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**Datasheet for the decision
of 16 January 2022**

Case Number: T 1078/19 - 3.3.02

Application Number: 11840896.2

Publication Number: 2640736

IPC: C07H1/06, C07H1/08, C07H15/24,
C07H15/256

Language of the proceedings: EN

Title of invention:

METHOD FOR THE ENRICHMENT OF REBAUDIOSIDE B AND/OR
REBAUDIOSIDE D IN STEVIA-DERIVED GLYCOSIDE COMPOSITIONS USING
ADSORB-DESORB CHROMATOGRAPHY WITH A MACROPOROUS NEUTRAL
ADSORBENT RESIN

Patent Proprietor:

Cargill, Incorporated

Opponent:

Tate & Lyle Ingredients Americas LLC

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor

Decisions cited:

T 0411/20

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1078/19 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 16 January 2022

Appellant:
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Cargill, Incorporated
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Mail Stop 24
Wayzata, MN 55391 (US)

Representative:
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Appellant:
(Opponent)
Tate & Lyle Ingredients Americas LLC
5450 Prairie Stone Parkway
Hoffman Estates IL 60192 (US)

Representative:
EIP
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London WC1V 6HU (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
1 February 2019 concerning maintenance of the
European Patent No. 2640736 in amended form.**

Composition of the Board:

Chairman M. O. Müller
Members: P. O'Sullivan
R. Romandini

Summary of Facts and Submissions

- I. The appeals of both the opponent and the patent proprietor lie from the interlocutory decision of the opposition division according to which European patent 2 640 736 in amended form met the requirements of the EPC.
- II. The patent proprietor requested that the patent be maintained on the basis of the set of claims of the main request, or alternatively on the basis of one of the sets of claims of the first to ninth auxiliary requests, all filed with the statement of grounds of appeal. Alternatively, maintenance of the patent was requested on the basis of the set of claims of the tenth auxiliary request submitted with the reply to the opponent's statement of grounds of appeal.
- III. Pursuant to Article 15(1) RPBA, the board issued a communication in preparation for oral proceedings, scheduled to take place on 1 December 2022.
- IV. With letter dated 9 November 2022 the patent proprietor stated that it withdrew approval of the text as granted and as found allowable ("as maintained") by the opposition division, and furthermore that it withdrew all requests on file, as well as the notice of appeal filed on 11 April 2019.
- V. The scheduled oral proceedings were cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. The patent proprietor withdrew their consent and agreement to the text of the patent as granted. Furthermore, it withdrew all requests pending in the appeal proceedings. Consequently, there is no text of the patent submitted or agreed by the proprietor of the patent, on the basis of which the board can consider compliance with the requirements of the EPC.
3. It is established case law of the Boards of Appeal (see for example T 411/20, reasons for the decision, point 3) that under such circumstances, the patent is to be revoked without further substantive examination.
4. By withdrawing its notice of appeal, the board also considers the patent proprietor to have withdrawn its appeal. Pursuant to Rule 103(3)(a) EPC, the appeal fee is reimbursed to the patent proprietor at 50%.
5. There are also no further ancillary issues that need to be dealt with by the board in the present case.

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:



N. Maslin

M. O. Müller

Decision electronically authenticated