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**Datasheet for the decision
of 28 April 2010**

Case Number: T 1736/06 - 3.3.09

Application Number: 99959607.5

Publication Number: 1176872

IPC: A23C 9/12

Language of the proceedings: EN

Title of invention:

Production of stirred fermented milk products

Patentee:

Cindric, Marin

Opponent:

Friesland Brands B.V.
NESTEC S.A.
Campina Nederland Holding B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 54, 84, 123(2)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Novelty (main request) - no"
"Clarity (auxiliary requests I, IIa, IIIa, IVa) - no"
"Amendments - added subject-matter (auxiliary requests Ia, II, III, IV) - yes"

Decisions cited:

T 1129/97, T 1208/97, T 0223/05, T 0476/89, T 0544/89,
T 0565/89, T 0952/90

Catchword:

-



Case Number: T 1736/06 - 3.3.09

D E C I S I O N
of the Technical Board of Appeal 3.3.09
of 28 April 2010

Appellant:
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Decision under appeal: Decision of the Opposition Division of the European Patent Office announced orally on 12 September 2006 and issued in writing on 9 October 2006 revoking European patent No. 1176872 pursuant to Article 102(1) EPC 1973.

Composition of the Board:

Chairman: W. Sieber
Members: M. O. Müller
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. European patent No. 1 176 872 was granted in respect of European patent application No. 99959607.5, which was filed in the name of Marin Cindric as international patent application PCT/HR99/00031 on 10 December 1999, claiming priority of HR 990136 (7 May 1999). The mention of grant was published on 25 August 2004 in Bulletin 2004/35. The granted patent contained one claim, which read as follows:

"1. Procedure for the production of stirred and drinking fermented milk products, characterized by the production of two or more individual different products made in a set of parallelly arranged fermenters, cooled and mixed in a desired proportion to make a new product."

II. Notices of opposition were filed on 23 May 2005 by Friesland Brands B.V. (opponent I) and on 25 May 2005 by NESTEC S.A. and Campina Nederland Holding B.V. (opponents II and III), requesting revocation of the patent in its entirety on the grounds that the claimed subject-matter was neither novel nor inventive (Article 100(a) EPC, opponents I-III) and that the patent did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by the person skilled in the art (Article 100(b) EPC, opponent II).

The documents cited during opposition proceedings included:

- D1: H. Hartwig, "Die Frischkäserei - Einrichtung, neue Herstellungs- und Vertriebsmethoden", 2nd edition, Hildesheim, Verlag Th. Mann GmbH, 1962, 70 to 73;
- D3: F.M. Driessen et al, "DEVELOPMENTS IN THE FERMENTATION PROCESS (Liquid, stirred and set fermented milks)", Bulletin of the International Dairy Federation 277, 1992, 28 to 40;
- D4: J.A. Kurmann et al, "TECHNOLOGY OF FERMENTED SPECIAL PRODUCTS", Bulletin of the International Dairy Federation 227, 1988, 101 to 102;
- D12: EP 0 850 568 A1;
- D13: F.M. Driessen et al, "DEVELOPMENTS IN THE FERMENTATION PROCESS (Liquid, stirred and set fermented milks)", Proceedings of the XXIII International Dairy Congress, vol. 3, 8-12 October 1990, Montreal, 1937 to 1953; and
- D16: GB 22554 A.

III. The Proprietor requested rejection of the oppositions and, on an auxiliary basis, maintenance of the patent on the basis of auxiliary request I filed with letter of 23 September 2005 or auxiliary requests II - V filed during oral proceedings before the opposition division.

Claim 1 of auxiliary request I differed from granted Claim 1 *inter alia* by the incorporation of the wording "(b) a group of different but compatible microorganisms". Claim 1 of auxiliary requests II - IV differed from granted Claim 1 *inter alia* in that the

feature "which raw milk has been treated by the steps of standardization and pasteurization, preparation, homogenization and heat-treatment before inoculation" had been incorporated. Finally, auxiliary request V differed from granted Claim 1 *inter alia* in that the individual products made in the set of parallelly arranged fermenters were "milk" products, and in that "the fermenters each contain different subjects of fermentation, one fermenter containing a mesophilic culture and another fermenter containing a thermophilic culture".

