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Datasheet for the decision of 27 February 2026

Case Number: T 0554/24 - 3.3.09

Application Number: 14739502.4

Publication Number: 3007563

IPC: A23C19/064, A23C19/09

Language of the proceedings: EN

Title of invention:
METHOD FOR MANUFACTURING CHEESE

Patent Proprietor:
Valio Ltd

Opponent:
Intercontinental Great Brands LLC

Headword:
Cheese manufacture/VALIO

Relevant legal provisions:
EPC Art. 56

Keyword:
Main request and auxiliary requests 1 to 7: inventive step - (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

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Case Number: T 0554/24 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 27 February 2026

Appellant: (Opponent)	Intercontinental Great Brands LLC 100 Deforest Avenue East Hanover NJ New Jersey 07936 (US)
Representative:	Boult Wade Tennant LLP Salisbury Square House 8 Salisbury Square London EC4Y 8AP (GB)
Respondent: (Patent Proprietor)	Valio Ltd Meijeritie 6 00370 Helsinki (FI)
Representative:	Kolster Oy Ab (Salmisaarenaukio 1) P.O. Box 204 00181 Helsinki (FI)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 27 March 2024 concerning maintenance of the European Patent No. 3007563 in amended form.**

Composition of the Board:

Chairman	M. Ansorge
Members:	A. Veronese
	L. Basterreix

Summary of Facts and Submissions

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

II. With its notice of opposition, the opponent had requested revocation of the patent on the grounds of Article 100(a) EPC (lack of novelty and lack of inventive step).

III. Claim 1 of the main request reads as follows:

"*1. A method of making cheese having a ratio of K/Na of more than 0.2 up to 4.0 wherein the cheese is salted with a salting agent comprising milk minerals and NaCl, wherein the NaCl content of the cheese is more than 0.81% up to 5.0%, and wherein the cheese is salted with milk minerals and NaCl or a combination thereof in at least one salting step in any order, and the cheese is subjected to brine salting.*"

IV. The documents submitted during the opposition proceedings included the following.

D2: M. Harju, "Milk sugars and minerals as ingredients", International Journal of Dairy Technology 54(2), 2001, 61 to 63

D3: "Lactosalt® Optitaste" brochure, 2009

D4: "Lactosalt Optitaste" fact sheet, 2010

D5: EP 2 745 704 A1

D6: M.C. Katsiari et al., "Manufacture of Kefalograviera cheese with less sodium by partial replacement of NaCl with KCl", Food Chemistry 61(1/2), 1998, 63 to 70

D10: WO 2011/039414 A1

V. In its decision, the opposition division found, *inter alia*, that the invention claimed in the main request filed during the oral proceedings did involve an inventive step over the teaching of the closest prior art, i.e. D6, when considered on its own and when combined with the teaching of D2, D3 or D10.

VI. In its statement setting out the grounds of appeal, the appellant contested the opposition division's inventive-step finding.

VII. With its reply to the statement setting out the grounds of appeal, the respondent filed a main request corresponding to the main request found allowable by the opposition division, and auxiliary requests 1 to 7.

VIII. Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the cheese is defined as a "ripened cheese".

IX. Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the K/Na (potassium/sodium) ratio is limited to 0.2 to 1.2.

X. Claim 1 of auxiliary request 3 differs from claim 1 of the main request by the following feature.

"...*the milk minerals are provided as a milk mineral concentrate obtained by a process wherein*

- *milk is subjected to ultrafiltration to provide an ultrafiltration permeate,*
- *the ultrafiltration permeate is subjected to nanofiltration to provide a nanofiltration permeate,*
- *the nanofiltration permeate is subjected to reverse osmosis to provide a reverse osmosis retentate as the milk mineral concentrate.*"

XI. Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 3 in that it additionally states the following.

"...*wherein the dry matter content of the milk mineral concentrate is about 9% to about 40%, specifically about 16%.*"

XII. Claim 1 of auxiliary request 5 differs from claim 1 of the main request in that the wording "*or a combination thereof*" has been deleted.

