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D E C I S I O N
of 14 September 2001

Case Number: T 0758/01 - 3.3.2

Application Number: 94200204.9

Publication Number: 0664959

IPC: A23G 1/00

Language of the proceedings: EN

Title of invention:

Edible fat-containing composition in a substantially solid form for use in a non-frozen aqueous environment

Patentee:

CAMPINA MELKUNIE B.V.

Opponent:

Franz ZENTIS GmbH & Co
Société des Produits Nestlé S.A., Vevey
COMPAGNIE GERVAIS DANONE
Friesland Coberco Dairy Foods B.V.

Headword:

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Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"Revocation of the European patent as consequence of the patentee's statement stating: "The patentee ... no longer approves the text which was granted"

Decisions cited:

T 0073/84

Catchword:

-



Case Number: T 0758/01 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 14 September 2001

Other party:
(Opponent)

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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 9 May 2001
rejecting the opposition filed against European
patent No. 0 664 959 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: P. A. M. Lançon
Members: J. Riolo
S. U. Hoffmann
U. Oswald
C. Rennie-Smith

Summary of Facts and Submissions

- I. In a decision given on 15 February 2001, with written reasons posted on 9 May 2001, the Opposition Division rejected the opposition filed against European patent No. 0 664 959 granted upon the subject-matter of European patent application No. 94 200 204.9.
- II. On 5, 6 and 9 July 2001 the Appellants (Opponents 02, 03, and 04) respectively filed Notices of Appeal against this decision and each paid the appropriate fee on the same dates.
- III. In a facsimile dated 23 July 2001 the representative of the Respondent (Proprietor of the patent) stated "The patentee ... no longer approves the text which was granted".

Reasons for the Decision

1. The Respondent made it clear through its representative that it no longer approves the text in which the patent was granted without submitting an amended text on which further prosecution of the appeal could be based. Therefore the patent must be revoked (Article 113(2) EPC; see also Decision T 73/84, OJ EPO 1985, 241).

Order

For these reasons it is decided that:

1. The decision of the Opposition Division is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

A. Townend

P. A. M. Lançon