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**Datasheet for the decision
of 18 March 2022**

Case Number: T 2434/18 - 3.3.09

Application Number: 12151682.7

Publication Number: 2476318

IPC: A23C19/068

Language of the proceedings: EN

Title of invention:

Cheese and methods for making such cheese

Patent Proprietor:

LEPRINO FOODS COMPANY

Opponents:

Mondelez Global LLC
FRKelly

Headword:

Cheese and method for its manufacture/LEPRINO

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Basis of decision - text or agreement to text withdrawn by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, T 0186/84, T 0655/01, T 1526/06, T 2405/12

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2434/18 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 18 March 2022

Appellant: LEPRINO FOODS COMPANY
(Patent Proprietor) 1830 West 38th Avenue
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Appellant: FRKelly
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Representative: FRKelly
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Party as of right: Mondelez Global LLC
(Opponent 1) Three Parkway North
Deerfield, IL 60015 (US)

Representative: Boulton Wade Tennant LLP
Salisbury Square House
8 Salisbury Square
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 August 2018 concerning maintenance of the
European Patent No. 2476318 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: A. Veronese
 F. Blumer

Summary of Facts and Submissions

- I. Appeals were filed by opponent 2 and the proprietor against the decision of the opposition division finding that European patent No. 2 476 318 B1 as amended according to auxiliary request 17 meets the requirements of the EPC.
- II. With its letter dated 14 March 2022 the proprietor stated that it no longer approved of the text of the patent in any form. Furthermore, that no amended text will be submitted.
- III. The opponent requested that the decision under appeal be set aside and that the patent be revoked.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be strictly observed also in opposition and opposition appeal proceedings.
2. By disapproving the granted text of the patent in any form, the patent proprietor has withdrawn its approval of any text for maintenance of the patent. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. There is therefore no text of the patent on the basis of which the board can consider the appeal filed by the opponent.

3. In the case of T 73/84 (OJ EPO 1985, 241, Headnote and Reasons), the board decided that if the proprietor of a European patent stated in opposition or appeal proceedings that it no longer approved the text in which the patent was granted, and did not submit any amended text, the patent was to be revoked. This approach was confirmed inter alia by decisions T 186/84 (OJ EPO 1986, 79), T 655/01, T 1526/06 and T 2405/12.
4. Furthermore, as clarified in decision T 186/84, the examination as to whether the grounds for opposition laid down in Article 100 EPC prejudice the maintenance of the patent becomes not merely superfluous but impossible since the absence of a valid text of the patent precludes any substantive examination of the alleged impediments to patentability.
5. In the circumstances of the present case, the board sees no reasons for deviating from the principles set out in the above-mentioned decisions. The patent must therefore be revoked, without a substantive examination first being carried out.

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:



A. Nielsen-Hannerup

A. Haderlein

Decision electronically authenticated