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**Datasheet for the decision
of 9 April 2026**

Case Number: T 1185/24 - 3.3.02

Application Number: 11181073.5

Publication Number: 2402425

IPC: C12C5/00, C12H1/22, C12C11/00,
C12N9/62

Language of the proceedings: EN

Title of invention:
Improved brewing process

Patent Proprietor:
DSM IP Assets B.V.

Opponent:
International N&H Denmark ApS

Relevant legal provisions:
EPC Art. 76(1), 84, 123(2)
RPBA 2020 Art. 12(2), 12(4), 12(6)

Keyword:
primary object of appeal proceedings to review decision
Amendments - allowable (no)
Claims - clarity (no)

Decisions cited:

G 0003/14, T 0612/09



Beschwerdekammern

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Case Number: T 1185/24 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 9 April 2026

Appellant: DSM IP Assets B.V.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 10 July 2024
concerning maintenance of the European Patent
No. 2402425 in amended form.**

Composition of the Board:

Chairman M. O. Müller
Members: P. O'Sullivan
L. Bühler

Summary of Facts and Submissions

I. The appeals of both the patent proprietor (hereinafter: proprietor) and the opponent lie from the decision of the opposition division that European patent 2 402 425 (hereinafter: patent) in amended form, according to the set of claims of auxiliary request 6 submitted during oral proceedings, met the requirements of the EPC.

II. The patent was opposed under Article 100(a) (lack of novelty and inventive step), 100(b) and 100(c) EPC.

III. Requests relevant to the present decision

The proprietor (appellant) requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request, or alternatively on the basis of one of auxiliary requests 1 to 6, all submitted with the grounds of appeal.

The opponent (appellant) requested that the proprietor's appeal be dismissed and that the patent be revoked in its entirety.

The opponent also requested that the main request and auxiliary requests 1 to 4 submitted with the proprietor's statement of grounds of appeal not be admitted into appeal proceedings.

IV. For the relevant party submissions, reference is made to the reasons for the decision set out below.

Reasons for the Decision

1. Admissibility of the proprietor's appeal
 - 1.1 The opponent submitted that the proprietor's appeal was not admissible as it did not comply with Article 108, third sentence, EPC and Rule 99(2) EPC.
 - 1.2 During oral proceedings, the board decided that the proprietor's appeal was admissible. However, since the proprietor's appeal is not allowable for the reasons set out below, there is no need for the board to provide its reasons in this regard.

Admittance - Main request and auxiliary requests 1 to 4

2. Relevant procedural history
 - 2.1 With the reply to the notice of opposition, the proprietor filed auxiliary request 1, which differed from the claims as granted (main request) in the deletion of a dependent claim.
 - 2.2 In the annex to the summons dated 24 November 2023, the opposition division set out its preliminary opinion on the issues to be addressed at oral proceedings, and set 18 April 2024 as the final date for making written submissions and/or amendments under Rule 116 EPC.
 - 2.3 With letter dated 18 April 2024, the proprietor submitted auxiliary requests 2 to 25.
 - 2.4 During oral proceedings before the opposition division, the opposition division concluded that the (then) main request and auxiliary requests 1 to 4 were not

allowable. The (then) main request and auxiliary requests 1, 3 and 4 did not comply with Article 76(1) EPC, while (then) auxiliary request 2 did not comply with the requirements of Article 54 EPC.

- 2.5 Following a break requested by the proprietor, a new auxiliary request 5 was filed. The opposition division concluded that this request did not comply with Article 76(1) EPC.
- 2.6 Following a further break requested by the proprietor, auxiliary request 6 was filed. The opposition division concluded that auxiliary request 6 complied with the requirements of the EPC and that the patent could be maintained on the basis thereof. Auxiliary request 6 consequently formed the basis for the interlocutory decision.
- 2.7 With the statement of grounds of appeal, the proprietor filed a new main request and auxiliary requests 1 to 4.
3. Admittance - introduction

The opponent requested that the main request and auxiliary requests 1 to 4 not be admitted into the appeal proceedings essentially on the grounds that they were new on appeal and presented combinations of features that were not present in any of the claim requests filed in opposition proceedings.

It was not disputed by the proprietor that the main request and auxiliary requests 1 to 4 were first filed with the statement of grounds of appeal and were therefore not included amongst the requests submitted in opposition proceedings.

