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**Datasheet for the decision
of 26 September 2011**

Case Number: T 0969/10 - 3.3.09

Application Number: 96945769.6

Publication Number: 0866667

IPC: A23L 3/015

Language of the proceedings: EN

Title of invention:

High temperature/ultra-high pressure sterilization of low acid foods

Patentee:

MARS, INCORPORATED

Opponent:

Richard S. Meyer
Unilever N.V.

Headword:

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Relevant legal provisions:

EPC Art. 113(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"No text agreed by patentee - revocation of the patent"

Decisions cited:

T 0073/84, T 0186/84, T 0157/85, T 1655/07

Catchword:

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Case Number: T 0969/10 - 3.3.09

D E C I S I O N
of the Technical Board of Appeal 3.3.09
of 26 September 2011

Appellant: Unilever N.V.
(Opponent II) Weena 455
NL-3013 AL Rotterdam (NL)

Representative: Wurfbain, Gilles L.
Unilever Patent Group
Olivier van Noortlaan 120
NL-3133 AT Vlaardingen (NL)

Respondent: MARS, INCORPORATED
(Patent Proprietor) 6885 Elm Street
McLean, VA 22101-3383 (US)

Representative: James, Anthony Christopher W.P.
Carpmaels & Ransford
One Southampton Row
London WC1B 5HA (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
23 February 2010 concerning maintenance of the
European patent No. 0866667 in amended form.

Composition of the Board:

Chairman: W. Sieber
Members: M. O. Müller
R. Menapace

Summary of Facts and Submissions

- I. This decision concerns the appeal by opponent II (Unilever N.V.) against the interlocutory decision of the opposition division (posted 23 February 2010) that European patent No. 0 866 667 as amended met the requirements of the EPC.
- II. On 14 April 2010, the appellant (opponent II) filed a notice of appeal against the above decision and paid the prescribed fee on the same day. A statement setting out the grounds of appeal was filed on 2 July 2010.
- The appellant requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- III. With letter of 1 November 2010, the respondent (proprietor) filed a response to the appeal.
- IV. By letter of 11 August 2011, the respondent stated the following:

"The patentee (respondent) has decided to relinquish the above patent. Accordingly, I hereby withdraw the patentee's approval of the text of the above patent. The patentee will not be filing an alternative text or any further requests. I look forward to receiving your confirmation that the opposition and appeal proceedings are terminated".

Reasons for the Decision

1. The appeal is admissible.

2. Article 113(2) EPC requires that the EPO may decide upon the European patent only in the text submitted to it, or agreed by the proprietor of the patent.

Agreement cannot be held to be given if the proprietor without submitting an amended text, expressly states that he no longer approves the text of the patent as granted or previously amended.

In such a situation a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see eg decisions T 73/84, OJ EPO 1985, 241; T 186/84, OJ EPO 1986, 79; T 157/85 of 12 May 1986, not published in OJ EPO; and T 1655/07 of 10 June 2009, equally not published in OJ EPO).

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:

G. Röhn

W. Sieber