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**Datasheet for the decision
of 2 February 2026**

Case Number: T 0283/24 - 3.3.09

Application Number: 13777432.9

Publication Number: 2903448

IPC: A23G3/54, A23G3/20

Language of the proceedings: EN

Title of invention:

HARD CONFECTIONARY AND METHOD OF MANUFACTURE THEREOF

Patent Proprietor:

Intercontinental Great Brands LLC

Opponent:

Wm. Wrigley Jr. Company

Headword:

Hard Confectionary/INTERCONTINENTAL GREAT BRANDS

Relevant legal provisions:

EPC Art. 54(2), 56, 83, 84, 123(2)

Keyword:

Main request: added subject-matter - (no); clarity,
sufficiency of disclosure, novelty and inventive step - (yes)

Decisions cited:

G 0003/14

Catchword:



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Case Number: T 0283/24 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 2 February 2026

Appellant: Intercontinental Great Brands LLC
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 December 2023 concerning maintenance of the
European Patent No. 2903448 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: A. Veronese
N. Obrovski

Summary of Facts and Submissions

I. The appeal was filed by the patent proprietor (appellant) against the opposition division's decision finding that the European patent as amended according to auxiliary request 3 filed during the oral proceedings held before the opposition division meets the requirements of the EPC.

II. Claim 1 of auxiliary request 3 reads:

"1. A multi-region hard confectionary providing a multi-flavor experience, comprising, based on the total weight of the confectionary:

10 to 60% by weight of an inner region comprising a hard confectionary composition having a flavor profile;

40 to 90% by weight of an outer region comprising a hard confectionary composition having a flavor profile distinguishable from the flavor profile of the inner region during consumption of the confectionary; and

wherein the outer region fully surrounds the inner region; and

wherein the thickness of the outer region and the volume of the inner region are configured to sequentially provide a transition from a first flavor profile to a second flavor profile to a third flavor profile, wherein the first flavor profile is provided by the composition of the outer region, the second flavor profile is provided by a combination of the compositions of the outer region and the inner region, and the third flavor profile is provided by the composition of the inner region,

wherein the first flavor profile provides a mild fruit taste and a cooling sensory experience and the

*third flavor profile provides a more intense fruit taste and no additional cooling experience,
wherein the outer region has a minimum thickness of at least 2.0mm, and the inner region has a minimum thickness of at least 5mm,
wherein the outer region is visually distinguishable from the inner region and the outer region is sufficiently transparent to provide visibility to the inner region."*

III. With its notice of opposition, the opponent had requested revocation of the patent in its entirety on the grounds under Article 100(a) (lack of novelty and lack of inventive step), 100(b) and 100(c) EPC.

IV. The documents submitted during the opposition proceedings included:

- D1: WO 2006/077480 A1
- D10: Declaration from Mr Paul Smak with annexed pictures of the LifeSavers Fusions candy and measurements of its size
- D11a/b: Extracts from the Wayback Machine
- D12/D13: YouTube link and screenshots from videos of TV commercials on LifeSavers Fusions candies
- D14a: eBay screenshots relating to LifeSavers Fusions candies
- D14b: Printed advert of LifeSavers Fusions candies

V. The opposition division found, *inter alia*, that auxiliary request 3 was to be admitted. Claim 1 of this request was based, *inter alia*, on claim 11 as filed and met the requirements of Article 123(2) EPC. The wording "*no additional cooling experience*" was clear, and claim 1 complied with Article 84 EPC. The claimed

subject-matter involved an inventive step over D1, the closest prior art.

VI. In its statement setting out the grounds of appeal, the appellant filed a main request and auxiliary requests 1 to 3.