The proprietor requested that the main request and auxiliary requests 1 to 4 be admitted into the appeal proceedings. It essentially argued that the filing of these requests was justified by developments during the opposition proceedings and that their admittance would be consistent with procedural economy. It further argued that the main request and auxiliary requests 1 to 4 simplified the issues to be decided and reduced the number of claim requests compared with opposition proceedings, thereby contributing to procedural economy.

3.1 Admittance - main request

3.1.1 Claim 1 of the main request reads as follows:

*"Method for accelerating a beer brewing process comprising preparing a beer in the presence of a proline-specific protease, followed by a maturation phase and stabilisation phase, **and wherein PVPP is used**, wherein the stabilisation phase is performed on a beer cooled to a temperature of 3°C to 8°C, and wherein the stabilisation phase has a duration of less than 7 days."* (emphasis added by the board)

In the following, proline-specific protease, an enzyme, is abbreviated to "PSP". "PVPP" in claim 1 refers to polyvinylpolypyrrolidone.

3.1.2 Since the main request was first filed with the proprietor's statement of grounds of appeal, and thus was not pending at any time in opposition proceedings, it constitutes an amendment to the proprietor's appeal case within the meaning of Article 12(4) RPBA. Its admittance is therefore subject to the board's discretion.

- 3.1.3 According to Article 12(6), second sentence, RPBA, the board shall not admit requests which should have been submitted in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.
- 3.1.4 In applying these provisions, the decisive question is whether the proprietor was justified in filing the present main request for the first time on appeal, although it was not pending before the opposition division and therefore did not form part of the contested decision. In particular, it must be assessed whether the request amounts to a legitimate reaction to the reasons for the decision under appeal, or whether it instead seeks examination on appeal of a fresh claim formulation which could and should have been pursued before the opposition division.
- 3.1.5 The board is not convinced that the circumstances of the present case justify the admittance of the main request.
- 3.1.6 Claim 1 of the present main request differs from claim 1 of the main request underlying the contested decision (patent as granted) by the incorporation of the feature "wherein PVPP is used" from claim 6 of the patent as granted.
- 3.1.7 Claim 1 also differs from claim 1 of auxiliary request 6 found allowable by the opposition division. In particular, it no longer requires at least the following features:
- that the preparation comprises fermenting a wort in the presence of the proline-specific protease,

- that the stabilisation phase is reduced to the time required to cool the beer to the desired end temperature for filtration and/or packaging, and
- that the stabilisation phase starts when diacetyl levels have been reduced to less than 0.10 mg/l and ends when the beer is contacted with PVPP.

3.1.8 The board further notes that the feature "wherein PVPP is used" was already present in claim 1 of auxiliary request 6. Claim 1 of the present main request therefore does not merely add a feature that was absent from claim 1 of the main request considered by the opposition division. Rather, it represents an intermediate formulation obtained by selecting a feature contained in claim 1 of auxiliary request 6 found allowable by the opposition division, while discarding other limitations that formed part of this claim.

3.1.9 In this way, it seeks protection for subject-matter broader than that found allowable by the opposition division on the basis of a claim formulation that was not pursued before the opposition division.

3.1.10 The board does not see any circumstances in the present case which justify the filing of the present main request for the first time on appeal.

3.1.11 As set out in the relevant procedural history above, the proprietor was afforded multiple opportunities during the opposition proceedings to formulate and reformulate its case. Following receipt of the preliminary opinion of the opposition division and before expiry of the Rule 116 EPC time limit, the proprietor filed twenty-four new auxiliary requests. Subsequently, during the oral proceedings before the

opposition division, it filed new auxiliary requests 5 and 6, auxiliary request 6 ultimately forming the basis of the interlocutory decision.

- 3.1.12 The proprietor therefore had ample opportunity to pursue claim requests directed to subject-matter that it considered patentable. Nevertheless, the claim formulation now pursued in claim 1 of the main request was never submitted to the opposition division. It was for the proprietor to determine the claim requests on which it wished the opposition division to decide, and despite the opportunities available to it during the opposition proceedings, it chose not to pursue the present claim formulation.
- 3.1.13 Nor can the present main request be regarded as a reaction to the reasons underlying the contested decision. Such a reaction may be acceptable in a situation in which new matter was raised during oral proceedings before the opposition division or in the contested decision. This does not correspond to the present situation. Rather, in the present case, the opposition division concluded that the (then) main request did not comply with Article 76(1) EPC. Rather than addressing that objection, the proprietor filed the present main request, claim 1 of which was obtained by retaining selected features of auxiliary request 6, which had been found allowable by the opposition division, while omitting other limitations contained in that request. The present main request therefore represents a fresh intermediate claim formulation, rather than a response to the reasons for the contested decision.
- 3.1.14 Furthermore, as argued by the opponent, admittance of the main request would be incompatible with the primary

object of appeal proceedings as defined in Article 12(2) RPBA, namely to review the decision under appeal in a judicial manner. Rather, the present main request would require the board to examine, for the first time on appeal, a claim formulation which was not pursued before the opposition division.