IV. In its decision announced orally on 12 September 2006 and issued in writing on 9 October 2006, the opposition division revoked the opposed patent for lack of novelty (granted Claim 1), lack of clarity (auxiliary request I), non-compliance with the requirements of Article 123(2) EPC (auxiliary requests II - IV) and lack of inventive step (auxiliary request V). The reasons for the decision were *inter alia* as follows:

With regard to Claim 1 as granted, Article 69 EPC could not be used to interpret a term in said claim in the light of the specific and narrow context of the description. The term "different products" in Claim 1 did not imply that different cultures of bacteria had to be used. On the contrary, one could use the same culture but carry out the fermentation under different conditions, eg different pH, thus providing different, distinguishable products. This was the case in Examples 1 and 2 of D12. Therefore, the subject-matter of Claim 1 lacked novelty in view of *inter alia* Examples 1 and 2 of this document.

Claim 1 of auxiliary request I did not meet the requirements of Article 84 EPC as the term "compatible microorganisms" was too vague and therefore lacked clarity. Claim 1 of auxiliary requests II - IV did not meet the requirements of Article 123(2) EPC as the treatment steps introduced into Claim 1 were taken out of their originally disclosed context, namely the process scheme on page 5 of the application as filed. Finally, the subject-matter of auxiliary request V lacked inventive step in view of D3.

V. On 10 November 2006, the appellant (proprietor) filed a notice of appeal against the above decision and paid the prescribed fee on the same date. The statement setting out the grounds of appeal was filed with letter dated 8 February 2007 (received on 9 February 2007) together with auxiliary requests I, Ia, II, IIa, III, IIIa, IV and IVa.

(a) The appellant's main request was that the first instance decision be set aside and that the patent be maintained unamended, ie with Claim 1 as granted (point I above).

(b) Claim 1 of auxiliary request I read as follows (amendments over Claim 1 as granted in bold):

"1. Procedure for the production of stirred and drinking fermented milk products, characterized by the production of two or more individual different products made in a set of parallelly arranged fermenters,
wherein the different fermenters each contain different subjects of fermentation,

the subjects of fermentation being selected each from the group consisting of (a) one species of microorganisms, (b) a group of different but compatible microorganisms, (c) a symbiotic union of microorganisms,
wherein the individual different products thus made are then cooled and mixed in a desired proportion to make a new product."

(c) Claim 1 of each of auxiliary requests IIa, IIIa and IVa contained, apart from other amendments, the wording "(b) a group of different but compatible microorganisms".

(d) Claim 1 of auxiliary request Ia read as follows (amendments over Claim 1 as granted in bold):

"1. Procedure for the production of stirred and drinking fermented milk products, characterized by the production of two or more individual different **milk** products made in a set of parallelly arranged fermenters,
wherein the fermenters each contain different subjects of fermentation,
one fermenter containing a mesophilic culture and another fermenter containing a thermophilic culture,
wherein the individual different products thus made are then cooled and mixed in a desired proportion to make a new product."

(e) Claim 1 of auxiliary request II read as follows (amendments over Claim 1 as granted in bold):

"1. Procedure for the production of stirred and drinking fermented milk products, characterized by the production of two or more individual different **milk** products made in a set of parallelly arranged fermenters,
using raw milk as a common starting material for all individual different milk products which raw milk has been treated by the steps of standardization and pasteurization, preparation, homogenization and heat-treatment before inoculation,
wherein the fermenters each contain different subjects of fermentation,
one fermenter containing a mesophilic culture and another fermenter containing a thermophilic culture,
wherein the individual different products thus made are then cooled and mixed in a desired proportion to make a new product, followed by filling and transfer to cold storage."

- (f) Claim 1 of auxiliary request III differed from Claim 1 of auxiliary request II in that one fermenter contained a mesophilic culture and another fermenter contained a yoghurt culture.

