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**Datasheet for the decision
of 9 January 2025**

Case Number: T 1397/23 - 3.3.09

Application Number: 18206164.8

Publication Number: 3461343

IPC: A23K20/121, A23K20/142,
A23K50/40, A23L27/00

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Basis of decision - text or agreement to text withdrawn by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

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Case Number: T 1397/23 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 9 January 2025

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

Representative: Strych, Sebastian
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Patent- und Rechtsanwälte
Karlstraße 7
80333 München (DE)

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

Representative: Haseltine Lake Kempner LLP
One Portwall Square
Portwall Lane
Bristol BS1 6BH (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
1 June 2023 concerning maintenance of the
European Patent No. 3461343 in amended form.**

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 several auxiliary requests.
- III. In its letter dated 9 January 2025, the proprietor of the patent stated the following:
- "The proprietor hereby disapproves the text as granted, withdraws all requests on file and confirms that no further requests will be filed.*
- As a result, we expect that... the Board will revoke the patent."*
- 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