XIII. Claim 1 of auxiliary request 6 differs from claim 1 of the main request in that it additionally states the following.

"*...and wherein brine salting with milk mineral brine is carried out for about 1 hour to 4 hours and brine salting with NaCl brine is carried out for about 4 to about 8 hours.*"

XIV. Claim 1 of auxiliary request 7 differs from claim 1 of auxiliary request 6 in that the K/Na ratio is limited to 0.2 to 1.2.

XV. The arguments set out by the appellant during the appeal proceedings can be summarised as follows.

- The claimed method did not involve an inventive step starting from D6 as the closest prior art. The claimed method differed from that of D6 only in that milk minerals were used for salting. Claim 1 did not require brine salting to be conducted with milk minerals and NaCl. The minerals could be added by dry salting.

- There was no evidence that the use of milk minerals for salting cheese resulted in an improvement over the teaching of D6, let alone a cheese with a more favourable mineral composition. Thus, the problem to be solved was to provide an alternative method for making cheese.

- Faced with this problem, the skilled person would have considered adding milk minerals to cheese in both the brine-salting and dry-salting steps described in D6. The use of milk minerals for salting and fortifying cheese without altering its flavour and taste was well known, as shown by D2, D3 and D10. Consequently, the claimed method was obvious over D6 as the closest prior art. These conclusions applied to all of the requests.

XVI. The arguments set out by the proprietor (respondent) during the appeal proceedings can be summarised as follows.

- D6 was the closest prior art. The claimed method differed from that of D6 in that milk minerals and sodium chloride were used in a brine-salting step. The appellant's late-filed argument that claim 1 did not require brining with milk minerals should not be admitted into the appeal proceedings.

- Milk minerals also contained calcium, phosphorous and magnesium, in addition to sodium (Na) and potassium (K). Consequently, the addition of milk minerals to cheese resulted in a more favourable mineral composition.

- The problem to be solved was to provide cheese subjected to brine salting having a more favourable mineral composition.

- D6 did not suggest modifying the NaCl/KCl brining mixtures described using the claimed milk minerals. Although D6 mentioned a minor flavour defect when potassium was increased, the overall taste of the cheese was already highly acceptable.

- D2, D3 and D10 did not hint at the claimed solution either. They did not provide an incentive to use milk minerals to modify or replace the brine-salting solutions described in D6. Even if the skilled person had considered using these salts, they would not have carried out the claimed method.

- These arguments applied to all of the requests on file. In addition, the subject-matter of the auxiliary requests was more limited and further distinguished the claimed subject-matter from the prior art.

The requests

XVII. The appellant requested that the decision under appeal be set aside and that the patent be revoked.

XVIII. The respondent requested that the appeal be dismissed or, alternatively, that the patent be maintained on the basis of one of auxiliary requests 1 to 7 as filed with the reply to the statement setting out the grounds of appeal.

Reasons for the Decision

Main request

1. *Inventive step*

1.1 The aim of the invention claimed in the opposed patent is to "provide cheeses and cheese-like products with a flawless taste, appearance and texture and which advance eating habits, health and well-being and, particularly, contain a reduced amount of sodium"; see paragraph [0008].

1.2 As stated in the patent, it is known that a high sodium content in food has detrimental effects in the form of cardiovascular disease and that it is desirable to reduce dietary sodium intake; see paragraphs [0001] and [0002]. Accordingly, the patent proposes a method for producing cheese having a low sodium content and good organoleptic properties.

The closest prior art

1.3 The opposition division decided, and the parties agreed, that D6 is the closest prior art. The board does not see any reason to deviate from this finding.

