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**Datasheet for the decision
of 22 January 2025**

Case Number: T 1750/23 - 3.3.09

Application Number: 16704771.1

Publication Number: 3253225

IPC: A23G3/54, A23G4/20, A23G3/34

Language of the proceedings: EN

Title of invention:
DUAL STRUCTURE CRUNCHY GUM PELLETT

Patent Proprietor:
Perfetti Van Melle Benelux B.V.

Opponent:
Mars, Incorporated

Headword:
Crunchy gum pellet/INTERCONTINENTAL

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text submitted or agreed by patent proprietor (no) - revocation of the patent at request of the patent proprietor

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
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Case Number: T 1750/23 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 22 January 2025

Appellant: Perfetti Van Melle Benelux B.V.
(Patent Proprietor) Zoete Inval 20
4815 HK Breda (NL)

Representative: Boulton Wade Tennant LLP
Salisbury Square House
8 Salisbury Square
London EC4Y 8AP (GB)

Appellant: Mars, Incorporated
(Opponent) 6885 Elm Street
McLean, VA Virginia 22101 (US)

Representative: Greaves Brewster LLP
Copa House
Station Road
Cheddar, Somerset BS27 3AH (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 August 2023 concerning maintenance of the
European Patent No. 3253225 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: A. Veronese
R. Romandini

Summary of Facts and Submissions

- I. Appeals were filed by the opponent and the patent proprietor against the opposition division's decision finding that the European patent as amended according to the auxiliary request 4 filed during the oral proceedings before the opposition division meets the requirements of the EPC.
- II. With its statement setting out the grounds of appeal and with its letter filed in reply to the opponent's statement of grounds of appeal the patent proprietor filed several auxiliary requests.
- III. After receiving the preliminary opinion set out by the board in the communication issued in preparation to the oral proceedings, the patent proprietor stated *inter alia* that:

"In connection with the above appeal matter, the patentee hereby:"

"3. Withdraws their approval of the text for grant."
- IV. Furthermore, it stated that:
- V. *"We understand that this Patent will be revoked ab initio and the Opposition/Appeal will cease automatically"*.
- VI. The opponent/appellant 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 in opposition and opposition appeal proceedings.
2. From the patent proprietor's statements the board understands that the patent proprietor 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. Hence, there is no text of the patent on which the board can base its consideration of the opponent's appeal.
3. 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). 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