

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 7 May 2025**

**Case Number:** T 0960/23 - 3.3.09

**Application Number:** 16778892.6

**Publication Number:** 3355701

**IPC:** A23C9/15, A23C9/20, A23L33/00,  
A23L33/18, A23L33/19, A23J3/10,  
A61K38/18

**Language of the proceedings:** EN

**Title of invention:**  
LIQUID NUTRITIONAL COMPOSITION COMPRISING MICELLAR CASEIN AND  
HYDROLYSED WHEY PROTEIN

**Patent Proprietor:**  
FrieslandCampina Nederland B.V.

**Opponents:**  
Fresenius Kabi Deutschland GmbH  
Arla Foods Amba  
N.V. NUTRICIA

**Headword:**  
Liquid nutritional composition/FRIESLAND CAMPINA

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

**Keyword:**



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

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0

Case Number: T 0960/23 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 7 May 2025**

**Appellant:** Fresenius Kabi Deutschland GmbH  
(Opponent 1) Else-Krömer-Strasse 1  
61352 Bad Homburg (DE)

**Representative:** Fresenius Kabi Deutschland GmbH  
Pharmaceuticals and Devices Division  
Borkenberg 14  
61440 Oberursel (DE)

**Appellant:** Arla Foods Amba  
(Opponent 2) Sønderhøj 14  
8260 Viby J (DK)

**Representative:** Guardian  
IP Consulting I/S  
Diplomvej, Building 381  
2800 Kgs. Lyngby (DK)

**Appellant:** N.V. NUTRICIA  
(Opponent 3) Eerste Stationsstraat 186  
2712 HM Zoetermeer (NL)

**Representative:** Nederlandsch Octrooibureau  
P.O. Box 29720  
2502 LS The Hague (NL)

**Respondent:** FrieslandCampina Nederland B.V.  
(Patent Proprietor) Stationsplein 4  
3818 LE Amersfoort (NL)

**Representative:** FrieslandCampina IP Department  
Bronland 20  
6708 WH Wageningen (NL)

**Decision under appeal:**      **Decision of the Opposition Division of the  
European Patent Office posted on 27 March 2023  
rejecting the opposition filed against European  
patent No. 3355701 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman**                    A. Haderlein  
**Members:**                    M. Ansorge  
                                      G. Decker

## **Summary of Facts and Submissions**

- I. Appeals were filed by opponents 1 to 3 against the opposition division's decision rejecting the oppositions.
- II. By letter of 7 May 2025 the patent proprietor declared that it disapproved the text of the patent as granted and that it withdrew auxiliary requests 1 and 2.
- III. The opponents 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 patent proprietor. This principle according to which the text of the patent is at the disposition of the patent proprietor applies also in opposition and opposition appeal proceedings.
2. The patent proprietor no longer approves the text of the patent. Hence, there is no text of the patent on which the board can base its consideration of the opponents' appeals.
3. If the patent 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 of the

European Patent Office, 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.

## 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