1.4 Like the opposed patent, D6 aims at providing a ripened cheese with a reduced sodium content, without compromising the cheese quality. Like the patent, D6

teaches that a reduction in sodium intake reduces the risk of cardiovascular disease. The reduction of the sodium content in the cheeses of D6 was achieved using a mixture of NaCl and KCl instead of pure NaCl as the salting agent. Salting was carried out by brining, followed by dry salting, using a NaCl/KCl mixture for both steps (see the abstract).

1.5 Three tests are described in D6. They involved an immersion step in a brine containing NaCl only, followed by dry salting with NaCl or, alternatively, with a mixture of NaCl/KCl in a ratio of 3:1 or 1:1, followed by a dry-salting step with the same 3:1 or 1:1 mixtures; see page 64, right-hand column, first paragraph. The reduced-sodium cheeses obtained with the NaCl mixture satisfy the K:Na ratio and the NaCl content specified in claim 1; see the table on page 6 of the appellant's statement setting out the grounds of appeal, which shows the K:Na ratio and the NaCl values calculated from the data shown in Table 3 of D6.

1.6 The organoleptic properties of the reduced-sodium cheeses described in D6 were similar to those of the standard cheese obtained by salting with NaCl only (see the abstract and the section entitled "Sensory evaluation" starting on page 66, right-hand column).

Distinguishing feature

1.7 In its statement setting out the grounds of appeal, the appellant argued, in line with the comments of the opposition division, that the difference between the disclosure of claim 1 and that of D6 was that D6 did not disclose a step in which the cheese was subjected to brine salting with milk minerals.

1.8 However, in its letter of 9 October 2024, the appellant argued that, while claim 1 required the use of milk minerals for salting, and that the method included at least one brine-salting step, the claim did not require milk minerals to be used in a brine-salting step. Milk minerals could be used for dry salting or surface salting, while the brine-salting step could be carried out using NaCl. Thus, claim 1 only required that milk minerals be used in a salting step, irrespective of the amount of milk minerals and the type of salting method used. D6 did not disclose a salting step - of any type - in which milk minerals were used to salt the cheese. Consequently, the method of claim 1 differed from that of D6 only in that it involved the use of milk minerals in a salting step.

1.9 The respondent submitted that this argument was new and should not be admitted into the appeal proceedings.

1.10 The board does not agree, however. The new argument relates to the interpretation of claim 1. It merely constitutes a development of the line of attack already set out in the statement setting out the grounds of appeal, namely a lack of inventive step over D6 in combination with any of D2, D3 and D10. Furthermore, the argument addresses the respondent's contention in the reply to the statement setting out the grounds of appeal that "D6 fails to disclose brine salting of cheese with NaCl and milk minerals".

1.11 No complex issues are raised by the appellant's new argument, and the documents relied on for the inventive-step objection are the same. The reasoning for the objection only differs marginally from that previously presented. Thus, admitting the new argument is not detrimental to procedural economy. Furthermore,

the new argument was submitted promptly in response to the respondent's reply to the statement setting out the grounds of appeal and well before the oral proceedings.

1.12 For these reasons, the board has decided to admit this new argument into the appeal proceedings (Article 13(1) RPBA). Furthermore, the board agrees with the appellant that, in view of the wording of the last sentence of claim 1, namely:

"*wherein the cheese is salted with milk minerals and NaCl or a combination thereof in at least one salting step in any order, and the cheese is subjected to brine salting*" (emphasis added),

the claim sets out two separate requirements: 1) that the cheese be salted with milk minerals and NaCl or a combination thereof in at least one salting step in any order, and 2) that the cheese be subjected to at least one brine-salting step. Claim 1 does not require the milk minerals to be used in a brine-salting step or in combination with NaCl. Consequently, claim 1 encompasses, *inter alia*, methods of making cheese that include one brine-salting step with NaCl and one dry-salting step with milk minerals. This interpretation is confirmed by claims 8 and 9 and by paragraphs [0025] to [0029] of the description, which refer to methods that include brine-salting, dry-salting and surface-salting steps, or a combination thereof, and the use of milk minerals and NaCl, or a combination thereof.

