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**Datasheet for the decision
of 19 April 2023**

Case Number: T 0875/21 - 3.3.09

Application Number: 12724759.1

Publication Number: 2706867

IPC: A23J3/26, A23J3/16, A23P30/20,
A23P30/30

Language of the proceedings: EN

Title of invention:
METHOD OF MAKING STRUCTURED PROTEIN COMPOSITIONS

Patent Proprietor:
Ojah B.V.

Opponents:
Société des Produits Nestlé S.A.
CLEXTRAL

Headword:
Method of making structured protein compositions/NESTLÉ

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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

Decisions cited:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0875/21 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 19 April 2023

Appellant: Ojah B.V.
(Patent Proprietor) Cuneraweg 9 c
4051 CE Ochten (NL)

Representative: V.O.
P.O. Box 87930
2508 DH Den Haag (NL)

Appellant: Société des Produits Nestlé S.A.
(Opponent 1) Entre-deux-Villes
1800 Vevey (CH)

Representative: CMS Cameron McKenna Nabarro
Olswang LLP
Cannon Place
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London EC4N 6AF (GB)

Party as of right: CLEXTRAL
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Representative: Lavoix
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 March 2021 concerning maintenance of the
European Patent No. 2706867 in amended form.

Composition of the Board:

Chairman A. Haderlein
Members: C. Meiners
 W. Sekretaruk

Summary of Facts and Submissions

- I. Appeals were filed by opponent 1 and the patent proprietor against the opposition division's decision which found that the European patent as amended according to the auxiliary request 9 as filed during oral proceedings before the opposition division meets the requirements of the EPC.
- II. During the oral proceedings held before the board, the patent proprietor withdrew all claim requests on file and its agreement to the text of the patent in any form.
- III. Opponents 1 and 2 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 examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle, according to which the text of the patent is at the disposition of the patent proprietor, has to be strictly observed also in opposition and opposition appeal proceedings.
2. As the patent proprietor withdrew all claim requests and its agreement to the text of the patent in any form, there is no text of the patent on which the board can base its consideration of the opponent's appeal.

3. If the proprietor of a European patent states in opposition or appeal proceedings that it no longer approves the text in which the patent was granted, and does not submit any amended text, the patent is to be revoked (see Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2, third paragraph and III.B.3.3, first paragraph). The patent must therefore be revoked, without any preceding substantive examination.

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. Schalow

A. Haderlein

Decision electronically authenticated