- 3.1.15 Admitting the present main request would therefore require the board to assess, for the first time on appeal, the allowability of subject-matter that did not form part of the contested decision. This would shift the focus of the appeal proceedings away from a judicial review of the contested decision and towards the examination of a claim formulation on which the opposition division never took a decision.
- 3.1.16 The proprietor's further arguments in favour of admittance of the main request failed to convince the board.
- 3.1.17 The proprietor argued that only during the oral proceedings before the opposition division did it become apparent that the combination of PSP and PVPP "resulted in allowable subject-matter".
- 3.1.18 This argument is not convincing. As stated by the opponent, several of the 24 auxiliary requests filed with the letter of 18 April 2024 already contained limitations relating to the combination of PSP and PVPP. The possibility of pursuing claim requests incorporating this combination was therefore available to the proprietor before the oral proceedings before the opposition division.
- 3.1.19 Moreover, even if it were accepted that the importance of the combination of PSP and PVPP only became apparent

during oral proceedings, this would not justify the filing of the present main request for the first time on appeal. The proprietor was twice given the opportunity to react to developments during the oral proceedings and indeed did so by filing auxiliary requests 5 and 6. If the proprietor had considered that the combination of PSP and PVPP justified a different claim formulation, it could and should have pursued an appropriate request before the opposition division.

- 3.1.20 Finally, the proprietor's statement that it only emerged during oral proceedings before the opposition division that the combination of PSP and PVPP "resulted in allowable subject-matter" is inaccurate at best. It was not the specific combination of PSP and PVPP in a claim which was found allowable by the opposition division, but rather PSP and PVPP necessarily in combination with the additional features of claim 1 of auxiliary request 6 underlying the contested decision which, as set out above, are absent from claim 1 of the main request.
- 3.1.21 The proprietor further argued that admittance of the present main request would contribute to procedural economy. In particular, it submitted that the number of requests had been substantially reduced (to seven in total) compared with the number before the opposition division, and that the present main request simplified the issues to be decided.
- 3.1.22 The board disagrees. Procedural economy is not determined by the number of requests alone. Rather, it depends on the issues raised by the amended request/s. The present main request contains a claim formulation that was not pursued before the opposition division. Its admittance would therefore require examination, for

the first time on appeal, of issues that were not the subject of the contested decision, and in particular issues in relation to combinations of features which were not considered by the opposition division.

- 3.1.23 Finally, the proprietor argued that incorporation into claim 1 of the feature "wherein PVPP is used", taken from granted claim 6, simplified the case. In particular, it submitted that the amendment was straightforward and reduced the number of issues requiring discussion, for example in relation to novelty.
- 3.1.24 This argument is not convincing. There is no link between the fact that an amendment may be straightforward and the question of whether its admittance simplifies the appeal proceedings. Since the subject-matter of granted claim 6 was not examined by the opposition division and did not form part of the contested decision, incorporation of the feature "wherein PVPP is used" into claim 1 cannot be regarded as eliminating or simplifying issues previously under dispute before the opposition division. Rather, it results in a claim formulation that was not the subject of opposition proceedings and whose examination would therefore extend beyond the matters decided before the opposition division. The purpose of appeal proceedings is not to provide a party with successive opportunities to obtain examination of different claim formulations that could have been pursued before the opposition division.
- 3.1.25 For these reasons, the board exercises its discretion under Articles 12(4) and 12(6) RPBA not to admit the main request into the appeal proceedings.

3.2 Admittance - auxiliary request 1

3.2.1 Claim 1 of auxiliary request 1 reads as follows:

*"1. Method for accelerating a beer brewing process comprising preparing a beer in the presence of a proline-specific protease, wherein said preparation comprises fermenting a wort in the presence of the proline-specific protease, followed by a maturation phase and stabilisation phase, **and wherein PVPP is used**, wherein the stabilisation phase is performed on a beer cooled to a temperature of 3°C to 8°C, and wherein the stabilisation phase has a duration of less than 7 days."* (emphasis added by the board)

3.2.2 The board notes that, as stated by the proprietor, this claim differs from claim 1 of (then) auxiliary request 2 underlying the contested decision only in that it additionally contains the feature "wherein PVPP is used".

