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**Datasheet for the decision
of 1 March 2021**

Case Number: T 2016/17 - 3.2.07

Application Number: 09718935.1

Publication Number: 2259976

IPC: B65D23/00, B65D75/52,
B65D75/56, B65D77/20, A61J1/10,
B65D75/58

Language of the proceedings: EN

Title of invention:
PACKAGING FOR FOOD PRODUCTS, IN PARTICULAR DRIP-FEED

Patent Proprietor:
N.V. Nutricia

Opponent:
Fresenius Kabi Deutschland GmbH

Headword:

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 2016/17 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 1 March 2021

Appellant: N.V. Nutricia
(Patent Proprietor) Eerste Stationsstraat 186
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Representative: Nederlandsch Octrooibureau
P.O. Box 29720
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Appellant: Fresenius Kabi Deutschland GmbH
(Opponent) Else-Krömer-Strasse 1
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Representative: Fresenius Kabi Deutschland GmbH
Patent Department
Borkenberg 14
61440 Oberursel (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 July 2017 concerning maintenance of the
European Patent No. 2259976 in amended form.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Cano Palmero
S. Watson

Summary of Facts and Submissions

- I. Both the opponent and the patent proprietor lodged an appeal in the prescribed form and within the prescribed time limit against the decision of the opposition division to maintain European patent No. 2 259 976 in amended form on the basis of the then auxiliary request 2.

- II. In a letter dated 5 November 2020 the patent proprietor unconditionally withdrew their appeal. Furthermore, the patent proprietor stated that they disapproved of the text in which the patent was maintained by the interlocutory decision under appeal and also of the other requests presently on file.

Reasons for the Decision

1. Due to the patent proprietor's unconditional declaration of non-approval of the text of the patent as maintained by the opposition division and of all pending requests, the Board can no longer decide on the appeal on its merits.

2. Article 113(2) EPC allows the European Patent Office to examine and to decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. Since the text of the patent is at the disposal of the patent proprietor, a patent cannot be maintained against the patent proprietor's will (see Case Law of the Boards of Appeal, 9th edition 2019, IV.D.2, second paragraph and decision T 73/84 (OJ EPO 1985, 241)).

3. The patent can therefore only be revoked.
4. The present decision is taken without oral proceedings since the non-approval of all the patent proprietor's requests affects their original request for oral proceedings as well.

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. Nachtigall

I. Beckedorf

Decision electronically authenticated