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**Datasheet for the decision
of 7 January 2026**

Case Number: T 0259/24 - 3.3.09

Application Number: 10764718.2

Publication Number: 2429305

IPC: A23C21/04, A23C1/14, A23J3/08,
A23C1/05, A23J1/20, A23C9/13,
A23C19/082, A23C21/00

Language of the proceedings: EN

Title of invention:
DAIRY PRODUCT AND PROCESS

Patent Proprietor:
Fonterra Co-Operative Group Ltd

Opponents:
N.V. Nutricia
Arla Foods amba

Headword:
Dairy product and process/FONTERRA

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Basis of decision - text or agreement to text withdrawn by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 0259/24 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 7 January 2026

Appellant:
(Opponent 1)

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Eerste Stationsstraat 186
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Representative:

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Appellant:
(Opponent 2)

Arla Foods amba
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Representative:

Guardian
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Respondent:
(Patent Proprietor)

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Representative:

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
15 December 2023 concerning maintenance of the
European Patent No. 2429305 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: F. Rinaldi
 L. Basterreix

Summary of Facts and Submissions

- I. This decision concerns the appeals filed by opponents 1 and 2 against the opposition division's interlocutory decision that the European patent as amended met the requirements of the EPC.
- II. With their respective statement setting out the grounds of appeal, opponents 1 and 2 requested that the decision under appeal be set aside and that the patent be revoked.
- III. By letter dated 5 January 2025, the patent proprietor stated, among other things, that it no longer approved the text of the patent and that it withdrew all requests pending before the presiding Board.

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, has to be strictly observed also in opposition and opposition appeal proceedings.
2. The patent proprietor clearly and unambiguously declared that it no longer approves the text of the patent. This applies to all requests on file, including in particular the claim requests on file. In view of

this, there is no text of the patent on which the board can base its consideration of the appeals filed by opponents 1 and 2. Therefore, the patent has to be revoked (Case Law of the Boards of Appeal, 11th edition 2025, IV.D.2, second paragraph 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