VII. Claim 1 of auxiliary request 1, the only claim request relevant for the present decision, reads:

"1. A multi-region hard confectionary providing a multi-flavor experience, comprising, based on the total weight of the confectionary:

10 to 60% by weight of an inner region comprising a hard confectionary composition having a flavor profile;

40 to 90% by weight of an outer region comprising a hard confectionary composition having a flavor profile distinguishable from the flavor profile of the inner region during consumption of the confectionary; and

wherein the outer region fully surrounds the inner region; and

wherein the thickness of the outer region and the volume of the inner region are configured to sequentially provide a transition from a first flavor profile to a second flavor profile to a third flavor profile, wherein the first flavor profile is provided by the composition of the outer region, the second flavor profile is provided by a combination of the compositions of the outer region and the inner region, and the third flavor profile is provided by the composition of the inner region,

wherein the first flavor profile provides a mild fruit taste and a cooling sensory experience and the third flavor profile provides a more intense fruit taste and no additional cooling experience, and

wherein the outer region has a minimum thickness of at least 2.0mm, and the inner region has a minimum thickness of at least 5mm."

- VIII. In a communication issued under Article 15(1) RPBA in preparation for the oral proceedings, the board expressed the preliminary opinion that the subject-matter of claim 1 of the main request filed with the grounds of appeal did not involve an inventive step over D1, whereas that of auxiliary request 1 fulfilled the requirements of the EPC.
- IX. In a letter filed in reply to the board's communication, the appellant stated that if the respondent withdrew its request for oral proceedings and did not file further substantive submissions on the grounds for opposition, it would withdraw the main request, auxiliary request 1 would become the main request, and it would withdraw its request for oral proceedings. The appellant also proposed amendments to the description.
- X. The respondent replied in writing, agreeing to withdraw its request for oral proceedings and not to file further substantial submissions relating to the opposition grounds. It also accepted the amendments of the description proposed by the appellant.
- XI. The arguments presented by the parties during the appeal proceedings are set out in the Reasons for the Decision.

Requests

- The patent proprietor (appellant) requested that the decision under appeal be set aside and that the

patent be maintained on the basis of the main request, filed as auxiliary request 1 with the statement setting out the grounds of appeal.

- The opponent (respondent) requested that the appeal be dismissed.

Reasons for the Decision

Main request (filed as auxiliary request 1 with the statement setting out the grounds of appeal)

1. *Amendments*
2. Claim 1 of the main request derives from claim 1 of the application as filed and contains, in addition, *inter alia*, the feature:
 - "the outer region has a minimum thickness of at least 2.0 mm, and the inner region has a minimum thickness of at least 5 mm"
- 2.1 This feature derives from paragraphs [0022] and [0023] of the application as originally filed.
- 2.2 When dealing with claim 1 as granted, the opposition division found that the addition of this feature created new subject-matter because the following statement in paragraph [0022] was omitted: "the outer layer can be configured to provide a thickness sufficient for the outer region to be visually distinguishable from the inner region when the outer region is substantially transparent"

- 2.3 Furthermore, the opposition division found that although paragraph [0023] referred to an "average minimum thickness" of at least 5 mm, it made technical sense to interpret the thickness as a "minimum thickness of least 5 mm", i.e. without necessarily referring to an average. Thus, the omission of the word "average" in claim 1 did not create originally undisclosed subject-matter.
- 2.4 These two findings of the opposition division were contested by the parties: the first by the appellant; the second by the respondent.
- 2.5 Concerning the first finding, the board considers that, as submitted by the appellant, the application as filed does not require that the thickness of the outer layer be sufficient for the outer region to be distinguishable from the inner region when the outer region is substantially transparent. In fact, the relevant sentence in paragraph [0022] begins with "can". Furthermore, transparency to provide visibility of the inner region is only mentioned in claim 8 of the application as filed. Also, paragraphs [0016] and [0017] teach that the outer region can be colourless or opaque. The possibility of distinguishing the outer region from the inner region when the outer region is transparent is presented as a possible advantage but not a requirement of the invention.
- 2.6 Reading paragraph [0022], the skilled reader would understand that the last sentence, which defines the minimum thickness of the outer layer, is generally applicable to all types of confectioneries, including those depicted in Figures 1 and 2, as mentioned in the first sentences in paragraph [0022].

