

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 25 April 2023**

Case Number: T 1600/21 - 3.3.09

Application Number: 12810306.6

Publication Number: 2793612

IPC: C11B3/10, C11B3/14, C11C1/08,
C11C1/10, A23L5/20

Language of the proceedings: EN

Title of invention:
METHOD OF TREATING A VEGETABLE OIL

Patent Proprietor:
Bunge Loders Croklaan B.V.

Opponents:
Cargill, Incorporated
Upfield Europe B.V.
Nutriswiss AG

Relevant legal provisions:
EPC Art. 113(2)

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Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1600/21 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 25 April 2023

Appellant: Bunge Loders Croklaan B.V.
(Patent Proprietor) Hogeweg 1
1521 AZ Wormerveer (NL)

Representative: Potter Clarkson
Chapel Quarter
Mount Street
Nottingham NG1 6HQ (GB)

Appellant: Cargill, Incorporated
(Opponent 1) 15407 McGinty Road West
Wayzata, MN 55391 (US)

Representative: Elseviers, Myriam
Cargill R&D Centre Europe BVBA
Bedrijvenlaan 9
2800 Mechelen (BE)

Appellant: Nutriswiss AG
(Opponent 3) Industriering 30
3250 Lyss (CH)

Representative: BOVARD AG
Patent- und Markenanwälte
Optingenstrasse 16
3013 Bern (CH)

Party as of right: Upfield Europe B.V.
(Opponent 2) Nassaukade 5
3071 JL Rotterdam (NL)

Representative: EP&C
P.O. Box 3241
2280 GE Rijswijk (NL)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 July 2021 concerning maintenance of the
European Patent No. 2793612 in amended form.

Composition of the Board:

Chairman A. Haderlein
Members: F. Rinaldi
N. Obrovski

Summary of Facts and Submissions

- I. This decision concerns the appeals filed by the proprietor of the patent and opponents 1 and 3 against the interlocutory decision of the opposition division that the European patent as amended met the requirements of the EPC.
- II. On appeal, by letter dated 21 April 2023, the patent proprietor submitted the following declaration:

"The patentee no longer approves the text of the above-mentioned patent as granted. The patentee will not be pursuing the Main Request and Auxiliary Requests on file. Furthermore, we will not be filing a replacement text."
- III. Opponents 1 and 3 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 proprietor, has to be strictly observed also in opposition and opposition appeal proceedings.

2. As the proprietor of the patent no longer approves the text of the patent as granted (main request) and does not intend to pursue the patent according to the auxiliary requests on file, there is no text of the patent on which the board can base its consideration of the appeals of opponents 1 and 3.
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