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Datasheet for the decision of 4 September 2026

Case Number: T 0709/25 - 3.3.09

Application Number: 20730042.7

Publication Number: 3883393

IPC: A23L33/10, A23L33/12, A23L33/21, A23L33/00, A61K31/19, A61K31/702, A23C9/20, A61P3/02

Language of the proceedings: EN

Title of invention:

NUTRITIONAL COMPOSITION COMPRISING 2'FUCOSYLLACTOSE AND DIETARY BUTYRATE

Patent Proprietor:

N.V. Nutricia

Opponents:

FrieslandCampina Nederland B.V.
ABBOTT LABORATORIES
Société des Produits Nestlé S.A.
Reckitt Benckiser Health Limited

Headword:

Composition comprising 2'fucosyllactose and dietary butyrate/ NUTRICIA

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It can be changed at any time and without notice

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
Basis of decision - text or agreement to text withdrawn by patent proprietor - patent revoked

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Boards of Appeal

Chambres de recours

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Case Number: T 0709/25 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 4 September 2026

Appellant: (Opponent 1)	FrieslandCampina Nederland B.V. Stationsplein 4 3818 LE Amersfoort (NL)
Representative:	FrieslandCampina IP Department Bronland 20 6708 WH Wageningen (NL)
Appellant: (Opponent 3)	Société des Produits Nestlé S.A. Entre-deux-Villes 1800 Vevey (CH)
Representative:	Strych, Sebastian Mitscherlich PartmbB Karlstraße 7 80333 München (DE)
Respondent: (Patent Proprietor)	N.V. Nutricia Eerste Stationsstraat 186 2712 HM Zoetermeer (NL)
Representative:	Nederlandsch Octrooibureau P.O. Box 29720 2502 LS The Hague (NL)
Party as of right: (Opponent 2)	ABBOTT LABORATORIES 100 Abbott Park Road Abbott Park IL 60064 (US)
Representative:	Boult Wade Tennant LLP Salisbury Square House 8 Salisbury Square London EC4Y 8AP (GB)
Party as of right:	Reckitt Benckiser Health Limited 103-105 Bath Road

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Legal Department - Patents Group
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Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted/ electronically transmitted on 14 April 2025 concerning maintenance of the European Patent No. 3883393 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: F. Rinaldi
G. Decker

Summary of Facts and Submissions

I. This decision concerns the appeals filed by opponents 1 and 3 against the opposition division's interlocutory decision that the European patent as amended met the requirements of the EPC.

II. With their respective statement setting out the grounds of appeal, opponents 1 and 3 requested that the decision under appeal be set aside and that the patent be revoked.

III. By letter dated 3 September 2026, the patent proprietor stated that it no longer approved the text of the patent as granted, that it withdrew all requests on file, including all auxiliary claim requests, and that according to its understanding the appeal proceedings would be terminated and 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 proprietor of the patent. This principle, according to which the text of the patent is at the disposition of the proprietor, has to be strictly observed also in opposition and opposition appeal proceedings.

2. The patent proprietor clearly and unambiguously declared that it no longer approved the text of the

patent as granted and that it withdrew the auxiliary claim requests on file. Hence, there is no text of the patent on which the board can base its consideration of the appeals filed by opponents 1 and 3. Therefore, the patent has to be revoked (Case Law of the Boards of Appeal, 11th edition, 2026 revision, IV.D.2, third paragraph, and III.B.3.3, first paragraph).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

K. Götz-Wein A. Haderlein

Decision electronically authenticated