1.13 Consequently, claim 1 differs from the teaching of D6 only in that milk minerals are used in a cheese-salting step.

Technical effect

1.14 No evidence has been provided to prove that the aforementioned distinguishing feature is associated with an effect going beyond the teaching of D6. The patent does not describe any test comparing the properties of cheese obtained by carrying out the claimed method and cheese obtained by the method of D6. It is stated with reference to Example 4 of the patent that a cheese obtained by the claimed method did not differ significantly in a "triangle test" from a reference Havarti-type cheese. Yet there is no information concerning how this reference cheese was obtained, let alone whether it was subjected to a salting procedure as described in D6.

1.15 The respondent submitted that the claimed method provided a cheese in which a portion of the sodium was replaced with potassium. This increased the K/Na ratio in the cheese, without any deterioration to its organoleptic properties. Furthermore, other relevant minerals like calcium, magnesium and phosphorous were added with the milk minerals. Since it was known that a high intake of sodium could have detrimental effects on cardiovascular health, the cheese obtained by the claimed method had a "more favourable mineral composition".

1.16 This argument is not convincing, however. D6 aims at obtaining the same effect, namely a cheese in which, for health reasons, the amount of sodium is reduced and the K/Na ratio is increased, without affecting its organoleptic properties. The claimed amount of NaCl and the K/Na ratio are the same as those in the cheese of D6. Furthermore, there is no evidence that the amounts of other minerals, such as calcium, magnesium and

phosphorous, in the cheeses exemplified in the patent are higher than those in the cheeses of D6. As the appellant noted, irrespective of the salting method, the cheeses of D6 could already be rich in milk minerals, these being present in the milk used to produce the cheese. Claim 1 does not impose any limitations regarding the nature of the cheese itself, nor does it specify the nature or amount of the milk minerals.

1.17 Consequently, it is not possible to conclude that the claimed method results in a cheese having a more favourable mineral composition or in a cheese producing effects which - in terms of taste or health benefits - go beyond those described in D6, let alone across the entire scope claimed.

Technical problem

1.18 In the absence of any evidence that the distinguishing technical feature is associated with an effect going beyond the teaching of D6, the only objective technical problem that can be considered credibly solved is the provision of an alternative method of producing cheese with a low sodium content.

1.19 The problem cannot, therefore, be defined as proposed by the respondent on page 4 of its reply to the statement setting out the grounds of appeal, i.e. "how to provide cheese subjected to brine salting with a more favourable mineral composition". Furthermore, since claim 1 defines a method, the problem must relate to the provision of an alternative method, not an alternative brining composition as suggested by the respondent on page 3 of its reply to the statement setting out the grounds of appeal.

Obviousness of the claimed solution

1.20 The study in D6 aims to replace part of the NaCl typically used for salting cheese with a different salting agent that contains a lower sodium content. Additionally, it seeks to examine the properties of the resulting cheese.

1.21 In the tests described in D6, part of the NaCl used for salting cheese by both brining and dry salting was replaced with a mixture of KCl and NaCl in a 3:1 or 1:1 ratio. This resulted in a reduction of the sodium content in the cheese of up to 50% (see the abstract, results and conclusions). The organoleptic properties of the cheeses salted with the NaCl/KCl mixtures were not significantly different from those of the control cheese, which was salted with NaCl alone (see page 64, "Cheese manufacture", and pages 66-67, "Sensory evaluation").

1.22 Nevertheless, the NaCl/KCl-salted cheeses received slightly higher scores than the control cheese. Those salted with the 3:1 NaCl/KCl mixture received a somewhat higher flavour score than those salted with the 1:1 NaCl/KCl mixture. The lower flavour scores of the cheese salted with the 1:1 NaCl/KCl mixture were attributed to a slightly burning-metallic aftertaste, typical of KCl (see page 67, left-hand column).

