorbitol and 0.1 to 3% of maltotriitol and at least one other polyol with a degree of polymerisation of 3 chosen from panitol, isomaltotriitol, and isopanitol in a given ratio and a dry-matter content of between 70 and 85% (see claim 1). In paragraphs [0046] to [0052] it discloses a process for the manufacture of a chewing gum or bubble gum using said composition and comprising the steps consisting in:

- preparing from 5 to 95% of basic gum,

- preparing from 1 to 95% of powdered maltitol, from 0.5 to 50% of a maltitol syrup, and from 0 to 50% of a sorbitol syrup,
- preparing from 0 to 30% of glycerol,
- preparing from 0.1 to 10% of a flavouring, and from 0.001 to 1% of an intense sweetener,
- mixing the basic gum, the powdered maltitol, the maltitol syrup, the flavouring, the intense sweetener and optionally the sorbitol syrup and the glycerol in order to manufacture the chewing gum,
- characterised in that some or all of the powdered maltitol composition is replaced by a liquid maltitol composition of claim 1.

1.4.2 Although there is no example in D2 of a specific embodiment falling within the scope of claim 1, the appellant contested the novelty of claim 1 in view of D2 because in its view all the features of the claimed chewing gum product were embraced by the disclosure of D2.

1.4.3 The board acknowledges novelty of the subject-matter of claim 1 over the disclosure of D2 because, in order to arrive at an embodiment falling within the scope of the claim, a multiple selection from the teaching of D2 would have to be made. In particular, it would be necessary to make at least the following selections:

- select 0 to 1% glycerin (feature (a5)) from the broad range of between 0 and 30% disclosed in D2;

- select 0 to 5% sorbitol (feature (a12)) from the broad range of between 0 and 50%;
- select an amount of powdered maltitol and maltitol syrup (from the respective ranges of 1 to 95% and 0.5 to 50%) which would result in a centre portion with less than 1% higher hydrogenated oligosaccharides (feature (a6)); and
- lastly, choose to coat the chewing gum, coating being only optional in D2.

1.4.4 First of all, such a multiple selection is nowhere disclosed in D2. According to EPO practice, in the case of a "multiple selection" an opponent has to show that the "combined selection" emerges from the prior art or that there is at least a pointer to such a combination. In the present case, however, the skilled person would have no reason, when reading the disclosure of D2, to concentrate on the combination of features set out in claim 1.

Such a combination is neither explicitly disclosed nor implicitly hinted at in D2, and is therefore not clearly and unambiguously derivable from the document. In fact, the chewing gum centre prepared in example 2 of D2 contains more than 1% higher hydrogenated oligosaccharides because it uses 9.7 wt% of LYCASIN<sup>®</sup> 80/55. In examples 3 and 4 of D2, chewing gum centres are coated with a coating syrup, which is, however, not defined at all.

1.5 For these reasons the board concludes that the subject-matter of claim 1 is novel over the disclosure of both D1 and D2.

2. *Inventive step*

2.1 The invention aims to provide a coated chewing gum with a hard crunchy coating that maintains its crunchiness for an extended period of time (see paragraph [0004]). It is said to be based on the finding that using the same polyol in both the centre portion and the coating results in a product with improved crunch and a longer shelf life (see paragraph [0005]).

2.2 Closest prior art

2.2.1 Document D4 was, in principle, agreed to be the closest prior art. While the appellant relied on the disclosure of example 2 of D4 as the closest prior-art embodiment, the respondent maintained that this example was not within the scope of the invention of D4, and saw example 1 as the starting point.

2.2.2 D4 discloses in claim 1 a sugarless chewing gum comprising a sugarless chewing gum centre with a low water content and a sugarless hard coating comprising hydrogenated isomaltulose (i.e. isomalt).