- 2.7 Furthermore, the minimum thickness specified in paragraph [0022] makes it possible, but does not necessarily require, the preparation of confectioneries having a transparent outer region which is visually distinguishable from the inner region. Therefore, the last sentence and the minimum thickness defined are not limited to the confectioneries defined in the preceding sentences. In other words, the last sentence is generally applicable and not limited to those confectioneries.
- 2.8 The argument that it only makes sense to speak about thickness for confectioneries as depicted in Figure 2, which have a variable thickness, is not convincing.
- 2.9 Hence, the indication that the outer region has a thickness of at least 2.0 mm, without the additional requirement that the outer region is visually distinguishable from the inner region, does not create originally undisclosed subject-matter.
- 2.10 Concerning the second finding of the opposition division, the board considers that the last sentence of paragraph [0023] discloses an inner region having a minimum thickness of at least 5 mm. As submitted by the appellant, despite a reference to an "average minimum thickness" of at least 5 mm in the first part of the sentence, for the invention, it does not make sense to speak of an "average minimum thickness" for a single measured dimension of a single confectionery article. Furthermore, the same sentence reads: "*more specifically at least 2.5 mm (minimum thickness), and even more specifically at least 5 mm*", i.e. referring to a "minimum thickness" without a reference to the "average". Thus, reading the entire sentence in the context of the description as filed, an inner region

having a minimum thickness of at least 5 mm is directly and unambiguously disclosed.

2.11 Thus, the amendment does not create originally undisclosed subject-matter (Article 123(2) EPC).

3. *Clarity*

3.1 Claim 1 defines a confectionery containing an "inner" and an "outer" region. Dependent claims 3 and 5 specify that the confectionery contains an "additional outermost region" or an "additional innermost region". According to the respondent, the inclusion of values (2.0 mm and 5 mm) defining the minimum thicknesses of the "outer" and the "inner" regions in claim 1 as granted introduced a lack of clarity. This was because when the confectionery comprised more than two layers, there were different ways of labelling them, making it impossible to unambiguously identify the "outermost" or "innermost" region defined in claims 3 to 5 and to measure its thickness. This lack of clarity was evident when considering the schematic representation of the three-layer confectionery shown on page 11 of the reply to the statement setting out the grounds of appeal.

3.2 The board does not agree. The clarity objection concerns the definitions of the additional regions in dependent claims 3 and 5 - which correspond to claims 3 to 5 as granted - rather than the addition of the thickness values in claim 1. The respondent's objection boils down to whether, in a multi-region confectionery comprising three regions, it is possible to determine whether an "outermost" or an "innermost" region is present, in addition to the "outer" and "inner" regions of claim 1 as granted. However, this issue was already present in the set of claims as granted. Thus, the

amendments in claim 1, which specify the minimum thickness of the "outer" and the "inner" regions, do not, in themselves, generate a lack of clarity.

3.3 The respondent referred to the figure and the two scenarios presented on page 11 of the reply to the statement setting out the grounds of appeal. However, the board is not convinced that the skilled person would consider scenario 2, in which the thickness of the inner region amounts to $2b + c$. In fact, a skilled person would not interpret scenario 2 as corresponding to a product with two regions in which an innermost region is somehow incorporated.

3.4 As decided in G 3/14, the claims of a patent may only be examined for compliance with the requirements of Article 84 EPC when, and then only to the extent that, the amendment introduces non-compliance with Article 84 EPC. Since, for the reasons set out above, this does not occur in the case in hand, the clarity objection cannot be examined in the current opposition-appeal proceedings (Article 84 EPC).

