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**Datasheet for the decision  
of 26 April 2023**

**Case Number:** T 1035/22 - 3.3.08

**Application Number:** 15724572.1

**Publication Number:** 3146044

**IPC:** C12N11/02, C12N11/08, C12P7/64,  
C12N9/20

**Language of the proceedings:** EN

**Title of invention:**  
Process for immobilization of a lipase

**Patent Proprietor:**  
Bunge Loders Croklaan B.V.

**Opponent:**  
International Flavors & Fragrances Inc.

**Headword:**  
Immobilization of lipase/BUNGE LODERS CROKLAAN

**Relevant legal provisions:**  
EPC Art. 113(1), 116(1)

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Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 0073/84, T 1182/17, T 0774/20

**Catchword:**

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**Beschwerdekammern**  
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Case Number: T 1035/22 - 3.3.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.08**  
**of 26 April 2023**

**Appellant:** International Flavors & Fragrances Inc.  
(Opponent) 521 West 57th Street  
New York, NY 10019 (US)

**Representative:** Mewburn Ellis LLP  
Aurora Building  
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Bristol BS1 6BX (GB)

**Respondent:** Bunge Loders Croklaan B.V.  
(Patent Proprietor) Hogeweg 1  
1521 AZ Wormerveer (NL)

**Representative:** Potter Clarkson  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
18 February 2022 concerning maintenance of the  
European Patent No. 3146044 in amended form**

**Composition of the Board:**

**Chair** T. Sommerfeld  
**Members:** B. Claes  
R. Winkelhofer

## Summary of Facts and Submissions

I. The appeal lodged by the opponent (appellant) lies from the interlocutory decision of the opposition division that European patent No. EP 3 146 044 (the patent), as amended in the form of auxiliary request 1 and the invention to which it relates meet the requirements of the EPC.

II. The appellant requested that the decision under appeal be set aside and amended such that the patent be revoked.

The respondent requested *inter alia* that the appeal be dismissed or, alternatively, that the patent be maintained with the set of claims of one of auxiliary requests 1 to 21 filed with the reply to the appeal.

III. The board summoned the parties to oral proceedings in accordance with their requests and issued a communication pursuant to Article 15(1) RPBA.

IV. With a submission dated 17 April 2023 the respondent declared the following:

*"The Proprietor no longer approves the text of the patent as granted, is not pursuing any pending claims requests, including the auxiliary claim requests, and will not propose any amended text.*

*We understand that the effect of the preceding paragraph is that patent will be revoked and the oral proceedings scheduled for 11 May 2023 will be cancelled."*

- V. In view of this declaration the oral proceedings were cancelled.

### **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
2. Since the text of the patent is at the disposition of the patent proprietor, their patent cannot be maintained against their will. In the present case the patent proprietor withdrew their approval of the text of the patent as granted. Further, by declaring that they are not pursuing any pending claims requests, including the auxiliary requests, and requesting that the patent be revoked, they also unequivocally withdrew all pending auxiliary requests. Consequently, there is no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC.
3. It is established case law that in the present circumstances the patent must be revoked without further substantive examination as to patentability (see, *inter alia*, decision T 73/84, OJ EPO 1985, 241; decisions T 1182/17 and T 774/20 and Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, section IV.D.2). There is no reason to deviate from this consistent approach of the boards of appeal, with the consequence that the patent is to be revoked.

4. Since there is no text of the patent which could be deemed to be approved by the patent proprietor, their declaration implies that their request for oral proceedings is also withdrawn (i.e. there is no text to be discussed). Revocation of the patent also complies with the request of the appealing opponent. The present decision can therefore be taken without oral proceedings (Article 116(1) EPC).

## Order

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

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



B. Brückner

T. Sommerfeld

Decision electronically authenticated