D4's "Background of the Invention" section states that hard coatings containing sorbitol are common in the art, but suffer from deficiencies. For example, sorbitol coatings are difficult to employ in the coating process. In addition, sorbitol-coated products are usually rough, contain coloured spots or blotches, and are very waxy. They are said to be often rejected by consumers in favour of sugar coatings because of their rough and mottled appearance and lack of crunchiness (see paragraph bridging pages 1 and 2). Thus, sorbitol coatings are described as being part of



the problem, and the whole idea of D4 is to improve sugarless chewing gum coatings.

There are two examples in D4. In example 1, a sorbitol-containing chewing gum centre containing 6% glycerin is coated with a coating syrup containing hydrogenated isomaltulose. The coated chewing gum is said to be comparable in appearance and mouth feel to chewing gums containing hard sugar coatings. Thus, example 1 differs from the claimed subject-matter in the glycerin content and in that the polyol used for the coating is not the same as for the centre. In example 2 the sorbitol centre of example 1 is coated with sorbitol to obtain a product with a crunchy coating (although in D4's "Background of the Invention" section it is stated that sorbitol-coated products lack crunchiness). Thus, the same polyol is used for the coating and the centre, but not one of the polyols specifically listed in claim 1.

2.2.3 The board agrees with the respondent that example 1 indeed represents a closer embodiment than example 2. Although the teaching of D4 is rather obscure, it appears that example 2 is indeed a comparative example which reflects the state of the art. As set out above, sorbitol is described as part of the problem of the products of the prior art and should not be used for the coating due to its lack of crunchiness. In fact, claim 1 of D4 requires hydrogenated isomaltulose; sorbitol is not a claimed alternative. Consequently, a person skilled in the art would not start from a comparative example for the assessment of inventive step.

2.2.4 For this reason, the choice of example 2 as closest prior-art embodiment is not realistic but appears to have been made with knowledge of the invention, in

order to start with an embodiment having the same polyol in the centre and in the coating.

## 2.3 Problem and solution

2.3.1 According to the respondent, in the chewing gum of example 1 of D4 the crunch deteriorates rapidly. This assertion is supported by comparative example 1 in the patent. The results summarised in table 3 show that a chewing gum product according to inventive example 2 (isomalt base/isomalt coating) maintained a high level of crunch for a significantly longer period of time than the chewing gum product of comparative example 1 (sorbitol base/isomalt coat), which is even closer to example 1 of D4 because it contains less than 1 wt% glycerin (D4: 6 wt%).

2.3.2 In view of this comparative experiment, the respondent saw the technical problem to be solved by the invention to provide a coated chewing gum with improved crunch and a long shelf-life.

2.3.3 This problem is said to be solved by the claimed chewing gums wherein the same polyol, namely erythritol, isomalt or maltitol, is used in both the gum centre and in the coating (see claim 1, features (a11) and (b1)) and the content of other polyols and higher hydrogenated oligosaccharides is minimised (see claim 1 features (a5), (a6) and (a12)).

2.3.4 The examples and comparative examples in the patent and the further experimental evidence filed by the respondent during the opposition proceedings, namely D6 and D6', convincingly show that crunchiness is better when one of the specified polyols is used and is the same in the gum centre and in the coating.

Thus, as mentioned above, the chewing gum product of example 2 of the patent maintains a high level of crunch for a significantly longer period of time than the chewing gum of comparative example 1 corresponding basically to example 1 of D4.

Furthermore, the data provided in D6 and D6' convincingly show that when the polyol of the coating does not match the polyol of the centre, the crunch deteriorates over time (see table in D6 for results up to 4 weeks and table in D6' for longer periods of time, namely 7 and 10 weeks). These experiments include data for the three polyols covered by claim 1 and show that, although all products deteriorate with time, those according to the invention perform much better than the comparative products (see D6' sample 1 compared with samples 2 and 3; sample 4 compared with samples 5 and 6 and sample 10 compared with samples 7 to 9).

- 2.3.5 The board cannot share the doubts of the appellant concerning these experiments, in particular the criticism that crunchiness is subjective and that not enough testers were used to obtain the data. In the absence of any experimental evidence to the contrary, the board sees no convincing reason to doubt the results of the experiments on file.
- 2.3.6 The board can also not accept the appellant's argument that no improvement was achieved by the claimed invention, basically because sample 3 in D6' (outside the scope of claim 1) performed better in terms of crunchiness than sample 10 (within the scope of claim 1).

