

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Internal distribution code:

(A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [X] To Chairmen

D E C I S I O N
of 27 February 1998

Case Number: T 0195/94 - 3.3.4

Application Number: 86400545.9

Publication Number: 0195715

IPC: C12C 5/02

Language of the proceedings: EN

Title of invention:

Unsweetened malt beverages with improved flavor and method of making same

Patentee:

The Stroh Brewery Company

Opponent:

Vitamalz GmbH & Co.

Headword:

-

Relevant legal provisions:

EPC Art. 106(2)
EPC R. 60(1), 66(1)

Keyword:

"National patents lapsed in all Designated States"
"Termination of appeal proceedings"

Decisions cited:

G 0001/90

Catchword:

-



Case Number: T 0195/94 - 3.3.4

D E C I S I O N
of the Technical Board of Appeal 3.3.4
of 27 February 1998

Appellant:
(Opponent) Vitamalz GmbH & Co.
Hoher Wall 5-7
4600 Dortmund 1 (DE)

Representative: Lins, Edgar, Dipl.-Phys. Dr.jur.
Gramm, Lins & Partner
Theodor-Heuss-Strasse 1
38122 Braunschweig (DE)

Respondent:
(Proprietor of the patent) The Stroh Brewery Company
100 River Place
Detroit
Michigan 48207 (US)

Representative: Bernasconi, Jean
c/o Cabinet Lavoix
2, Place d'Estienne d'Orves
75441 Paris Cédex (FR)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 17 January 1994
rejecting the opposition filed against European
patent No. 0 195 715 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairwoman: U. M. Kinkeldey
Members: F. L. Davison-Brunel
J.-C. Saisset

Summary of Facts and Submissions

- I. The Appellant Vitamalz GmbH & Co. lodged an appeal against the decision of the Opposition Division dated 17 January 1994 rejecting the opposition filed against the European patent No. 0 195 715.
- II. In a letter dated 19 November 1997, received on 24 November 1997, the Respondent (Proprietor) submitted "that the patent has lapsed failing to pay the national annual fees in the designated countries" and that the appeal file definitely had to be closed.
- III. In a communication dated 10 December 1997, the Board notified the parties to the proceedings, of the expiration of the national patents and stated that the appeal proceedings would be terminated in accordance with the provisions of Rule 60(1) EPC unless a request to continue the proceedings was filed within two months.
- IV. By a letter dated 15 December 1997, the only remaining opponent stated his agreement to the termination of the appeal proceedings.

Reasons for the Decision

Pursuant to Rule 60(1) EPC in conjunction with Rule 66(1) EPC, proceedings are not continued after the European patent has lapsed by non-payment of the renewal fees unless at the request of an opponent filed within two months as from the notification by the European Patent Office of the lapse.

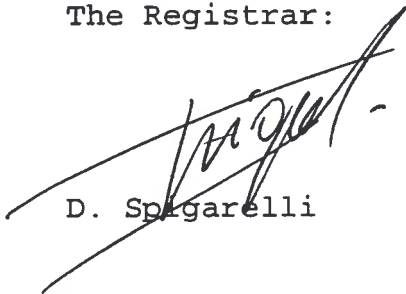
As in the present case, the parties are no more interested in the proceedings, these are terminated ("special case" of termination of opposition proceedings referred to in G 1/90, OJ EPO 1991, 275 to 279, Reasons, 7).

Order

For these reasons it is decided that:

The appeal proceedings are terminated

The Registrar:

A handwritten signature in black ink, appearing to read 'D. Spigarelli', is written over the printed name. The signature is somewhat stylized and includes a horizontal line that extends to the left.

D. Spigarelli

The Chairwoman:

A handwritten signature in black ink, appearing to read 'U. Kinkeldey', is written in a cursive style.

U. Kinkeldey