- (g) Claim 1 of auxiliary request IV differed from Claim 1 of auxiliary request II in that one fermenter contained a mesophilic culture producing a sour milk product and another fermenter contained a yoghurt culture producing a yoghurt product.

VI. By letters of 13 June 2007, 3 March 2010 and 21 June 2007, respondents I - III (opponents I - III) filed submissions in response to the appellant's statement of grounds of appeal and the auxiliary requests. Respondent III also submitted

D17: "Dairy Science and Technology", 2nd edition, CRC Press, New York, 2006, 551 to 557.

VII. On 20 April 2010, respondent III informed the board that it would not be represented at the oral proceedings.

VIII. On 28 April 2010, oral proceedings were held before the board. Respondent III, as announced, was not represented at these. Nor was the appellant represented but no prior notice had been given of this.

IX. The appellant's position, as apparent from his written submissions and in as far as relevant to the present proceedings, can be summarized as follows:

As to novelty of the subject-matter of the main request, the description had to be used to interpret the claims in line with Article 69 EPC. This was confirmed by the decisions T 476/89, T 544/89, T 565/89 and T 952/90. Therefore, Claim 1 had to be read as being directed to a process wherein one and the same starting material - raw milk - was used and wherein different subjects of fermentation were applied in each of the parallelly arranged fermenters. In view of this, novelty had to be acknowledged. D12, for example, used the same cultures for fermentation. Furthermore, the products obtained in D12 differed from each other only

in terms of their pH and thus were identical, contrary to the method of Claim 1, which required the obtainment of different products.

With regard to auxiliary requests I, IIa, IIIa and IVa, the term "compatible microorganisms" in Claim 1 was clear. More particularly, the yardstick for what was disclosed in the original documents was the skilled practitioner since the whole patent specification was directed to him. The skilled practitioner, in the present case a biologist with long term experience in the field of fermentation and microbiology, knew what to understand by the term "compatible microorganisms" since this term was familiar to him due to the fact that this term was a generally used term in the field. He would in particular know that microorganisms that inhibited their mutual growth were incompatible and that such microorganisms which enhanced their mutual growth were appropriate in order to be cultivated together.

Auxiliary request Ia (corresponding to auxiliary request V before the opposition division) was novel and inventive in view of D3.

Claim 1 of auxiliary request II contained all features of the full process scheme according to paragraph [0028] of the opposed patent and thus met the requirements of Article 123(2) EPC. In this context, the full incorporation of every single step was not necessary in order to fulfil the requirements of Article 123(2) EPC since the skilled practitioner was always able to distinguish between features which were important with respect to the realization of the

inventive teaching on the one hand and subsequent steps which were not crucial for the success of the inventive concept on the other hand.

The same applied to auxiliary requests III and IV.

- X. The respondents' submissions in the written and oral proceedings, in as far as relevant to the present decision, can be summarized as follows:

As was confirmed by decisions T 121/89, T 544/89 and T 1208/97, Article 69 EPC was of no relevance for the assessment of novelty. Any restrictions which the appellant read into Claim 1 by interpreting it in the light of the description of the opposed patent therefore did not apply. In view of this, the subject-matter of the main request lacked novelty with regard to each of D1, D3, D4, D12, D13, and D16. With regard to D12, reference was made *inter alia* to Example 1, which disclosed the preparation of a stirred, drinkable milk product (yoghurt) wherein the product was made in parallelly arranged fermenters F1 and F3. Since the different fermenters involved different conditions, namely a different pH, different products were obtained. The obtained products were cooled and mixed to create a new product.

Auxiliary requests I, IIa, IIIa and IVa did not meet the requirements of Article 84 EPC as the feature "compatible microorganisms" lacked clarity. Though re-defining what was to be understood by compatible microorganisms, the opposed patent did not give any guidance as to what microorganisms had to be considered compatible.