This objection is based on a wrong comparison of the experimental evidence. The experiments in D6' were designed to show that it was important to have the same polyol in the centre and the coating. Thus, for an erythritol coating the best crunch was achieved with an erythritol centre (sample 10 compared with samples 7 to 9), for a maltitol coating the best results were with a maltitol centre (sample 1 compared with samples 2 and 3), and for an isomalt coating the best results were obtained with an isomalt centre (sample 4 compared with samples 5 and 6). Thus, the conclusion of D6' is: use the same polyol in the centre and the coating. The fact that maltitol coatings appear to be generally better than erythritol coatings (which appears to be the actual core of the appellant's objection) is irrelevant. For whatever reason, someone may want to have an erythritol coating, that person would have to choose an erythritol centre for best results.

2.3.7 Lastly, the board cannot share the doubts of the appellant that in view of T 939/92 (OJ EPO 1996, 309) the experiments on file could not be regarded as sufficient evidence to infer that substantially all the claimed compounds possess the required activity. The claim is limited to three polyols and requires the coating and the gum centre to comprise the same polyol. All three possibilities have been exemplified by the respondent in D6' as discussed above.

2.3.8 The board is therefore satisfied that the above-mentioned problem is indeed the objective technical problem and has been credibly solved by the chewing gums of claim 1.

## 2.4 Obviousness

2.4.1 It remains to be decided whether, in view of the available prior art, it would have been obvious for the skilled person to solve this technical problem by the means claimed.

2.4.2 D4 itself gives no hint. D4 claims the use of isomalt in the coating and gives no hint to use isomalt also for the polyol in the centre, let alone any hint to the advantages associated with such a combined use of isomalt in both the centre and the coating.

The starting point of the appellant, namely example 2 of D4 where sorbitol is used in both the coating and the centre, also gives no hint. As explained above (see point 2.2.4), example 2 to a certain extent was counter the teaching of D4 and would discourage the skilled reader from using sorbitol for the coating. In any case, neither the coating nor the centre of example 2 of D4 is within the scope of claim 1, and the board cannot see any incentive in the document to modify this example to arrive at an embodiment of the invention.

The argument of the appellant that the skilled person would replace the sorbitol of the coating by any of isomalt, maltitol and erythritol because they are known to be less hygroscopic is clearly made with knowledge of the invention. D4 does indeed teach that sorbitol should be avoided for the coating and uses isomalt for it instead. However, there is no reason to also replace the centre gum of the chewing gum, and thus the replacement suggested by the appellant would not result in a chewing gum as claimed.

- 2.4.3 The combination of D4 with any of D1 or D2 does not render the claims obvious either.

The coating in D1 may be a homogeneous material built up of layers from a single coating syrup containing erythritol, or it may be a coating comprising two or more layers of different compositions, wherein at least one of the layers contains erythritol (see abstract). There is no teaching in D1 that the same material should be used in the coating and in the centre.

The composition of D2 contains maltitol and a small amount of sorbitol and higher polyols and it can be used in confectionery products and in particular in chewing gums and hard coating layers (see abstract). There is, however, no mention of the benefit of using the same polyol in both the gum centre and the coating in a chewing gum in D2.

- 2.5 In view of the above, the board concludes that the person skilled in the art, starting from D4 as the closest prior art, would not have arrived in an obvious manner at the subject-matter of claim 1. The subject-matter of claim 1 therefore involves an inventive step. Claims 2 to 16, which are directly or indirectly dependent on claim 1, also satisfy the requirements of Article 56 EPC.

#### AUXILIARY REQUESTS

3. As the respondent's main request is allowed, there is no need for the board to deal with the auxiliary requests.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



M. Cañueto Carbajo

W. Sieber

Decision electronically authenticated