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**Datasheet for the decision
of 7 January 2025**

Case Number: T 2029/23 - 3.3.09

Application Number: 18700508.7

Publication Number: 3570680

IPC: A23G3/44, A23L29/281, A23G3/34

Language of the proceedings: EN

Title of invention:
METHOD AND COMPOSITION FOR THE PREPARATION OF GELATIN BASED
GUMMY CANDIES

Patent Proprietor:
Rousselot B.V.

Opponent:
GELITA AG

Headword:
Gelatin-based gummy candies/ROUSSELOT

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Amendments - allowable (yes)

Decisions cited:

T 1919/11



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Case Number: T 2029/23 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 7 January 2025

Appellant:
(Patent Proprietor)

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
31 October 2023 concerning maintenance of the
European Patent No. 3570680 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: F. Rinaldi
A. Jimenez

Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the patent proprietor (appellant) against the opposition division's interlocutory decision that the European patent as amended met the requirements of the EPC.
- II. In the decision under appeal, the opposition division concluded that the main request and auxiliary requests 1 to 4 did not comply with the requirement of Article 123(2) EPC. Auxiliary request 5 was considered allowable.
- III. On appeal, the appellant re-filed the requests underlying the decision under appeal. The opponent withdrew its opposition and made no substantive submissions. By letter dated 18 December 2024, the appellant filed a description, namely paragraphs [0001] to [0046], which is adapted to the claims of the main request.
- IV. The documents submitted during the opposition proceedings included:
 - D5: WO 2017/102347 A1
 - D6: R. Schrieber *et al.*, "Gelatine Handbook", Weinheim: Wiley-VCH, 2007, 119 - 172
 - D12: Additional experimental data provided by Proprietor (Rousselot)
- V. The only claim relevant to this decision is claim 1 of the main request, which reads as follows:

"Method for the preparation of gelatin based gummy candies, comprising the steps of:

- 1) providing a liquid candy composition comprising gelatin having a bloom value of 200 to 300, bulking agent and water, that forms, upon setting in a mold, the gelatin based gummy candies,*
- 2) casting the liquid candy composition in a mold,*
- 3) allowing the liquid candy composition to set at a temperature below 10°C for 10 to 30 minutes, to provide the gelatin based gummy candies,*
- 4) removing the gelatin based gummy candies, obtained in step 3) from the mold,*

wherein the liquid candy composition of step 1) comprises, based on the total weight of the composition, 20 w/w% or less water, the mold not being capable of absorbing water from the liquid candy composition during steps 2) and 3), at least a portion of the mold that is in contact with the liquid candy composition during steps 2) and 3) being resilient, and wherein the water content of the liquid candy composition is substantially the same as the water content of the gummy candy of the final product."

- VI. The patent proprietor requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request or one of auxiliary requests 1 to 5, all filed with the statement setting out the grounds of appeal.

Reasons for the Decision

1. *Patent*

The patent concerns a method for preparing gelatin-based candy that does not require a drying step or the use of a single-use starch mould to extract moisture from the liquid composition (paragraph [0011]).

2. *Main request - amendments*

2.1 The opposition division concluded that the amendment to claim 1 of the main request did not meet the requirement of Article 123(2) EPC. It explained that the range "10 to 30 minutes" in combination with the other features of claim 1 was not directly and unambiguously derivable from the application as filed. It was not possible to combine the end points (10 and 30 minutes) into a new range, especially not to transform an upper limit into a lower limit. Reference was made to T 1919/11.

2.2 Claim 1 of the main request differs from claim 1 of the application as filed in that claim 1 of the main request specifies that:

- the gelatin has a bloom value of 200 to 300
- the liquid candy composition is allowed to set at a temperature below 10°C for 10 to 30 minutes

2.3 The widest range for a bloom value disclosed in the claims of the application as filed is 200 to 300 (claim 8). Adding this feature to claim 1 of the main request merely specifies the gelatin to be used in the

invention. This amendment is directly and unambiguously derivable from the application as filed.

- 2.4 As regards the setting temperature and setting time, the application as filed discloses that the setting step:
- "is performed at a temperature below 25°C, preferably at a temperature below 10°C, more preferably at a temperature below 4°C" (claim 3); and
 - "takes one hour or less, preferably 30 minutes or less, more preferably 10 minutes or less" (claim 4)
- 2.5 The question here is whether "a temperature below 10°C for 10 to 30 minutes" would be directly and unambiguously derivable by the skilled person from the application as filed.
- 2.6 A temperature below 10°C is directly and unambiguously derivable by the skilled person from claim 3 of the application as filed.
- 2.7 As regards the range of 10 to 30 minutes, T 1919/11, as cited in the opposition division's decision, is not relevant. In the case underlying the cited decision, the competent board decided that the amendment combining a lower limit and an upper limit from two separate sentences (or "lists") of upper and lower limits was not allowable. The reason was that one of the upper limits mentioned in a first sentence of the description of the parent application as filed and one of the lower limits mentioned in a second sentence were "arbitrarily combined" (Reasons, 2.2.2). The disclosure in the parent application as filed did not represent a

range, and consequently the amendment was not allowable.