Auxiliary request Ia did not meet the requirements of Article 123(2) EPC. More particularly, the production of two or more individual different milk products made in a set of parallelly arranged fermenters, as required by Claim 1 of auxiliary request Ia, was not disclosed in paragraphs [0027] and/or [0028] of the granted patent. It was not allowable under Article 123(2) EPC to generalize the specific information contained in these paragraphs.

Auxiliary request II did not meet the requirements of Article 123(2) EPC. More particularly, the treatment steps that were additionally present in Claim 1 of auxiliary request II were based on the scheme of paragraph [0028] of the patent. However, the embodiment of paragraph [0028] was much more specific than the subject-matter of Claim 1 of auxiliary request II. Such an embodiment could not be generalized.

The objections pursuant to Article 123(2) EPC raised against auxiliary request II equally applied to auxiliary request III. Additionally, the feature that the thermophilic culture was a yoghurt culture was not based on the application as filed, as paragraphs [0028] to [0038] of the opposed patent were linked to a specific milk treatment, specific fermentation conditions and a "sour milk fermentation", all absent in the claim of the auxiliary request.

The objections pursuant to Article 123(2) EPC raised against auxiliary request III equally applied to auxiliary request IV. Additionally, the feature that the fermenter contained a yoghurt culture producing a

yoghurt product was again isolated from the other features of the example described in paragraphs [0028] to [0038] of the patent specification.

XI. The appellant requested

- as a main request, that the decision under appeal be set aside and the patent be maintained as granted, or, alternatively,
- on the basis of auxiliary requests I, Ia, II, IIa, III, IIIa, IV or IVa as filed with the statement setting out the grounds of appeal dated 8 February 2007.

XII. The respondents requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.

Main request

2. *Grounds under Article 100(a) EPC - Novelty*

2.1 The appellant argued that Claim 1 as granted had to be read in the light of the description pursuant to Article 69 EPC. Therefore, the process of Claim 1 was, in the appellant's view, restricted *inter alia* in that different subjects of fermentation had to be used in each of the parallelly arranged fermenters.

2.2 However, the appellant's approach is not in line with the established jurisprudence of the EPO, according to which Article 69 EPC does not offer any basis for reading into a claim features which can be found in the description. Reference is made for instance to

- T 1129/97 (OJ EPO 2001, 273; point 2.1.9):

"...the practice of using an ambiguous and therefore imprecise term in the wording of a claim, and relying for its interpretation on an implicit but essential reference to the description, must remain prohibited. The principle of the self-sufficiency of the claim must be retained.";

- T 1208/97 (of 3 November 2000, point 4(b); not published in OJ EPO):

"Article 69 EPC does not offer any basis for reading into a claim features which can be found in the description when judging novelty."; and

- T 223/05 (of 24 April 2007, point 3.5; not published in OJ EPO):

"Article 69 EPC and its Protocol do not provide a basis for excluding what is literally covered by the terms of the claims. ... In particular, Article 69 EPC does not offer any basis for reading into a claim features which can be found in the description when judging novelty (see T 1208/97 of 3 November 2000, point 4(b), not published in the OJ EPO)."

2.3 According to the appellant, its view on the interpretation of a claim was confirmed by T 476/89 of 10 September 1991, T 544/89 of 27 June 1991, T 565/89 of 26 September 1990 and T 952/90 of 23 November 1992 (none of which is published in OJ EPO). These decisions refer exclusively to cases in which a claim contains an unclear feature whereas in the present case there is no ambiguity in Claim 1 as granted. It is unambiguously clear from the wording of Claim 1 that any subject of fermentation, including both the **same or different** subjects of fermentation, can be present in the parallelly arranged fermenters. The decisions cited by the appellant are thus irrelevant to the present case.

Moreover, the description does not contain any indication that the invention is restricted to different subjects of fermentation present in each of the fermenters. Therefore such a restriction could not be read into the claim even if one were to take the description into account.

2.4 Consequently, Claim 1 of the main request covers processes in which the same culture of microorganisms is applied in the parallelly arranged fermenters.

