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**Datasheet for the decision
of 18 December 2024**

Case Number: T 2326/22 - 3.3.09

Application Number: 18206149.9

Publication Number: 3461348

IPC: A23L27/00, A23K20/121,
A23K20/126, A23K20/142,
A23K20/153, A23K50/40,
A23B7/152

Language of the proceedings: EN

Title of invention:
FLAVOUR ADDITIVES

Patent Proprietor:
Mars, Incorporated

Opponent:
Société des Produits Nestlé S.A.

Headword:
Flavour additives/MARS

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Basis of decision - text or agreement to text withdrawn by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

Boards of Appeal of the
European Patent Office
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Case Number: T 2326/22 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 18 December 2024

Appellant: Société des Produits Nestlé S.A.
(Opponent) Avenue Nestlé 55
1800 Vevey (CH)

Representative: Rupp, Christian
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80333 München (DE)

Respondent: Mars, Incorporated
(Patent Proprietor) 6885 Elm Street
McLean, VA 22101 (US)

Representative: Haseltine Lake Kempner LLP
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Bristol BS1 6BH (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 14 September
2022 rejecting the opposition filed against
European patent No. 3461348 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman A. Haderlein
Members: F. Rinaldi
R. Romandini

Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the opponent against the opposition division's decision to reject the opposition.
- II. On appeal, among other things, the proprietor of the patent filed 23 auxiliary requests.
- III. At the oral proceedings before the board, the proprietor of the patent stated that it withdrew the consent to the text of the patent as granted and withdrew all requests.
- IV. The opponent 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, applies also to opposition and opposition appeal proceedings. As corollary of this principle, 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).

2. In the present case 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. As there is no text of the patent on which the board can base its consideration of the opponent's appeal, the patent must be revoked without any preceding substantive examination.

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