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**Datasheet for the decision
of 9 July 2024**

Case Number: T 1753/22 - 3.3.09

Application Number: 08784967.5

Publication Number: 2173197

IPC: C11C3/00, C11C3/10, C12N9/20,
A23L33/00, A23L33/12

Language of the proceedings: EN

Title of invention:
PROCESS

Patent Proprietor:
Bunge Loders Croklaan B.V.

Opponents:
Cargill, Incorporated
AAK AB

Headword:
Process/BUNGE LODERS CROKLAAN

Relevant legal provisions:
EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - revocation of the patent at request of the
patent proprietor

Decisions cited:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1753/22 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 9 July 2024

Appellant: Cargill, Incorporated
(Opponent 1) 15407 McGinty Road West
Wayzata, MN 55391 (US)

Representative: Elseviers, Myriam
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Appellant: AAK AB
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Respondent: Bunge Lodders Croklaan B.V.
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Representative: Potter Clarkson
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 17 May 2022
rejecting the opposition filed against European
patent No. 2173197 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman A. Haderlein
Members: C. Meiners
 A. Jimenez

Summary of Facts and Submissions

- I. The appeals were filed by the opponents 1 and 2 (both appellants) against the opposition division's decision to reject the oppositions against the patent.
- II. The opponents requested in their notices of appeal that the decision under appeal be set aside and that the patent be revoked.
- III. With its letter dated 5 July 2024, the patent proprietor withdrew its approval of the text in which the patent was granted and all pending claim requests.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle has to be strictly observed also in opposition and opposition appeal proceedings. As the patent proprietor withdrew its agreement to the text of the patent in any form, there is no text of the patent on which the board can base its consideration of the opponents' appeals.
2. In such a situation, the patent is to be revoked without any preceding substantive examination (Case Law of the Boards of Appeal of the EPO, 10th edition 2022, IV.D.2, in particular third and fifth paragraphs, and III.B.3.3, first paragraph).

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:



K. Götz-Wein

A. Haderlein

Decision electronically authenticated