1.23 Starting from D6 and faced with the aforementioned problem, the skilled person would have considered using a known salting agent with a low sodium content, either in addition to, or as a partial or total replacement for, the salts used in D6. In particular, the skilled person would have considered using salting agents

already known for salting cheese. Furthermore, given the desire to avoid possible aftertastes induced by potassium, as reported in D6, the skilled person would have been motivated to use salting agents having off-taste masking properties.

1.24 When searching for suitable salting agents, the skilled person would have considered using milk minerals, as these were known salting agents low in sodium and with off-taste masking properties, and had already been used in cheese manufacturing, as shown in documents D2, D3 and D10, which are described in the following.

1.25 D10 describes a method for manufacturing a ripened cheese having a low sodium content and/or a low fat content. Like the opposed patent, D10 acknowledges that a reduction in salt intake would be beneficial to prevent cardiovascular disease. However, it also states that reducing the salt content of cheese is challenging, since this is associated with a deterioration in taste and other organoleptic properties of the cheese. The method described in D10 aims at improving the organoleptic properties of cheese having a low sodium content and/or a low fat content by using milk minerals; see paragraphs [0001] to [0007], [0017] and [0018].

1.26 Paragraph [0022] states the following. "Surprisingly, it has now been detected that milk- and/or whey-based minerals and/or a biologically active peptide prevent the taste defects and off-tastes caused by reduction of at least table salt and/or fat in a ripened cheese and cheese-like product".

1.27 Therefore, D10 specifically teaches that reducing the salt or fat content of cheese can induce taste defects

and off-tastes, and that these defects can be remedied by using milk minerals. Moreover, D10 explains how to obtain the milk minerals and provides a nutritional breakdown which shows that they are rich in potassium (0.5% to 35% according to paragraph [0043]). The method for isolating the milk minerals and salt content, as described in paragraph [0043] and Example 2 of D10, are identical to the methods described in paragraphs [0016], [0018] and [0048] of the opposed patent.

1.28 What's more, D10 teaches that milk minerals can be used as a salting agent in both dry-salting and brine-salting methods (see paragraphs [0057], [0083] and [0085], claims 13 and 14 and Figures 2 and 3). Figure 2 focuses specifically on brine salting with milk minerals.

1.29 Hence, based on the teaching of D6, when faced with the underlying problem the skilled person would have been motivated by D10 to perform the brining and dry-salting steps using milk minerals, either in addition to, or as a partial or total replacement for, the salting agents used in D6.

1.30 The respondent argued that D10 would have led the skilled person to entirely replace the NaCl/KCl mixture of D6 with the mineral salts of D10. It pointed out that D10 described a cheese with a sodium content of at most 0.3%, which was below the claimed sodium content. Accordingly, by following the teaching of D10, the skilled person would have produced a cheese falling outside the scope of claim 1.

1.31 This argument is not convincing, however.

1.32 In the first place, as noted by the appellant, the beneficial effects of the milk minerals described in D10 are not tied to the low sodium aspect, let alone to a sodium content of below 0.3%. In fact, paragraphs [0022] and [0031] of D10 convey a broader teaching, stating that milk minerals reduce or prevent taste defects generally associated with a reduction of the table salt content (not necessarily leading to a sodium content of below 0.3%) and/or a reduction of the fat content (e.g. at most 30%). The cheeses with a low fat content described in D10 fall within the scope of the claimed invention, as shown in paragraph [0038] of the opposed patent.

1.33 Furthermore, when using milk minerals as salting agents in brining and dry-salting steps, the skilled person would have adjusted the salting conditions so as to achieve a salt concentration and a K/Na ratio close to those described in D6, as these had already been shown to result in a cheese with organoleptic properties virtually identical to those of the original cheese.

1.34 It is noted that the K/Na ratio of the salting agents and the NaCl content in the cheeses exemplified in D6 fall squarely within the ranges in claim 1, which are very broad. Consequently, by following the teaching of D6 and D10, the skilled person would have arrived at a method defined in claim 1 and would have obtained a cheese having the claimed NaCl content and K/Na ratio.

