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**Datasheet for the decision  
of 20 September 2023**

**Case Number:** T 2212/21 - 3.3.07

**Application Number:** 09168590.9

**Publication Number:** 2289527

**IPC:** A61K35/74, A61P1/00, A23C9/12

**Language of the proceedings:** EN

**Title of invention:**  
Bifidobacterium longum and functional GI disorders

**Patent Proprietor:**  
Société des Produits Nestlé S.A.

**Opponent:**  
Morinaga Milk Industry Co., Ltd.

**Headword:**  
Bifidobacterium / NESTLE

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

**Keyword:**  
Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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European Patent Office  
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Case Number: T 2212/21 - 3.3.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.07**  
**of 20 September 2023**

**Appellant:** Morinaga Milk Industry Co., Ltd.  
(Opponent) 33-1, 5-chome, Shiba  
Minato Ward  
Tokyo 108-8384 (JP)

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

**Respondent:** Société des Produits Nestlé S.A.  
(Patent Proprietor) Entre-deux-Villes  
1800 Vevey (CH)

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

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 12 October 2021  
rejecting the opposition filed against European  
patent No. 2289527 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** A. Usuelli  
**Members:** M. Steendijk  
S. Ruhwinkel

## **Summary of Facts and Submissions**

I. With the decision announced on 15 September 2021 and posted on 12 October 2021 the opposition division rejected the opposition filed against European patent No. 2 289 527 ("the patent").

II. The opponent filed the appeal against this decision.

The appellant-opponent requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

III. With a letter dated 18 September 2023 the patent proprietor declared that it no longer approved the text in which the patent was granted and that it did not intend to pursue the maintenance of the patent with an amended text.

## **Reasons for the Decision**

1. The respondent-patent proprietor has indicated that it no longer agrees with the text of the patent as granted and that it did not intend to pursue the maintenance of the patent with any alternative text. Pursuant to Article 113(2) EPC a patent can only be maintained on the basis of a text submitted or agreed to by the patent proprietor. In the absence of such agreed text the patent is to be revoked (cf decision T 0073/84 (OJ EPO 1985, 241)).

## 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:



S. Sánchez Chiquero

A. Usuelli

Decision electronically authenticated