Example 1 of D12 (to be read in conjunction with Figure 1, to which this example refers) discloses the production of a "yoghurt" (column 7, line 25) using a mixture of *Streptococcus thermophilus* CNCM I-1292 and *Lactobacillus bulgaris* CNCM I-1348 as a starting culture wherein products are made in parallelly (Figure 1, "Parallèlement" in column 7, line 38) arranged fermenters (F1, F3) which contain a stirring device. The products in the different fermenters have

different pH values, namely a pH of 5.7 in F1 and a pH of 4 to 4.2 in F3. The products of F1 and F3 are cooled (Figure 1, column 7, line 56 and column 8, line 1), transferred into a fermenter F2 and mixed to create a new product.

As not disputed by the appellant, a yoghurt is a "drinking fermented milk product", ie a fermented milk product that is suitable for drinking. Furthermore, the presence of stirring devices in the fermenters of D12 implies that the product obtained in Example 1 of D12 is stirred during its production. Said product is thus a "stirred and drinking fermented milk product", as required by Claim 1.

As not disputed either by the appellant, the two fermenters F1 and F3 are arranged parallelly (Figure 1 and column 7, line 38 of D12), as required by Claim 1.

The two products obtained from the two fermentation processes in fermenters F1 and F3 differ in pH. The pH value corresponds to the amount of acidic material in a product. Consequently, the two fermented products differ at least in this respect. Contrary to the appellant's position, they therefore correspond to two individual different products, as required by Claim 1.

Finally, the cooling after extraction from fermenters F1 and F3 and the subsequent mixing in fermenter F2 correspond to the feature "cooled and mixed in a desired proportion to make a new product" in Claim 1.

2.5 Consequently, the subject-matter of Claim 1 of the main request lacks novelty in view of D12. Article 100(a)

EPC thus prejudices the maintenance of the opposed patent as granted.

- 2.6 In view of this, there is no need to discuss novelty with regard to the other cited documents.

Auxiliary requests I, IIa, IIIa and IVa

3. *Amendments - Clarity*

- 3.1 Claim 1 of these auxiliary requests differs from Claim 1 as granted *inter alia* in that the different fermenters each contain different subjects of fermentation and in that the subjects of fermentation are selected each from the group consisting of (a) one species of microorganisms, (b) a group of different but **compatible microorganisms**, (c) a symbiotic union of microorganisms.

- 3.2 The meaning of "compatible" is unclear, since - according to the opposed patent - cultures which were obviously long considered to grow together in one fermenter, and were thus regarded as being compatible in the field, are no longer considered to grow together in view of the patent (paragraphs [0004] to [0015]). The problem addressed in the patent thus requires the skilled person to adopt a re-definition of the term "compatibility". Yet, the opposed patent does not give any further guidance. In the absence thereof, it leaves the skilled person to guess precisely when microorganisms are to be considered compatible and in what respects. For example, for microorganisms to qualify as compatible, is it enough if one microorganism is not eaten up by the other? Or does

compatibility mean that the growth of one microorganism is not inhibited by the presence of the other microorganism? Or should the microorganisms have similar growth conditions? In the last case, the skilled person would not even know the degree of similarity that is required to consider microorganisms as being compatible.

3.3 As the term "compatible microorganisms" was introduced into Claim 1 by way of amendment and was not present in the only granted claim, said amendment is open to an objection under Article 84 EPC.

3.4 Consequently, auxiliary requests I, IIa, IIIa and IVa do not meet the requirements of Article 84 EPC.

Auxiliary request Ia

4. *Amendments - Article 123(2) EPC*

4.1 Claim 1 of auxiliary request Ia (point V(d), above) differs from Claim 1 as granted *inter alia* by the feature that the individual different products made in the parallelly arranged fermenters are **milk** products.

4.2 The appellant relied upon paragraph [0027] and the process scheme in paragraph [0028] as a basis for this amendment. These paragraphs represent passages of text from the patent specification and correspond to the penultimate paragraph on page 4 and the scheme on page 5 of the application as filed.