1.35 It is also noted that the milk minerals described in D10 are produced in the same manner as those described in the patent, and contain the other minerals, such as magnesium, calcium and phosphorous, which according to the respondent provide a "more favourable mineral composition" (see paragraph [0043]).

1.36 For these reasons, by following the teaching of D10 the skilled person would have arrived at the claimed method without requiring inventive effort.

1.37 The respondent submitted that D8 taught that brine salting was more complicated than dry salting, because, for example, calcium also had to be controlled. Thus, D8 taught against using milk minerals in a brine-salting step and against the claimed solution.

1.38 This argument is not persuasive. First, D6 already performs a brine-salting step to salt cheese. Furthermore, D8 teaches that the presence of calcium in brining solutions is important to prevent surface and rind defects. Since milk minerals contain calcium, D8 provides an additional incentive to employ them for brining. Furthermore, since claim 1 is not restricted to the use of milk minerals for brining, as set out above, the respondent's argument cannot be upheld in any case.

1.39 For these reasons, the claimed subject-matter lacks an inventive step over a combination of the teaching of D6, the closest prior art, with that of D10.

1.40 D2 and D3 provide further incentives to use milk minerals as salting agents in cheese manufacturing, and reinforce the finding set out above.

1.41 D2 describes the isolation of whey salts (i.e. milk minerals) as by-products of cheese manufacturing. The salts, isolated as a powder through ultrafiltration and concentrations steps, have a much higher potassium content than sodium content. According to D2, the whey salt can mask the bitter taste of potassium and can be

used as a natural mineral salt in many products, including cheese (see page 63, section entitled "Whey salt").

1.42 The respondent argued that D2 did not disclose the composition of the described milk minerals and that the use thereof for salting cheese was only speculative. However, claim 1 does not define the composition of the claimed milk minerals either. Moreover, the milk minerals of D2 are obtained from milk by nanofiltration and reverse osmosis steps, analogously to those described in the opposed patent. The use of these mineral salts for salting cheese is explicitly mentioned. Consequently, D2 provides a further incentive to use whey salts (i.e. milk minerals) to supplement or replace the salts used in the brining and dry-salting steps described in D6.

1.43 D3 describes the use of Lactosalt Optitaste, a product obtained by isolating milk minerals from milk, to replace the sodium. Furthermore, D3 contemplates its inclusion in cheese manufacturing and states that when using Lactosalt Optitaste to replace salt, "The sodium level falls, the taste improves" (see the graph on page 3 of D3). Moreover, there is a clear compatibility in supplementing or substituting at least some of the KCl in the recipes of D6 with Lactosalt Optitaste, because D3 also states that "your manufacturing process does not change".

1.44 Including at least some of the Lactosalt Optitaste product can be seen as a way to reduce the sodium content without inducing the KCl aftertaste mentioned in D6. Including the Lactosalt Optitaste as a salting agent and alternative to NaCl/KCl in the process of D6 would inherently involve a brining step.

1.45 The respondent argued that D3 did not mention the exact composition of Lactosalt Optitaste and that D4 and D5, which described this product, mentioned different sodium, potassium and calcium contents. Thus, D3 did not point to the claimed solution.

1.46 Yet this argument is not persuasive either. As shown in the calculations presented in points 3.19 to 3.22 of the appellant's statement setting out the grounds of appeal, any level of substitution of KCl with Lactosalt Optitaste would result in a salting agent as defined in claim 1, irrespective of whether the amounts of sodium and potassium in the Lactosalt Optitaste are those indicated in D4 or D5.

1.47 Consequently, like D2, D3 provides a further incentive to use milk minerals to supplement or replace the KCl used in the brining and dry-salting steps described in D6. It is therefore concluded that the claimed method does not involve an inventive step over the teaching of these prior-art documents.