2.8 Instead, in the case in hand, there is a single sentence, namely claim 4 of the application as filed, that contains a general range (1 hour or less) and only two preferred narrower ranges (30 minutes or less and 10 minutes or less). The lower two values of this range are used to draw up the range in claim 1 of the main request. This amendment in itself cannot be considered to produce subject-matter that would not have been directly and unambiguously derivable by the skilled person.

2.9 Finally, the application as filed explicitly states that for a relatively fast setting time, the temperature during setting is to be kept low (page 7, lines 13 to 16). The skilled person would have readily understood that there is a correlation between the setting temperature and setting time. Therefore, the amendment of combining a temperature below 10°C with 30 minutes or less, with the end of the range being 10 minutes, is considered to be allowable.

2.10 To conclude, the skilled person would have directly and unambiguously derived the combination of features of claim 1 of the main request from the application as filed. The amendment complies with the requirement of Article 123(2) EPC.

3. *Further remarks*

3.1 In the course of the opposition proceedings (which are now withdrawn), objections were raised under Articles 83, 54 and 56 EPC. The opposition division examined all these aspects for a lower-ranking request,

and found none of the objections to be convincing. The board confirmed that none of the objections raised was applicable to the current main request.

3.2 Sufficiency of disclosure

3.2.1 During the opposition proceedings the objection was raised that the invention was not sufficiently disclosed over the entire scope (of the claims as granted). The opponent referred to issues with demoulding the gelatin-based gummy candies.

3.2.2 The opposition division explained that the skilled person would have been able to carry out the invention over the entire scope of the claims without undue burden using their common general knowledge, for instance by increasing the amount of gelatin, or by adjusting the bloom value. This reasoning also applies to the current main request.

3.2.3 Furthermore, the experimental report D12 filed by the patent proprietor sets out several successful experiments carried out specifically within the setting temperature and setting time required by claim 1 of the main request.

3.2.4 To conclude, the board has no reason to assume that the requirement of Article 83 EPC is not complied with.

3.3 Novelty

3.3.1 During the opposition proceedings, the allegation was made that D5 anticipated the subject-matter of claim 1 as granted.

3.3.2 D5 is prior art under Article 54(3) EPC. This document does not disclose a bloom value. The setting conditions are less than 60 minutes and the temperature disclosed is below 12°C.

3.3.3 To conclude, D5 does not anticipate the subject-matter of claim 1 of the main request (Article 54(3) EPC).

3.4 Inventive step

3.4.1 During the opposition proceedings, D6 was used as the closest prior art. Page 164, table 3.18 of this document discloses a method for preparing gelatin-based gummy candies. The method discloses the steps of providing a liquid candy composition comprising, based on the total weight of the composition, 7 w/w% gelatin having a bloom value of 260. The liquid composition is placed in starch moulds and allowed to set for 48 hours at room temperature to provide the gelatin-based gummy candies.

3.4.2 The subject-matter of claim 1 differs from D6 in that:

- the liquid candy composition is allowed to set at a temperature below 10°C for 10 to 30 minutes
- the mould is not capable of absorbing water
- the water content of the liquid candy composition is substantially the same as the water content of the gummy candy of the final product

3.4.3 The technical effect of the distinguishing features is that the process is much faster than the traditional method and the problem to be solved is to provide an improved casting method.

3.4.4 The skilled person would have considered the passage concerning starch-free moulding in D6 (page 168) and would have tried to use silicone moulds, i.e. moulds that do not absorb water from the liquid candy composition; however, they would not have been prompted by the prior art to use a combination of a lower temperature and shorter setting time to make the process faster.

3.4.5 Therefore, the subject-matter of claim 1 complies with the requirement of Article 56 EPC.

3.5 Adaptation of the description

The appellant filed a description which was adapted to the claims of the main request. The amended description corresponds to the claims of the main request. No reason can be found to object to the adapted description.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in the following version:

Description:

Paragraphs [0001] to [0046] filed by letter dated 18 December 2024.

Claims:

No. 1 to 14 of the main request filed with the statement setting out the grounds of appeal.

The Registrar:

The Chairman:



K. Götz-Wein

A. Haderlein

Decision electronically authenticated