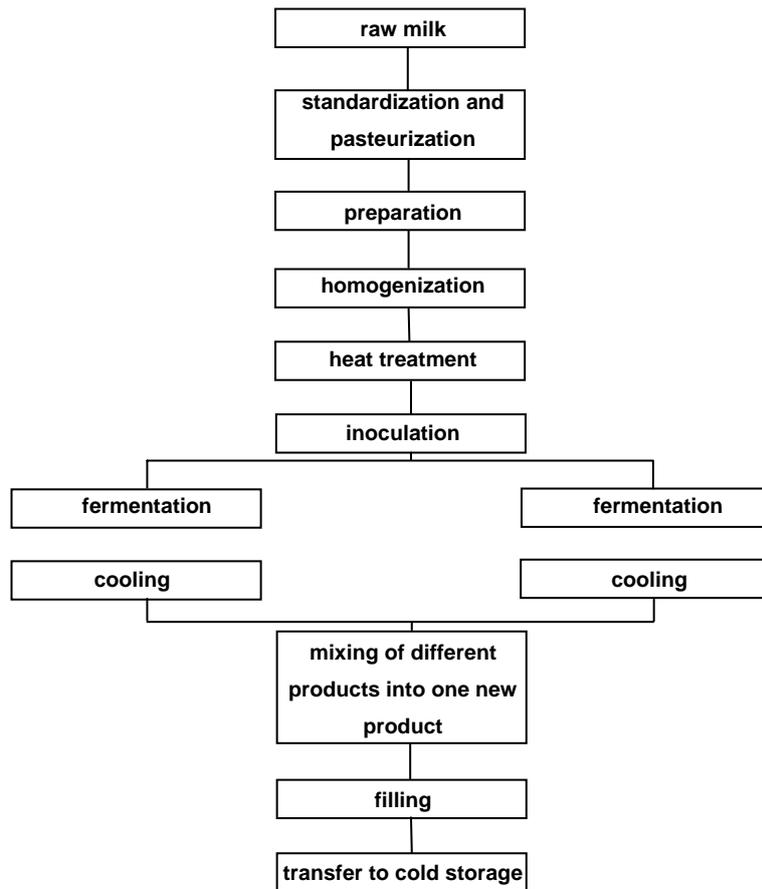
4.3 The penultimate paragraph on page 4 of the application as filed reads:

"This implies:

1. a joint and flexible preparation of milk
2. a joint and flexible heat treatment of milk
3. certain number of parallelly placed fermenters with cooling and agitation equipment
4. buffer tanks for finished product
5. filling of the finished product
6. transfer to a cold storage".

However, this paragraph is silent on the use of the multiple fermenters to ferment different **milk** products. All that is clear from this paragraph is that different products may be fermented simultaneously. Whether these products are milk-based is not directly and unambiguously derivable therefrom. Furthermore, contrary to Claim 1, this paragraph requires eg the presence of buffer tanks. Thus, this passage of the original disclosure is not a proper basis for the amendment in Claim 1 of auxiliary request Ia.

- 4.4 The process scheme on page 5 of the application as filed discloses the following steps:



From the above scheme, a production of two different milk products in the fermenters may be derived. However, this scheme is restricted *inter alia* in that milk is divided over two fermenters only after inoculation. Contrary thereto, Claim 1 is neither limited to two fermenters nor does it require the division of the milk product over the fermenters only after inoculation. In fact, the appellant attempts to generalize the specific embodiment schematically presented on page 5 of the application as filed and takes some of the process features of the scheme out of the originally disclosed context. Consequently, the process scheme on page 5 of the application as filed cannot provide a proper basis for the amendment in Claim 1 of auxiliary request Ia.

It is noted in this connection that the division of the milk over the two fermenters after inoculation in the scheme cannot be considered an error, let alone an obvious error. More particularly, the process could be realised by inoculating milk with two different cultures of microbes at the same time, then dividing this mixture over two fermenters and using different fermenting conditions in the two fermenters, one being suitable for one of the two microbe cultures and the other being suitable for the second microbe culture. Thus, the scheme on page 5 of the application as filed would not be recognized as containing an error, let alone one that would be corrected by the skilled person to something that could provide a basis for Claim 1 of auxiliary request Ia.

