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**Datasheet for the decision  
of 11 December 2015**

**Case Number:** T 2047/14 - 3.3.09

**Application Number:** 02779227.4

**Publication Number:** 1542541

**IPC:** A23G4/00

**Language of the proceedings:** EN

**Title of invention:**  
LOW MOISTURE CHEWING GUM

**Patent Proprietor:**  
Gumlink A/S

**Opponent:**  
WM. Wrigley Jr. Company

**Headword:**

**Relevant legal provisions:**  
EPC Art. 106, 125  
EPC R. 99(2)

**Keyword:**  
Admissibility of appeal - (no)

**Decisions cited:**  
T 0113/92, T 1063/92, T 0846/01, T 0134/11

**Catchword:**



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 2047/14 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 11 December 2015**

**Appellant:** WM. Wrigley Jr. Company  
(Opponent) 1132 West Blackhawk Street  
Chicago, IL 60622 (US)

**Representative:** inCompass IP Europe Limited  
4 Bloomsbury Place  
London WC1A 2QA (GB)

**Respondent:** Gumlink A/S  
(Patent Proprietor) Dandyvej 19  
7100 Vejle (DK)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
21 July 2014 concerning maintenance of the  
European Patent No. 1542541 in amended form.**

**Composition of the Board:**

**Chairman** W. Sieber  
**Members:** M. O. Müller  
F. Blumer

## **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. 1 542 541 as amended met the requirements of the EPC.
- II. The opponent's appeal is the second appeal in the present case, the first appeal having been filed by the proprietor against the opposition division's first decision finding that the patent as then amended met the requirements of the EPC.
- III. In the first appeal, T 134/11, the board decided to remit the case to the opposition division with the order to maintain the patent on the basis of claims 1-52, filed as the main request with letter dated 5 October 2012, and a description yet to be adapted.
- IV. After the description had been adapted by the proprietor, the opposition division held in its subsequent (second) decision that the patent on the basis of description pages 2 to 10, filed with letter of 27 January 2014, claims 1 to 52 filed with letter of 5 October 2012, i.e. the claims on which the board's decision had been based, and drawing 1/1 met the requirements of the EPC.
- V. On 17 September 2014, the opponent (hereinafter: the appellant) filed an appeal against this decision. On 24 November 2014, the appellant filed its statement of grounds of appeal and requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

The appellant argued in particular that claim 1 as found allowable by the opposition division was in breach of Article 84 EPC, and the invention as defined in this claim was insufficiently disclosed and lacked novelty and inventive step.

- VI. A response was filed by the proprietor (hereinafter: the respondent) by its letter dated 24 March 2015 requesting that the appeal be rejected as inadmissible or, alternatively, be dismissed.

The respondent argued that the appeal was inadmissible, firstly because it related only to aspects on which a previous decision, namely T 134/11 of the same board of appeal, had already been made, and secondly because it completely failed to address the decision of the opposition division, which was only about the adaptation of the description.

- VII. On 13 May 2015, the parties were summoned to oral proceedings.
- VIII. By communication of 19 May 2015, the board issued its preliminary opinion, in which it observed that the appeal would most likely have to be held inadmissible.
- IX. With its letter dated 27 October 2015, the respondent requested the board to indicate whether the oral proceedings could be limited to the issue of admissibility, so that it could confine its preparations to that issue.
- X. By its communication dated 6 November 2015, the board observed that it could not comply with this request.

- XI. By its letter dated 8 December 2015, the appellant declared that it would not be attending the oral proceedings. The appellant did not provide any arguments as regards the admissibility of its appeal.
- XII. On 11 December 2015, oral proceedings took place before the board in the appellant's absence. The board announced its decision at the end of the oral proceedings.
- XIII. The appellant had requested in writing that the decision under appeal be set aside and that the patent be revoked in its entirety.

The respondent requested that the appeal be rejected as inadmissible.

### **Reasons for the Decision**

1. Admissibility of the appeal
  - 1.1 Decision T 134/11 contained the order that the case "is remitted to the opposition division with the order to maintain the patent on the basis of claims 1-52, filed as the main request with letter dated 5 October 2012, and a description yet to be adapted". In its decision, the board held that all novelty attacks failed (point 4 of the Reasons), that the subject-matter of all claims was inventive (point 5 of the Reasons) and that the further requirements of the EPC were also met by the claims (point 6 of the Reasons).

The board in T 134/11 has thus finally decided that the claims of the respondent's main request meet the

requirements of the EPC. This decision constitutes *res judicata*.

1.2 In the present appeal, the appellant challenged the validity of these claims on the following grounds:

- the feature "the at least one biodegradable polymer comprises at least 5% of the chewing gum polymers" in claim 1 did not meet the requirements of Article 84 EPC;
- the invention as defined in claim 1 did not meet the requirements of Article 83 EPC;
- the subject-matter of claim 1 lacked novelty;
- the subject-matter of claim 1 lacked inventive step.

1.3 As Article 106 EPC makes no provision for appealing a decision of a board of appeal, and in view of the principle of *res judicata*, a principle generally recognised in the contracting states and thus to be taken into account under Article 125 EPC, decision T 134/11 was not open to be challenged in the subsequent resumed opposition proceedings and cannot now be challenged in the present appeal proceedings (T 846/01, point 3 of the Reasons; T 1063/92, points 2.4 and 2.5 of the Reasons, T 113/92, catchword).

Therefore, the present appeal, by which the appellant is seeking to reopen the issue of validity of the claims, which has already been finally decided in T 134/11, is in contravention with the requirements of Article 106 EPC and the principle of *res judicata*.

1.4 The grounds of appeal should state the reasons why the impugned decision should be set aside (Rule 99(2) EPC).

In the present case, the opposition division's second decision only dealt with the adaptation of the description. The appellant's statement of grounds of appeal, however, does not address this issue at all, let alone indicate why the opposition division's decision was wrong. The appeal thus does not comply with Rule 99(2) EPC.

1.5 In view of the above, the appeal is clearly inadmissible.

## Order

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

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



M. Cañueto Carbajo

W. Sieber

Decision electronically authenticated