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**Datasheet for the decision
of 1 June 2023**

Case Number: T 2617/19 - 3.3.07

Application Number: 08864664.1

Publication Number: 2244591

IPC: A61K31/7052, A61K31/7072,
A61K35/60, A61K47/36,
A61K47/38, A61P25/28, A61K9/00,
A61K38/02, A23L29/262,
A23L29/269, A23L33/115,
A23L33/13, A23L33/17,
A23L33/00, A61K33/06,
A61K47/42, A61K47/44

Language of the proceedings: EN

Title of invention:
A PALATABLE NUTRITIONAL COMPOSITION COMPRISING A NUCLEOTIDE
AND/OR A NUCLEOSIDE AND A TASTE MASKING AGENT

Patent Proprietor:
N.V. Nutricia

Opponent:
Société des Produits Nestlé S.A.

Headword:
Taste-masking agent/NUTRICIA

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

T 0073/84



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 2617/19 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 1 June 2023

Appellant: Société des Produits Nestlé S.A.
(Opponent) Entre-deux-Villes
1800 Vevey (CH)

Representative: Elkington and Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks, Kent TN13 1XR (GB)

Respondent: N.V. Nutricia
(Patent Proprietor) Eerste Stationsstraat 186
2712 HM Zoetermeer (NL)

Representative: Nederlandsch Octrooibureau
P.O. Box 29720
2502 LS The Hague (NL)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 15 July 2019
rejecting the opposition filed against European
patent No. 2244591 pursuant to Article 101(2)
EPC**

Composition of the Board:

Chairman A. Uselli
Members: J. Molina de Alba
Y. Podbielski

Summary of Facts and Submissions

- I. The decision under appeal is the opposition division's decision rejecting the opposition filed against European patent No. 2 244 591.
- II. The opponent (appellant) filed an appeal against the decision.
- III. The board scheduled oral proceedings in line with the parties' requests.
- IV. Oral proceedings were held before the board on 1 June 2023. During the oral proceedings, the patent proprietor (respondent) declared that they no longer approved the text of the patent and withdrew all requests on file.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by its proprietor.
2. By disapproving the text of the granted patent and withdrawing all amended text versions submitted to the EPO, the patent proprietor withdrew their approval of any text for maintenance of the patent. Therefore, there is no approved text of the patent on the basis of which the board can decide on the appeal.

3. In these circumstances, it is established case law that the patent must be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, section IV.D.2). The board has no reason to deviate from this case law.

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:



B. Atienza Vivancos

A. Usuelli

Decision electronically authenticated