4.5 Nor can the text that follows the scheme on page 5 (text bridging pages 5 and 6 of the application as filed) serve as a basis for Claim 1. More particularly, this text describes an even more detailed embodiment which contains numerous features such as the fat content, homogenisation pressure and temperature, as well as inoculation and cooling temperatures, none of which is required by Claim 1. Hence Claim 1 constitutes an unallowable generalisation of this passage.

4.6 Finally, none of the remaining parts of the application as filed discloses that the individual different products made in the parallelly arranged fermenters are milk products.

4.7 For the above reasons, auxiliary request Ia does not meet the requirements of Article 123(2) EPC.

Auxiliary request II

5. *Amendments - Article 123(2) EPC*

5.1 Claim 1 of auxiliary request II (point V(e), above) differs from that of the main request in that, firstly, **raw milk is used as a common starting material** for all individual different milk products, secondly, the raw milk is treated by **the steps of standardization and pasteurization, preparation, homogenization and heat-treatment before inoculation** and thirdly, after cooling and mixing, **filling and transfer to cold storage** is carried out.

5.2 The process scheme on page 5 of the application as filed cannot support the amendments in Claim 1 of auxiliary request II. As explained in point 4.4 above, this process scheme relates to a specific embodiment in which the milk is divided after inoculation. This feature has been omitted in Claim 1 of auxiliary request II. It is not allowable to generalize process steps from their originally disclosed context, let alone combine them with other features not related to the process scheme of page 5, namely the use of a mesophilic culture in one fermenter and the use of a thermophilic culture in the other.

5.3 Nor is the text following this scheme on pages 5 and 6 a proper basis for the amendments of Claim 1 of auxiliary request II. As explained in point 4.5 above, these passages describe a very specific embodiment, eg inoculation in fermenter No. 1 with a mesophilic culture and inoculation in fermenter No. 2 with a yoghurt culture, employing very specific conditions,

such as fat content, homogenisation pressure and temperature, and cooling temperatures. None of these features is mentioned in Claim 1 of auxiliary request II.

Consequently, auxiliary request II does not meet the requirements of Article 123(2) EPC.

Auxiliary requests III and IV

6. *Amendments - Article 123(2) EPC*

6.1 Claim 1 of auxiliary request III differs from Claim 1 of auxiliary request II in that one fermenter contains a **mesophilic culture** and another fermenter contains a **yoghurt culture**.

In Claim 1 of auxiliary request IV the microorganisms are further specified, namely one fermenter contains a **mesophilic culture producing a sour milk** product and another fermenter contains a **yoghurt culture producing a yoghurt product**.

6.2 The only disclosure of a "yoghurt culture" can be found in the text on pages 5 and 6 in the application as filed. However, as explained in points 4.5 and 5.3 above, these passages describe a very specific embodiment directly linked to a specific milk-pre-treatment, fermentation conditions and a "sour milk fermentation" in one of the fermenters. None of these features has been incorporated into Claim 1 of auxiliary request III. It is, however, not allowable under Article 123(2) EPC to isolate individual features from the original context and to use these features to

create embodiments which are not clearly and unambiguously derivable from the application as filed. Consequently, Claim 1 of auxiliary request III does not meet the requirements of Article 123(2) EPC.

6.3 In Claim 1 of auxiliary request IV the "yoghurt culture" is indeed combined with a "sour milk fermentation" as disclosed in the text on pages 5 and 6. However, again, all the other features disclosed in this context are not incorporated into Claim 1 of auxiliary request IV. Thus, for the same reasons as given for auxiliary request III, Claim 1 of auxiliary request IV does not meet the requirements of Article 123(2) EPC.

7. In summary, none of the appellant's requests is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:

G. Röhn

W. Sieber