3.2.3 Accordingly, the same considerations as set out above in relation to the main request apply, namely that claim 1 of auxiliary request 1 represents an intermediate formulation obtained by adapting claim 1 of auxiliary request 2 considered by the opposition division by inserting a feature contained in claim 1 of auxiliary request 6 found allowable by the opposition division, while discarding other limitations that formed part of this claim. Consequently, the board exercises its discretion under Articles 12(4) and 12(6) RPBA not to admit auxiliary request 1 into the appeal proceedings.

3.3 Admittance - auxiliary request 2

3.3.1 Claim 1 of auxiliary request 2 reads as follows:

*"1. Method for accelerating a beer brewing process comprising preparing a beer in the presence of a proline-specific protease, wherein said preparation comprises fermenting a wort in the presence of the proline-specific protease, followed by a maturation phase and stabilisation phase, **and wherein PVPP is used**, wherein the stabilisation phase is performed on a beer cooled to a temperature of 3°C to 8°C, and wherein the stabilisation phase has a duration of less than 7 days, and wherein the stabilisation phase starts when diacetyl levels in the beer have been reduced to less than 0.10 mg/liter, measured according to EBC method 9.24.1 Vicinal Diketones in Beer: Spectrophotometric Method and ends when the beer is contacted with PVPP".*

3.3.2 As stated by the proprietor, compared to claim 1 of auxiliary request 1, claim 1 of auxiliary request 2 incorporates features defining the beginning and end of the stabilisation phase contained in auxiliary request 6 found allowable by the opposition division. However, a further feature of claim 1 of auxiliary request 6 is omitted, namely that the stabilisation phase has a duration which is reduced to the time required to cool the beer to the desired end temperature for filtration and/or packaging.

3.3.3 In the same way as set out above for claim 1 of auxiliary request 1, claim 1 of auxiliary request 2 therefore represents an intermediate claim formulation obtained by selecting certain features from auxiliary request 6 found allowable by the opposition division while discarding others. The resulting combination of

features was not pursued before the opposition division and was not the subject of the contested decision.

3.3.4 Accordingly, although the specific circumstances addressed above are not identical to those of the main request, the same principles apply. Consequently, for the same reasons as set out above in relation to the main request, auxiliary request 2 is not admitted into the appeal proceedings pursuant to Articles 12(4) and (6) RPBA.

3.4 Admittance - auxiliary request 3

3.4.1 Claim 1 of auxiliary request 3 reads as follows:

*"1. Method for accelerating a beer brewing process comprising preparing a beer in the presence of a proline-specific protease, wherein said preparation comprises fermenting a wort in the presence of the proline-specific protease, followed by a maturation phase and stabilisation phase, **and wherein PVPP is used**, wherein the stabilisation phase is defined as the period of cooling the beer from the temperature at the end of the maturation phase to a temperature of 3°C to 8°C and performing stabilisation on the beer which is cooled to 3°C to 8°C, and wherein the stabilisation phase has a duration of less than 7 days and ends when the beer is contacted with PVPP."*

3.4.2 The board notes that, as stated by the proprietor during the oral proceedings before the board, claim 1 of auxiliary request 3 is based on claim 1 of (then) auxiliary request 4 before the opposition division, with the addition of the feature "wherein PVPP is used". This latter feature was present in claim 1 of auxiliary request 6 found allowable by the opposition

division in combination with other features not present in claim 1 of auxiliary request 3, such as the definition of the start of the stabilisation phase as being when diacetyl levels have been reduced to less than 0.10 mg/liter.

3.4.3 Claim 1 of auxiliary request 3 therefore represents an intermediate formulation obtained by adapting claim 1 of auxiliary request 4 considered by the opposition division by inserting a feature contained in claim 1 of auxiliary request 6 found allowable by the opposition division, while discarding other limitations that formed part of this claim. Hence, the same procedural situation therefore arises as for the main request and auxiliary requests 1 and 2, and for the same reasons as set out above for those requests, the board sees no reason to admit auxiliary request 3 into the appeal proceedings under Articles 12(4) and 12(6) RPBA.

3.4.4 The board therefore exercises its discretion under Articles 12(4) and 12(6) RPBA not to admit auxiliary request 3 into the appeal proceedings.