4. *Sufficiency of disclosure*

4.1 The respondent considered that the claimed invention was sufficiently disclosed. The contested issues were:

- whether the feature requiring that the outer and the inner regions be configured to provide three flavour profiles limits claim 1 beyond what the other features of this claim already do
- whether, if this feature is limiting, the patent provides sufficient information for preparing the

confectionery, in particular with regards to its dimensions and the volume of the inner region

- 4.2 Concerning the first issue, the board agrees with the appellant that the indication in claim 1 of the weight percentage and thickness of the inner and outer layers is insufficient to define a confectionery providing a transition from a first to a second and from a second to a third flavour profile. This becomes apparent when considering the drawings on page 3 of the appellant's letter of 27 November 2024. It is credible that if the inner core is strongly misaligned in the confectionery, it may be impossible to appreciate the third flavour arising solely from the inner region. Hence, the aforementioned feature provides a functional limitation which translates to a structural constraint on the way the confectionery must be constructed.
- 4.3 Concerning the second issue, as noted by the appellant, the patent describes the preparation of several confectioneries according to the invention. Additionally, Figures 1 to 4 illustrate the structure of confectioneries in which the inner region is centrally aligned within the outer region. Although the final dimensions and the volume of the inner region are not explicitly mentioned, it is credible that, relying on the technical information in the patent, the examples and common general knowledge, the skilled person would be able to prepare a confectionery that provides the claimed flavour profiles. The dimensions of typical confectioneries are well known in the art, and the skilled person would be able to prepare inner cores having a volume which is suitable to provide the second and the third flavour profiles.

4.4 For these reasons, the claimed invention is sufficiently disclosed (Article 83 EPC).

5. *Novelty*

5.1 The respondent contested the opposition division's finding that the claimed confectionery was novel over the alleged public prior use of the product LifeSavers Fusions.

5.2 The respondent argued essentially the following.

- The opposition division should have applied the standard of "balance of probabilities" rather than the more stringent "up to the hilt" standard when assessing novelty because both parties had access to the alleged public prior use.
- D10, D11a, D11b, D12, D13, D14a and D14b demonstrated that LifeSavers Fusions candies were offered for sale and advertised to the public before the relevant date. D11a and D11b were retrieved from the Wayback Machine and showed that relevant products were offered for sale before the relevant date. D14a and D14b had a copyright pre-dating the relevant date. The title of the videos in D12 and D13 showed that those videos were from 2003. This year, rather than the upload date, counted as the relevant date.
- There was no evidence that the regions of the confectionery shown in Figures 4 and 5 of D10 exhibited different thickness when measured along different dimensions.

5.3 The respondent's arguments are not persuasive.

5.4 Claim 1 is characterised by the requirement that the minimum thickness of the outer region is at least 2.0 mm and that that of the inner region is at least 5 mm. There are reasonable doubts that these requirements are fulfilled by the LifeSavers Fusions candies for the following reasons.

- The measurements in the experimental report D10 were performed on half of a single candy, in a single plane. It is not clear which plane was assessed. To determine the minimum thickness of either region, it is necessary to take multiple measurements: at least two in each of three orthogonal planes for the outer region and at least one across the whole core in three orthogonal planes for the inner region. This is especially important considering that, as shown in Figure 1 of D10, the LifeSavers Fusions candies are disc shaped and have a rippled surface, indicating a clear potential for the thickness of the regions to vary in different planes.
- The tested sample was found in a storage cabinet on 5 June 2023, along with other historical samples at the Global Innovation Centre. There is no evidence to suggest that this product was a commercially and publicly available product, rather than, for example, a flawed sample batch being investigated for a defect, which would not be publicly available.
- The product was over 16 years old. It cannot be excluded that its structure and form had changed over this period. Furthermore, the tests were

conducted taking into account the product colour, which does not necessarily correlate with the flavour regions as one or both of these could have migrated over time.

5.5 Furthermore, as noted by the respondent, the tested candy was manufactured in March 2007, i.e. after the date, 2004, on which Wrigley acquired the LifeSavers brand. Therefore, this candy and all aspects of its manufacture fall exclusively within the ambit of the opponent/respondent. Hence, the opposition division was correct to apply a higher standard of proof than the balance of probabilities when assessing the public prior use. The board agrees that there is no convincing evidence that there is a link between the tested candy and the LifeSavers Fusions candies which were allegedly put on sale. In this regard, the following is also noted.

