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**D E C I S I O N**  
**of 29 June 1999**

**Case Number:** T 0269/94 - 3.3.4

**Application Number:** 88201753.6

**Publication Number:** 0304131

**IPC:** A23D 7/00

**Language of the proceedings:** EN

**Title of invention:**

Edible fat-containing product and process for preparing same

**Patentee:**

UNILEVER N.V., et al.

**Opponent:**

The Procter & Gamble Company

**Headword:**

Revocation at the instigation of the patent proprietor/UNILEVER

**Relevant legal provisions:**

EPC Art. 113(2), 102

**Keyword:**

"Revocation with agreement of patent proprietor"

**Decisions cited:**

T 0073/84

**Catchword:**



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Boards of Appeal

Chambres de recours

**Case Number:** T 0269/94 - 3.3.4

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.4**  
**of 29 June 1999**

**Appellant:** The Procter & Gamble Company  
(Opponent) One Procter & Gamble Plaza  
Cincinnati, Ohio 45202 (US)

**Representative:** De Minvielle-Devaux, Ian Benedict Peter  
CARPMAELS & RANSFORD  
43, Bloomsbury Square  
London WC1A 2RA (GB)

**Respondent:** UNILEVER N.V. et al.  
(Proprietor of the patent) Weena 455  
NL-3013 AL Rotterdam (NL)

**Representative:** Mulder, Cornelis Willem Reinier, Dr.  
UNILEVER N.V.  
Patent Division  
P.O. Box 137  
NL-3130 AC Vlaardingen (NL)

**Decision under appeal:** Interlocutory decision of the Opposition Division  
of the European Patent Office posted  
9 February 1994 concerning maintenance of  
European patent No. 0 304 131 in amended form.

**Composition of the Board:**

**Chairwoman:** U. M. Kinkeldey  
**Members:** D. D. Harkness  
W. Moser

## Summary of Facts and Submissions

- I. In a decision dated 9 February 1994 the Opposition Division maintained European patent NO. 0 304 131 in amended form.
- II. The appellant (opponent) filed a notice of appeal against this interlocutory decision, paid the appeal fee and filed a statement of grounds.
- III. The respondent (patent proprietor) responded to the appeal.
- IV. After further correspondence the parties were invited to attend oral proceedings on 2 December 1998. The appellant was present, however, the respondent indicated in a letter dated 20 November 1998 that he would not attend the oral proceedings and did not do so.
- V. At oral proceedings it was decided to continue the appeal in writing.
- VI. The Board issued a communication stating that the scope of claim 1 on file (second auxiliary request before the Opposition Division) was broader than the scope of claim 9 as maintained by the Opposition Division and that, consequently, the request of the respondent, ie. a non-appealing party, went beyond the appeal requests of the appellant pursuant to Rule 64(b) EPC.
- VII. In a letter filed on 21 June 1999 the respondent informed the Board that in her opinion the claims as filed by her on 23 February 1999 in response to the

Board's communication, did not meet the requirements of the European Patent Convention and that she would not file new claims which could be considered to be suitable for patenting.

### **Reasons for the Decision**

1. The appeal is admissible.
2. If the opponent is the appellant and the patent proprietor makes it clear that he or she no longer approves the text of the patent in suit and will not be submitting an amended text, the appeal proceedings are terminated by a decision ordering revocation of the patent, without going into the substantive issues. This is supported by Article 113(2) EPC, which provides that a patent may be maintained only in a version approved by the patent proprietor. If there is no such version, one of the substantive requirements for maintaining the patent is lacking (cf. T 73/84 [OJ EPO 1985, 241]).
3. The opinion expressed by the respondent that the claims filed on 23 February 1999 did not meet the requirements of the EPC is, in the board's judgement, tantamount to her disapproval of the text of the claims and, hence, of the patent in suit. Indeed, the respondent cannot possibly intend to request maintenance of the patent in suit on the basis of claims she does not consider allowable. Since, on the other hand, the respondent informed the board that she will not be submitting new claims, there is no longer a version in which the patent in suit may be maintained. Consequently, the patent in suit is to be revoked (cf. point 2 above).

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:

U. Bultmann

U. Kinkeldey