3.5 Admittance - auxiliary request 4

3.5.1 Claim 1 of auxiliary request 4 reads as follows:

*"1. Method for accelerating a beer brewing process comprising preparing a beer in the presence of a proline-specific protease, wherein said preparation comprises fermenting a wort in the presence of the proline-specific protease, followed by a maturation phase and stabilisation phase, **and wherein PVPP is used**, wherein the stabilisation phase is defined as the period of cooling the beer from the temperature at the end of the maturation phase to a temperature of 3°C to*

8°C and performing stabilisation on the beer which is cooled to 3°C to 8°C, and wherein the stabilisation phase has a duration of less than 7 days and wherein the stabilisation phase begins when the maturation phase ends, and when diacetyl levels in the beer have been reduced to less than 0.10 mg/liter, measured according to EBC method 9.24.1 Vicinal Diketones in Beer:Spectrophotometric Method and ends when the beer is contacted with PVPP."

- 3.5.2 The proprietor submitted that claim 1 of auxiliary request 4 was a combination of claim 1 of auxiliary requests 9 and 15 as renumbered during oral proceedings before the opposition division.
- 3.5.3 The board notes, however, that claim 1 of auxiliary request 4 does not merely combine features of claim 1 of those requests. Whilst it incorporates features taken from claim 1 of auxiliary requests 9 and 15, and further retains only one of the three alternative definitions of the end of the stabilisation phase contained in auxiliary request 15, it additionally introduces the feature that the "preparation comprises fermenting a wort in the presence of the proline-specific protease", which was neither contained in claim 1 of auxiliary request 9 nor claim 1 of auxiliary request 15.
- 3.5.4 Claim 1 of auxiliary request 4 therefore represents a new claim formulation assembled from features originating from two different requests submitted before the opposition division, together with a further feature not contained in either of those requests. The resulting combination of features was never the subject of examination before the opposition division.

3.5.5 The board further notes that the proprietor has not identified any circumstances that could justify the admittance of a request comprising this claim formulation for the first time on appeal, including why this request was not already filed before the opposition division. Nor is any such justification apparent to the board. The board therefore sees no reason to admit auxiliary request 4 into the appeal proceedings under Articles 12(4) and 12(6) RPBA.

3.5.6 Accordingly, the board exercises its discretion under Articles 12(4) and 12(6) RPBA not to admit auxiliary request 4 into the appeal proceedings.

Auxiliary request 5 - added subject-matter - Articles 76(1) and 123(2) EPC

4. Auxiliary request 5 is identical to auxiliary request 5 underlying the decision under appeal. The opposition division found that claim 1 added subject-matter (contested decision, point 6.2).

4.1 Claim 1 of auxiliary request 5 reads as follows:

*"Method for the production of a beer **accelerating a beer brewing process comprising preparing a beer in the presence of a proline-specific protease, wherein said preparation comprises** ~~comprising~~ fermenting a wort in the presence of the proline-specific protease, followed by a maturation phase and stabilisation phase, **and wherein PVPP is used, wherein the stabilisation phase is performed on a beer cooled to a temperature of 3°C to 8°C, and wherein the stabilisation phase has a duration which is reduced to the time required to cool the beer to the desired end temperature for filtration and/or packaging and is ~~of~~ less than 7 days, and***

wherein the stabilisation phase ends when the beer is contacted with PVPP."

(emphasis added by the board; bold and strike through text denoting addition and deletion compared to claim 9 of the parent application as filed)

- 4.2 The patent is based on a divisional application of earlier European patent application No. 07730303.0, published as WO 2007/101888 A2.
- 4.3 For the purposes of Articles 76(1) and 123(2) EPC, both parties relied exclusively on the disclosure of the published parent application WO 2007/101888 A2. Accordingly, the board refers below solely to the disclosure of this document, hereinafter referred to as the parent application as filed. The conclusions in relation to Article 76(1) EPC therefore apply equally to Article 123(2) EPC.
- 4.4 The opponent submitted that the combination of features defined in claim 1 of auxiliary request 5 was not directly and unambiguously derivable from the parent application as filed.
- 4.5 As basis for claim 1 of auxiliary request 5, the proprietor started from claim 9 of the parent application as filed, which reads as follows:

"9. Method for the production of beer comprising fermenting a wort in the presence of a proline-specific protease followed by a maturation phase and stabilisation phase, wherein the stabilisation phase has a duration of less than 7 days." (emphasis added by the board)

