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**Datasheet for the decision
of 4 July 2023**

Case Number: T 1303/21 - 3.3.09

Application Number: 11781699.1

Publication Number: 2667732

IPC: A23L1/236, A23L2/60

Language of the proceedings: EN

Title of invention:

STEVIA BLENDS CONTAINING REBAUDIOSIDE B

Patent Proprietor:

Tate & Lyle Solutions USA LLC

Opponents:

Cargill, Incorporated

Krämer, Dana

Headword:

Stevia blends/TATE & LYLE

Relevant legal provisions:

EPC Art. 113(2)

EPC R. 103(4)(a)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked
Reimbursement of appeal fee - (yes)



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1303/21 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 4 July 2023

Appellant: Tate & Lyle Solutions USA LLC
(Patent Proprietor) 5450 Prairie Stone Parkway
Hoffman Estates, IL 60192 (US)

Representative: Marks & Clerk LLP
15 Fetter Lane
London EC4A 1BW (GB)

Appellant: Krämer, Dana
(Opponent 2) Schüleiplatz 3c
81673 München (DE)

Representative: Vossius & Partner
Patentanwälte Rechtsanwälte mbB
Siebertstrasse 3
81675 München (DE)

Party as of right: Cargill, Incorporated
(Opponent 1) 15407 McGinty Road West
Wayzata, MN 55391 (US)

Representative: Forresters IP LLP
Skygarden
Erika-Mann-Straße 11
80636 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 July 2021 concerning maintenance of the
European Patent No. 2667732 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: F. Rinaldi
 A. Jimenez

Summary of Facts and Submissions

I. This decision concerns the appeals filed by the proprietor of the patent and opponent 2 against the interlocutory decision of the opposition division that the European patent as amended met the requirements of the EPC.

II. On appeal, the proprietor of the patent submitted the following declaration, by letter dated 3 July 2023:

"The proprietor, Tate & Lyle Solutions USA LLC, no longer approves the text in which the patent was granted. In addition, it also withdraws all of its requests currently on file, i.e. the Main Request and Auxiliary Requests 1 to 93."

In a further written submission, the proprietor of the patent also withdrew its appeal.

III. Opponent 2 requested that the decision under appeal be set aside and that the patent be revoked.

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. This principle, according to which the text of the patent is at the disposition of

the proprietor, has to be strictly observed also in opposition and opposition appeal proceedings.

2. As the proprietor of the patent no longer approves the text of the patent as granted (main request) and does not pursue the patent according to the auxiliary requests on file, there is no text of the patent on which the board can base its consideration of the appeal of opponent 2.
3. If the proprietor of a European patent states in opposition or appeal proceedings that it no longer approves the text in which the patent was granted, and does not submit any amended text, the patent is to be revoked (Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2, third paragraph and III.B.3.3, first paragraph). Therefore, the patent must be revoked, without any preceding substantive examination.
4. *Partial reimbursement of the appeal fee*
 - 4.1 The proprietor of the patent withdrew its appeal and requested a refund of the appeal fee at 25%.
 - 4.2 According to Rule 103(4)(a) EPC the appeal fee is to be reimbursed at 25% if the appeal is withdrawn later than one month after notification of the communication issued by the board of appeal in preparation for oral proceedings but before the decision is announced at oral proceedings.
 - 4.3 In the current case, the appeal was withdrawn later than one month after notification of the communication issued by the board of appeal in preparation for oral proceedings. The oral proceedings scheduled for this case were cancelled and did not need to take place.

Therefore, the condition that the withdrawal of the appeal occurred before the decision is announced at oral proceedings is necessarily also met.

- 4.4 To conclude, the proprietor of the patent is eligible for a 25% reimbursement of the appeal fee (Rule 103(4) (a) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The appeal fee paid by the proprietor of the patent is reimbursed at 25%.

The Registrar:

The Chairman:



M. Schalow

A. Haderlein

Decision electronically authenticated