Auxiliary request 1

1.48 Auxiliary request 1 requires that the cheese is ripened cheese. However, the cheeses disclosed in D6 and D10 were also ripened; see D6, page 64, right-hand column, lines 20 to 22, and D10, claim 13). Thus, the arguments set out above with respect to the main request also apply to auxiliary request 1.

Auxiliary request 2

1.49 Auxiliary request 2 narrows down the ratio of K/Na to 0.2 to 1.2. However, sample B of D6, which can be

considered the most suitable starting point, not least because it has a better flavour, contains K/Na in a ratio (0.4) which still falls squarely within the claimed narrowed range. Thus, the arguments set out above with respect to the main request also apply to auxiliary request 2.

Auxiliary request 3

1.50 Auxiliary request 3 defines specific method steps for isolating the milk minerals used as a salting agent. However, the claimed steps are the same as those of the process for forming the milk minerals described in paragraph [0039] of D10 and in Figures 1 and 2 of D8.

1.51 Accordingly, when confronted with the problem formulated above, the skilled person taking into account the teaching of D6 in combination with that of D2, D3, D8 or D10 would have arrived at the claimed solution without having to exercise any inventive skill.

Auxiliary request 4

1.52 Auxiliary request 4 specifies the amount of dry matter in the concentrate. However, amounts falling within this range are already disclosed in D10. Paragraph [0038] of D10 discloses a RO retentate containing approximately 40% dry matter, and paragraph [0039] discloses a process of producing an RO retentate having 20% of dry matter, and a method of preparing an RO retentate concentrate that contains approximately 35 to 40% dry matter.

1.53 Furthermore, there is no evidence of any technical benefit associated with providing the milk minerals

with such a dry matter content. This is an entirely arbitrary selection. Thus, the skilled person confronted with the underlying problem would have been motivated by the prior art to supplement a cheese with milk minerals, working within the claimed range, without requiring any inventive effort.

1.54 For these reasons, taking into account the arguments set out above with respect to the previous requests, the subject-matter of auxiliary request 4 does not involve an inventive step.

Auxiliary request 5

1.55 The wording "or a combination thereof" was deleted from claim 1 of auxiliary request 5.

1.56 D6 discloses methods involving brine salting and dry salting made of a mixture of NaCl and KCl. Supplementing the existing salting agents with milk minerals, or directly substituting some of the KCl with milk minerals, would involve salting with milk minerals and NaCl in at least one salting step.

1.57 Thus, the claimed subject-matter is obvious to the skilled person for the reasons set out above with respect to the previous requests.

Auxiliary request 6

1.58 As argued by the appellant, claim 1 does not specify for how long the salting step should be carried out when NaCl and milk minerals are used in combination. Thus, since the duration of a brining step performed with a mixture is not specified, the amendment in auxiliary request 6 does not further distinguish the

claimed subject-matter over D6 and the arguments set out above with respect to the previous requests also apply here.

1.59 Should the amended claim be considered to distinguish the invention over the two-day brining in D6, the selection of the broad ranges defining brine salting of 1 to 4 hours in milk minerals, and 4 to 8 hours in NaCl, would have to be considered arbitrary selections that are not associated with any technical effect. It is noted that the brining times are essentially meaningless without specifying the nature and size of the cheese to be brined, and the nature of the brine solution. This is confirmed by paragraph [0030] of the opposed patent. Furthermore, Example 2 of D10 describes brine salting in NaCl for 4 to 8 hours and in milk minerals for 1 to 4 hours. Thus, it would be obvious to employ a brining step meeting these criteria.

1.60 Thus, the claimed subject-matter does not involve an inventive step for the same reasons as those set out above with respect to the previous claim requests.

Auxiliary request 7

1.61 Auxiliary request 7 is a combination of the amendments in auxiliary requests 2 and 6. This request does not further distinguish the claimed subject-matter over D6.

1.62 Thus, the arguments set out above with respect to the previous requests also apply to auxiliary request 7.

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 M. Ansorge

Decision electronically authenticated