

Publication in the Official Journal ~~Yes~~ / No

File Number: T 92/88 - 3.3.1

Application No.: 82 901 341.6

Publication No.: 0 078 813

Title of invention: Method for the Manufacture of Cheese with a
Substantially Reduced Fat Content

Classification: A23C 19/032

D E C I S I O N
of 19 July 1991

Proprietor of the patent: David Lavery & Son Proprietary Ltd

Opponent: Krayner, Warner Dirk

Headword: Abandoned patent

EPC Article 111

Keyword: "Patent revoked as consequence of the patentee stating that
the EPO is "welcome to revoke the patent"

Headnote



Case Number : T 92/88 - 3.3.1

D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 19 July 1991

Appellant :
(Opponent)

Krayer, Warner Dirk
c/o Volmerlaan 7
Rijswijk (ZH)
The Netherlands

Representative :

Smulders, Theodorus A.H.J., Ir.
Vereenigde Octrooibureaux
Nieuwe Parklaan 107
NL-2587 BP - 's-Gravenhage
The Netherlands

Respondent :
(Proprietor of the patent)

DAVID LAVERY & SON
PROPRIETARY LTD
578 St. Kilda Road
Melbourne, Vic. 3000 (AU)

Representative :

Seaborn, George Stephen
c/o Edward Evans & Co.
Chancery House
53-64 Chancery Lane
London WC2A 1SD
GREAT BRITAIN

Decision under appeal :

Decision of the Opposition Division of the European Patent Office dated 15 December 1987, posted on 28 December 1987, rejecting the opposition filed against European patent No. 0 078 813 pursuant to Article 102(2) EPC.

Composition of the Board :

Chairman : K. Jahn
Members : R. Spangenberg
G. Davies

Summary of Facts and Submissions

- I. The Opposition Division rejected the opposition filed against European patent No. 0 078 813, granted upon the subject-matter of European patent application No. 82 901 341.6.
- II. The Appellant (Opponent) appealed against this decision and requested that the patent be revoked.
- III. In a reply to the Statement of Grounds, the Respondent (Patentee) requested that the appeal be rejected and the patent maintained unamended.
- IV. Subsequently, in reply to a summons to oral proceedings, a letter quoting the number of the patent in suit and dated 4 July 1991 was received in which the representative of the Respondent stated:

"I shall not be attending the oral proceedings. You are welcome to revoke the patent. According to my clients, the patent has been allowed to lapse in all designated States."

Reasons for the Decision

1. The appeal is admissible.

2. The Respondent (the firm David Lavery & Son Proprietary Ltd) has invited the Board through its representative by the letter referred to in paragraph IV above to revoke the patent. The Board is satisfied that this letter has to be construed as meaning that the Respondent (the patent proprietor) now agrees that the patent be revoked, as consistently requested by the Appellant.

3. Accordingly, following the principles set out in the decision on appeal T 237/86 (OJ EPO 1988, 261), the Board has decided, in the exercise of its powers under Article 111(1) EPC, to revoke the European patent.

Order

For these reasons, it is decided that:

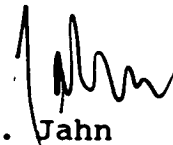
The decision under appeal is set aside and the patent revoked.

The Registrar:

The Chairman:



M. Beer



K. Jahn