

**Internal distribution code:**

- (A)  Publication in OJ  
(B)  To Chairmen and Members  
(C)  To Chairmen  
(D)  No distribution

**Datasheet for the decision  
of 4 November 2013**

**Case Number:** T 1413/11 - 3.3.09

**Application Number:** 03255095.6

**Publication Number:** 1400176

**IPC:** A23G 9/32, A23G 9/00, A23G 9/20

**Language of the proceedings:** EN

**Title of invention:**  
Frozen aerated products

**Patent Proprietor:**  
Unilever PLC  
Unilever N.V.

**Opponent:**  
NESTEC S.A.

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
"No text agreed by the patentee - revocation of the patent"

**Decisions cited:**  
T 0601/98

**Catchword:**  
-



Case Number: T 1413/11 - 3.3.09

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.09**  
**of 4 November 2013**

**Appellant:** NESTEC S.A.  
(Opponent) Avenue Nestlé 55  
CH-1800 Vevey (CH)

**Representative:** Rupp, Christian  
Mitscherlich & Partner  
Patent- und Rechtsanwälte  
Postfach 33 06 09  
D-80066 München (DE)

**Respondent:** Unilever PLC  
(Patent Proprietor 1) Unilever House  
Blackfriars  
London  
Greater London EC4P 4BQ (GB)

**Respondent:** Unilever N.V.  
(Patent Proprietor 2) Weena 455  
NL-3013 AL Rotterdam (NL)

**Representative:** Hugot, Alain  
Unilever Patent Group  
Colworth House  
Sharnbrook, Bedford, MK44 1LQ (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
5 April 2011 concerning maintenance of European  
patent No. 1400176 in amended form.**

**Composition of the Board:**

**Chairman:** W. Sieber  
**Members:** J. Jardón Álvarez  
K. Garnett

## **Summary of Facts and Submissions**

- I. In its interlocutory decision posted on 5 April 2011, the opposition division decided that the European patent No. 1 400 176 could be maintained in amended form according to Article 101(3) (a) EPC.
- II. The opponent, Nestec S.A., lodged an appeal against this decision on 7 June 2011 and paid the appeal fee on the same day. The statement of grounds of appeal was filed on 11 August 2011.
- III. In a letter dated 11 October 2013 the joint patent proprietors, Unilever PLC and Unilever N.V., informed the board that:  
"we no longer wish to maintain European Patent 1 400 176 and hereby withdraw our request that the Appeal be withdrawn".
- In a further letter dated 29 October 2013 the patent proprietors clarified that:  
"the patent proprietor no longer approves of the text of the patent as granted by the Opposition Division..."

## **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 requirements 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, for instance T 601/98).

## **Order**

### **For these reasons it is decided that:**

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairman:

M. Cañueto Carbajo

W. Sieber