- 4.6 Claim 1 of auxiliary request 5 is however not directed to a method for production of a beer, but to a "method for accelerating a beer brewing process".
- 4.7 It is self-evident that a "method for the production of a beer" in claim 9 of the parent application as filed is different from a "method for accelerating a beer brewing process" in that it does not include the concept of acceleration. Hence, as stated by the opponent, claim 9 of the parent application as filed cannot serve as basis for the method of claim 1 of auxiliary request 5.
- 4.8 As basis for amending claim 9 of the parent application as filed to a method of accelerating a beer brewing process recited in claim 1 of auxiliary request 5, the proprietor referred to claim 8, or alternatively, to page 4, lines 9 to 13 of the parent application as filed.
- 4.9 The board does not agree. Claim 8 of the parent application as filed reads as follows:
- "8. Method for accelerating a beer brewing process comprising preparing a beer in the presence of a proline-specific protease, **wherein the lagering period is shortened.**" (emphasis added by the board)
- 4.10 As argued by the opponent, this claim requires that "the lagering period is shortened". Since this feature is absent from claim 1 of auxiliary request 5, the incorporation in claim 9 of the parent application as filed of the method from claim 8 represents an unallowable intermediate generalisation which adds subject-matter.

4.11 Basis is also not provided by page 4, lines 9 to 13 of the parent application relied upon by the proprietor, which reads as follows:

"Accordingly, the invention also relates to a method for accelerating the beer brewing process comprising carrying out the process in the presence of a proline-specific protease. In such a process, the stabilisation phase may be shorter and/or carried out at a higher temperature as compared with conventional brewing processes."

4.12 This passage discloses a method for accelerating a beer brewing process in general terms. However, it contains no link to claim 9 of the parent application as filed. More specifically, the passage does not directly and unambiguously disclose that the method for accelerating a beer brewing process applies to the specific method for production of a beer defined in claim 9. Consequently, the above passage does not provide a direct and unambiguous basis for the combination of the features of claim 9 of the parent application with the method for accelerating a beer brewing process of claim 1 of auxiliary request 5 claimed.

4.13 Even if the proprietor's approach in relation to combining claim 9 of the parent application with claim 8 or the passage on page 4 quoted above were to be accepted, the subject-matter of claim 1 can only be arrived at by combining further features taken from different claims and embodiments of the parent application as filed, and from further intermediate generalisation of specific disclosures in the application as filed as set out below.

4.14 The further features referred to here are the remaining features of claim 1 of auxiliary request 5, i.e. those features which have not yet been addressed above and which the proprietor derived from further claims and passages of the description of the parent application as filed. For these features of claim 1 of auxiliary request 5, the proprietor relied on the following parts of the parent application as filed:

- page 5, lines 18 to 26 for the definition of the end of the stabilisation phase,
- page 4, lines 9 to 13 and page 6 lines 3 to 13 for the temperature of the stabilisation phase,
- claim 10 for the feature whereby the stabilisation phase has a duration which is reduced to the time required to cool the beer to the desired end temperature for filtration and/or packaging, and
- claim 14 for the feature "wherein PVPP is used".

4.15 First, the proprietor relied on page 5, lines 18 to 26 of the parent application as filed as a basis for the feature of claim 1 according to which "the stabilisation phase ends when the beer is contacted with PVPP". This passage reads as follows:

"In the context of the present invention the start of the stabilisation phase may be defined as the moment where diacetyl levels have been reduced to less than about 0.10 mg/liter if measured according to EBC method 9.24.1 Vicinal Diketones in Beer: Spectrophotometric Method. In the context of the present invention the end of the stabilisation period is defined as the moment where the beer is subjected to its final filtration

step, or in the event that a PVPP and/or silica gel treatment is part of the brewing process, once the beer is contacted with PVPP and/or silica gel. If the process is one in which no filtration is carried out, the end of the stabilisation period is defined as the point at which the beer is packaged."

- 4.16 As indicated in the board's communication pursuant to Article 15(1) RPBA in relation to auxiliary request 5, the cited passage discloses the end of the stabilisation phase required by claim 1 only in association with the definition of its start. More specifically, the stabilisation phase begins when the diacetyl level in the beer has been reduced to less than 0.10 mg/liter and ends when the beer is contacted with PVPP. Claim 1 incorporates only the definition of the end of the stabilisation phase while omitting the corresponding definition of its beginning. The board sees no direct and unambiguous disclosure in the parent application as filed that the end point of the stabilisation phase may be isolated from the associated definition of its beginning.
- 4.17 The board is not convinced by the proprietor's argument that these two disclosures about the start and end point of the stabilisation phase represent separate and independent embodiments. As stated by the opponent, the relevant passage does not disclose two unrelated features. Rather, it discloses the definition of a specific stabilisation phase. In that definition, the beginning of the stabilisation phase is identified as the point at which the diacetyl level has been reduced to less than 0.10 mg/liter, while the end of the stabilisation phase is identified as the point at which the beer is contacted with PVPP. The two disclosures

therefore jointly define the temporal boundaries of the same process step.