- There is no evidence that the product preparation and recipe remained unchanged following the transfer of ownership from Kraft to Wrigley in 2004.
- D11 provides evidence of the sale of a LifeSavers Fusions candies in 2004, the year in which the product became Wrigley's. However, it remains unclear who manufactured the product found in the R&D department which was used for the tests in D10.
- D12 is an advert obtained from YouTube entitled "LifeSavers Fusions 2003 TV Ad commercial", but there is nothing in the video to confirm the date. The date is just in the title added to the video when it was uploaded on 12 March 2023. Furthermore, the still images in D12 do not provide sufficient

information to determine the minimum thickness of the products shown, which are non-spherical. Even if a complete video were available, without an accurate image analysis of images around all axes, it would be impossible to determine whether the claimed thickness is disclosed. The same considerations apply to D13, which was uploaded on 20 July 2016.

- D14 is a poster sold with a title suggesting a 2004 date, but again, this is merely an alleged date and is not explicitly stated on the poster itself.

5.6 For these reasons, the alleged public prior use of the LifeSavers Fusions candies does not prejudice the novelty of the subject-matter of claim 1.

6. *Inventive step*

Closest prior art

6.1 The opposition division considered that D1 was the closest prior art, and this finding was not disputed by the parties. D1, like the opposed patent, relates to multi-region hard confectionery products (e.g. sweets), comprising an inner core surrounded by a transparent outer shell, each having different flavours and colours. The products provide, like the claimed ones, a multi-flavour experience. Thus, there is no reason to depart from the choice of D1 as the closest prior art.

Distinguishing features

6.2 The sweets of D1 comprise an inner core (a) (filling) surrounded by a transparent or translucent outer layer (b), with the two regions being differently flavoured

and coloured. The inner core (a) contains an opacifying agent, while the outer layer (b) contains at least one flavour enhancer (see abstract and claim 1). According to Example 1, the filling accounts for 13% of the total weight of the sweet (page 7 lines 11 to 12); according to Example 2, it accounts for 20% (page 10, lines 2 to 3). The remainder of the sweet is therefore represented by the outer region. In both Examples 1 and 2, the outer layer is transparent, while the filling is matt blue or red, respectively.

6.3 It was undisputed that D1 does not disclose the minimum thickness of the outer and inner regions.

6.4 What was contested was whether D1 disclosed the features requiring that:

- *"the thickness of the outer region and the volume of the inner region are configured to sequentially provide a transition from a first flavor profile to a second flavor profile to a third flavor profile, wherein the first flavor profile is provided by the composition of the outer region, the second flavor profile is provided by a combination of the compositions of the outer region and the inner region, and the third flavor profile is provided by the composition of the inner region"* (emphasis of the appellant)

This feature, referred to as feature 1E by the appellant, requires the confectionery to provide three flavour profiles.

- *"the first flavor profile provides a mild fruit taste and a cooling sensory experience and the*

third flavor profile provides a more intense fruit taste and no additional cooling experience"

This feature was referred to as feature 1H by the respondent.

- 6.5 With regard to feature 1E, the appellant argued that the confectionery of D1 did not provide the three claimed flavour profiles. D1 aimed to provide a sweet having a clear-cut demarcation between the aesthetic and organoleptic properties of the outer layer and the filling. Consequently, the disclosed sweet only provided a first flavour profile given by the outer region and a second flavour profile provided by the inner region. It did not provide a third flavour profile arising from the combination of the outer and inner regions.
- 6.6 The appellant's argument is not convincing. The opposed patent teaches that feature 1E is fulfilled when the outer layer partially dissolves to provide the first flavour, followed by simultaneous dissolution of the inner and outer regions to provide the second flavour, and finally by dissolution of the inner region to provide the third flavour (see paragraphs [0006] and [0010]).
- 6.7 As decided by the opposition division, this effect is inevitably achieved by the sweets of D1. It is true that D1 aims to provide sweets in which "the aesthetic and organoleptic demarcation between outer layer and filling is clear-cut". This requires that the regions have a thickness, shape and consistency sufficient for the flavour profiles of the outer and inner layers to be distinct and distinguishable. However, considering the manner in which the sweets disclosed in D1 and

those of the opposed patent are produced - namely by simply depositing an outer layer onto an inner layer with a different flavour profile - it is inevitable that upon consumption of both these sweets, an intermediate transient flavour will be perceived, in addition to those induced by the outer and the inner regions. This will occur when the outer layer is practically dissolved and the second starts to dissolve. Reference is made in particular to:

- the sweets and the method for their preparation described on page 2, line 11 to 23; page 5, lines 20 to 22; page 7, lines 10 to 12; Examples 1 and 2; and the claims of D1
- the confectioneries and the method for their preparation described in the examples of the opposed patent

6.8 As submitted by the respondent, it is technically unrealistic to assume that during consumption of the sweet disclosed in D1, no transitory period will occur in which the outer and inner regions gradually dissolve in the consumer's mouth. On the contrary, such a transitory phase is inevitable.

6.9 D1 teaches to add an opacifier to the inner region to provide a visual demarcation between the regions. However, the presence of this opacifier cannot prevent the flavour of the two regions from mixing during the aforementioned transitory period. The only way to prevent the two flavours from mixing would be to interpose a flavourless layer between the outer and the inner flavoured regions. However, this kind of intermediate layer is not present in the sweets of D1.

- 6.10 An aim of the claimed invention is to provide an inner region which can minimise the bitterness and aftertaste induced by cooling agents included in the outer region. The fact that an aftertaste persists after the first region is dissolved indicates that an intermediate flavour is perceived before the inner region starts to dissolve and mask the bitter aftertaste.
- 6.11 For these reasons, feature 1E is disclosed in D1 and does not distinguish the claimed confectionery from those disclosed in D1.
- 6.12 With regard to feature 1H, the board concurs with the opposition division's finding and the appellant's arguments that the skilled person would understand from claim 1 that the third flavour profile, induced by the inner region, provides a more intense fruit profile and no cooling experience, in addition to the more intense fruit experience induced by the inner region. In other words, claim 1 requires that the first flavour profile induce a mild fruit taste and a cooling effect, whereas the third flavour profile induces a more intense fruit taste but dispenses with any cooling effect.
- 6.13 This interpretation of feature 1H is technically more meaningful in the claimed invention than that advanced by the respondent, according to which the cooling effect could be the same. Had this been the intended meaning, claim 1 would have employed wording such as "the same" or "no stronger" cooling experience. The current interpretation is also consistent with the teaching of dependent claim 14, which requires that the inner region not comprise ingredients typically used to induce a cooling sensation. It is also consistent with paragraph [0027] of the description, which describes a third flavour profile providing a "stronger fruit taste

and no cooling experience". Furthermore, Examples 3, 5 and 6 of the opposed patent describe confectioneries in which the inner region induces a more intense fruit taste than the outer region and in which ingredients inducing a cooling effect (menthol and eucalyptus) are present in the outer but not in the inner region. None of the examples of the opposed patent describes a confectionery in which the inner region induces a stronger fruit taste while providing the same cooling experience as the outer region.

- 6.14 The respondent argued that Example 2 of D1 disclosed feature 1H because both the outer and the inner regions of the disclosed sweet comprised isomalt, a compound allegedly having a cooling effect. Moreover, the outer region of the sweet in Example 2 was flavoured with melon, whereas the inner region was flavoured with strawberry.
- 6.15 These arguments are not convincing. D8 teaches that "maltitol and isomalt exhibit minimal cooling effects" and are "more similar to sucrose". It therefore cannot be established whether the outer region of the sweet of Example 2 effectively provides any cooling experience, particularly in view of the fruit flavours present in that outer region. Moreover, isomalt is also present in the inner region of the sweet. Consequently, if isomalt were to impart a cooling effect, the requirement that the inner region does not confer a cooling effect (respondent's feature 1H) would not be met. Example 2 does not mention any initial cooling experience either.
- 6.16 Furthermore, it cannot be established whether the fruit flavour is more intense in the inner region. D1 teaches on page 10, lines 7 to 10 that:

"The absolute concentration of flavouring is not a significant factor in the case of fruit flavours. In fact, fruit flavourings contain solvents to maintain in solution molecules or essential oils which have olfactory or flavouring effect. Moreover, some flavours are perceived very differently from others."

