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**Datasheet for the decision
of 29 April 2026**

Case Number: T 1161/24 - 3.3.09

Application Number: 15819837.4

Publication Number: 3236784

IPC: A23L33/17, A23C9/15, A23J1/20,
A23C21/10, A23C21/08

Language of the proceedings: EN

Title of invention:
COMPOSITION COMPRISING A MIXTURE OF PROTEINS

Patent Proprietor:
Compagnie Gervais Danone

Opponent:
Fresenius Kabi Deutschland GmbH

Headword:
Composition comprising mixture of proteins/COMPAGNIE GERVAIS
DANONE

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Withdrawal of approval to the text of the patent - patent
revoked

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1161/24 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 29 April 2026

Appellant: Compagnie Gervais Danone
(Patent Proprietor) 17, Boulevard Haussmann
75009 Paris (FR)

Representative: Regimbeau
20, rue de Chazelles
75847 Paris Cedex 17 (FR)

Appellant: Fresenius Kabi Deutschland GmbH
(Opponent) Else-Kröner-Str. 1
61352 Bad Homburg (DE)

Representative: Fresenius Kabi Deutschland GmbH
Patent Department
Borkenberg 14
61440 Oberursel (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 9 July 2024
concerning maintenance of the European Patent
No. 3236784 in amended form.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. This decision concerns the appeals filed by the patent proprietor and the opponent against the opposition division's interlocutory decision holding the then second auxiliary request allowable.
- II. During the appeal proceedings the patent proprietor initially requested that the appeal be dismissed (main request). Auxiliary requests 1 to 51 were filed as fall-back positions.
- III. During the oral proceedings before the board, the patent proprietor withdrew its appeal and all of its claim requests and requested that the patent be revoked.
- 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 patent proprietor. This principle, according to which the text of the patent is at the disposition of the patent proprietor, has to be strictly observed also in opposition and opposition appeal proceedings.
2. The patent proprietor no longer approves the text of the patent as granted and as maintained in amended form and does not pursue the patent according to any auxiliary request. 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, 11th edition 2025, 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