- 4.18 In the board's view, defining the end of a phase in isolation from its disclosed beginning changes the technical information provided to the skilled person. The parent application as filed does not directly and unambiguously disclose the end point of the stabilisation phase as the point at which the beer is contacted with PVPP as a stand-alone feature detached from the corresponding definition of the beginning of that phase. Rather, both features are disclosed together in the above-quoted passage as part of a single definition of the stabilisation phase.
- 4.19 This is particularly so in the present case because claim 1 additionally defines the stabilisation phase as having a duration which is reduced to the time required to cool the beer to the desired end temperature for filtration and/or packaging and is of less than 7 days. By defining the duration and end point of the stabilisation phase, claim 1 necessarily also implies a starting point for that phase. However, the passage on page 5 discloses, in association with the end point being when the beer is contacted with PVPP as required by claim 1, a specific starting point for that phase, namely that the diacetyl level in the beer has been reduced to less than 0.10 mg/liter. This starting point has been omitted from claim 1. Hence, claim 1 of auxiliary request 5 also represents an unallowable intermediate generalisation of the disclosure on page 5, lines 18 to 26 of the parent application as filed.
- 4.20 Second, in relation to the temperature range for the stabilisation phase recited in claim 1, the passage on page 4, lines 9 to 13 of the parent application as

filed (quoted above) sets out alternatives, namely that the stabilisation phase may be shorter, or carried out at a higher temperature as compared with conventional brewing processes. To the extent that the proprietor relied on this passage, the subject-matter of claim 1 therefore requires a selection from these disclosed alternatives.

4.21 Additionally, once the above alternative that the stabilisation is carried out at a higher temperature has been selected, as stated by the opponent, further selections are required from page 6, lines 3 to 13 of the parent application as filed in order to arrive at the feature of claim 1 that the stabilisation phase is performed on a beer cooled to a temperature of 3°C to 8°C. Specifically, the cited passage on page 6 of the parent application does not disclose such a range. Rather, the passage discloses a series of preferred temperatures, namely beer cooled "to at most about 2°C", more preferably "to at most about 3°C, 4°C, 5°C or 6°C" and even more preferably "to at most about 7°C or about 8°C". The claimed range of 3°C to 8°C is not disclosed as such. Rather, it is obtained only by selecting the values 3°C and 8°C from a group of disclosed temperatures to which the beer may be cooled and combining these selected values to create a new temperature range. Hence, to arrive at the claimed subject-matter, further selections are required from the disclosure of page 6.

4.22 In addition to the above issues, the claimed subject-matter requires the selection of the features that PVPP is used from claim 14 of the parent application as filed, as well and the feature relating to the duration of the stabilisation phase from claim 10 of the parent application as filed.

Hence, in addition to an intermediate generalisation from the disclosure of the parent application as filed on page 5, lines 18 to 26 as detailed above, further selections from the parent application are required in order to arrive at claim 1 of auxiliary request 5. As stated by the opponent, there are no pointers in the parent application to the combination of these features, and none was indicated by the proprietor in this regard.

- 4.23 Consequently, the subject-matter of claim 1 of auxiliary request 5 does not fulfil the requirements of Article 76(1) EPC. For the reasons set out above, the same conclusion applies to Article 123(2) EPC.

Auxiliary request 6 - clarity, Article 84 EPC

5. Auxiliary request 6 is identical to auxiliary request 6 on which the decision under appeal is based. The opposition division found auxiliary request 6 to meet the requirements of the EPC.

- 5.1 Claim 1 of auxiliary request 6 reads as follows:

"Method for accelerating a beer brewing process comprising preparing a beer in the presence of a proline-specific protease, wherein said preparation comprises fermenting a wort in the presence of the proline-specific protease, followed by a maturation phase and stabilisation phase, and wherein PVPP is used, wherein the stabilisation phase is performed on a beer cooled to a temperature of 3°C to 8°C, and wherein the stabilisation phase has a duration which is reduced to the time required to cool the beer to the desired end temperature for filtration and/or packaging and is

*of less than 7 days, and wherein the stabilisation phase **starts when diacetyl levels in the beer have been reduced to less than 0.10 mg/liter, measured according to EBC method 9.24.1 Vicinal Diketones in Beer:Spectrophotometric Method** and ends when the beer is contacted with PVPP."*

(emphasis added to denote the feature added to claim 1 not present in the granted claims)

5.2 The opponent argued that the amendments in claim 1 introduced a lack clarity *inter alia* in relation to the start of the stabilisation phase.