- 6.17 For these reasons, the confectionery of claim 1 differs from that of Example 2 of D1, both in the minimum thickness of its regions and in the flavour profile of those regions, as defined by feature 1H.

Technical effect and underlying problem

- 6.18 As stated in the patent, the presence of cooling agents in the outer region, combined with the absence of an additional cooling effect in the inner region, contributes to achieving the purpose of the invention, namely to provide confectionery compositions that possess a balance between taste and cooling while minimising bitterness and aftertaste (see paragraphs [0003], [0004] and [0027] of the opposed patent).
- 6.19 According to paragraph [0027], *"[t]his combination is especially advantageous in that it allows the manufacture of a hard confectionery where any perceived aftertaste (e.g., a bitter note) of the cooling agent is displaced or masked by the third flavor profile"*.
- 6.20 This effect is supported by Examples 5 to 7 in Table 4 of the patent, where it is stated that *"[i]n addition, any bitter or off-tastes imparted by the cooling agents (or any other ingredients) are absent or significantly minimized by the third flavor profile, particularly in Examples 5 and 6"* (see paragraph [0099]).

- 6.21 The opponent argued that this effect was not linked to the distinguishing features and further contended that it was not credible that the effect could be achieved across the full scope of the claim.
- 6.22 The first argument is unconvincing as it is based on an incorrect assessment of the distinguishing features. The second argument is likewise unpersuasive. The patent provides evidence that the aftertaste of compositions comprising menthol and eucalyptus can be offset in a confectionery according to the invention. The respondent has not presented any concrete evidence demonstrating that this effect cannot be achieved using other compositions inducing a cooling effect.

The underlying objective technical problem

- 6.23 Taking into account the aforementioned effect, the underlying objective technical problem can be formulated, as suggested by the appellant, as the provision of a confectionery product exhibiting a cooling effect in which bitter or unpleasant flavour notes are avoided.

Non-obviousness of the claimed solution

- 6.24 There is no pointer in the cited prior art suggesting that this problem could be solved by the solution now claimed. The claimed confectionery addresses this problem by providing a smooth transition between a first, second and third flavour profiles, where the third flavour profile - absent in the prior-art products - does not contain any cooling agents.
- 6.25 As noted by the appellant, D1 does contemplate addressing "unpleasant (bitter) or too strong" flavours

(page 5, third paragraph). However, although D1 suggests concealing those flavours with stronger flavours, it does not suggest the claimed configuration of features - namely, the arrangement of the regions and the sequential provision of the three flavour profiles specified in claim 1.

6.26 D1 suggests using stronger masking flavours blended with the unpleasantly flavoured functional ingredients, rather than providing a cooling-agent-free inner region of a sufficient minimum thickness to deliver a distinguishable third flavour profile being free of any cooling agent. D1 does not contemplate omitting a cooling agent in the inner region.

6.27 For this reason, the claimed subject-matter involves an inventive step.

7. *Adaptation of the description*

7.1 The appellant requested that the description according to the version in the Druckexemplar annexed to the decision under appeal be adapted to the main request by reinstating paragraph [0013] and amending paragraph [0018]. The text of these paragraphs was submitted by the appellant.

7.2 The respondent agreed to these amendments, and the board does not see any reason to object to them.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent as amended in the following version:
 - claim 1 to 17 of the main request, filed as auxiliary request 1 with the statement setting out the grounds of appeal
 - the description and the drawings according to the Druckexemplar annexed to the decision under appeal in which paragraphs [0013] and [0018] are replaced with the version of those passages filed by the appellant with its letter dated 15 September 2025

The Registrar:

The Chairman:



L. Stridde

A. Haderlein

Decision electronically authenticated