5.3 The board agrees. Specifically, the opponent argued that the start of the stabilisation phase was not clear due to essentially conflicting information in claim 1 as regards this point in the method. Specifically, claim 1 requires that the stabilisation phase:

- (i) is performed on a beer **cooled** to a temperature of 3°C to 8°C,
- (ii) has a duration which is reduced to the time required **to cool** the beer to the desired end temperature for filtration and/or packaging and is less than 7 days, and
- (iii) starts when the diacetyl levels in the beer have been reduced to less than 0.10 mg/L.

5.4 It is undisputed that the first two requirements (i) and (ii) above form part of granted claims 1 and 2. However the combination of the above three requirements was not part of the granted claims, and hence is open to objection under Article 84 EPC in view of G 3/14.

5.5 In this context, the proprietor requested in the written appeal proceedings that the opponent's clarity objection in relation to the requirement (iii) above, namely the feature defining the start of the stabilisation phase by reference to a diacetyl level of less than 0.10 mg/L, not be admitted into the appeal proceedings. The proprietor submitted that the features on which this objection was based were already part of the opposition proceedings before the Rule 116 EPC deadline, and referred in this regard to auxiliary request 15, originally submitted as auxiliary request 13. Therefore, the clarity objection could not be considered reactive to auxiliary request 6, which was submitted during oral proceedings before the opposition division.

5.6 The board does not agree. As set out in the communication pursuant to Article 15(1) RPBA, the opponent's objection of lack of clarity arises from the **combination** of requirement (iii) related to the diacetyl level *inter alia* with requirements (i) and (ii) defining the duration of the stabilisation phase as being reduced to the time required to cool the beer to the desired end temperature for filtration and/or packaging - see opponent's statement of grounds of appeal, pages 20 and 21, point 6.2. Since this combination was not present in auxiliary request 15 cited by the proprietor and auxiliary request 6 was filed only during the oral proceedings before the opposition division, the board considers the opponent's objection to represent a timely reaction thereto, and therefore takes it into account. During oral proceedings, when given the floor to address clarity in relation to this request, the proprietor did not address the admittance issue raised in writing.

- 5.7 As set out above, claim 1 contains three different requirements (i), (ii) and (iii) as regards when the stabilisation phase takes place. Requirement (i) indicates that stabilisation occurs after cooling ("on a beer cooled"). Requirement (ii) indicates that stabilisation occurs during cooling ("reduced to the time required to cool the beer") and therefore starts when cooling begins. Requirement (iii), depending on the evolution of diacetyl levels over time, implies or at least covers a starting point for the stabilisation phase which is different from that of requirements (i) and (ii). For instance, as argued by the opponent, a diacetyl level of 0.10 mg/liter, the starting point for stabilisation according to requirement (iii), is achieved during maturation (page 4, lines 20-21 of patent), i.e. before the beer is cooled.
- 5.8 Hence even disregarding the ambiguity created by the requirements (i) and (ii) set out above, at the latest in view of requirement (iii), the claim is unclear as regards the definition of when the stabilisation phase occurs.
- 5.9 During oral proceedings before the board, the proprietor submitted that requirement (i), that the stabilisation phase "performed on a beer **cooled** to a temperature of 3°C to 8°C", should rather be understood as meaning that the stabilisation phase starts at the point in time when cooling is started.
- 5.10 The board does not accept this interpretation, as it is at odds with the explicit wording of requirement (i) itself, which specifies that beer on which stabilisation is performed has already been cooled to the given temperature range, i.e. stabilisation does not start before that temperature range is reached and

that stabilisation starts when a certain diacetyl level is reached, which might be the case neither at the point in time when cooling is started (as argued by the proprietor) nor after cooling. Further, as noted by the opponent, the proprietor's statement at oral proceedings is itself inconsistent with its earlier statement in written proceedings that this feature imposes the limitation that the temperature of the beer throughout the stabilisation phase is in the range of 3°C to 8°C (proprietor's reply to the grounds of appeal, point 5.30), which implies that stabilisation occurs after cooling.

Hence, at least for these reasons, the amendments in claim 1 introduce a lack clarity pursuant to Article 84 EPC.

6. Since none of the proprietor's claim requests is both admitted and allowable, the patent is to be revoked.

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:



U. Bultmann

M. O. Müller

Decision electronically authenticated