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D E C I S I O N
of 30 January 1995

Case Number: T 0621/94 - 3.2.4

Application Number: 88311235.1

Publication Number: 0319221

IPC: A21C 3/06

Language of the proceedings: EN

Title of invention:
Dough product

Applicant:
UNILEVER PLC, et al

Opponent:
-

Headword:
Dough product/UNILEVER

Relevant legal provisions:
EPC Art. 123(2), 84

Keyword:
-

Decisions cited:
-

Catchword:



Case Number: T 0621/94 - 3.2.4

DECISION
of the Technical Board of Appeal 3.2.4
of 30 January 1995

Appellant:

UNILEVER PLC
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Representative:

Roscoe, Brian Corrie
UNILEVER PLC
Patents Division
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Decision under appeal:

Decision of the Examining Division of the European Patent Office dispatched on 8 May 1992 and refusing European patent application No. 88 311 235.1 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
J. P. B. Seitz

Summary of Facts and Submissions

I. The European patent application No. 88 311 235.1, filed on 28 November 1988, was refused by a decision of the Examining Division dispatched on 8 May 1992.

The reason the Examining Division gave for the refusal was that the subject-matter of Claim 1 filed with the letter of 24 April 1991 did not involve an inventive step within the meaning of Article 56 EPC.

II. On 3 July 1992 the Appellant (Applicant) lodged an appeal against this decision and simultaneously paid the appeal fee. A Statement setting out the Grounds of Appeal was received on 16 September 1992.

III. The Appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the following documents:

Claims: Nos. 1 to 4 as filed with the Statement of Grounds;

Description: Pages 2 and 2a, as filed with letter of 24 April 1991; pages 1, 3 to 11, as originally filed;

Drawings: Sheets 1/2 and 2/2 (Figures 1 to 4), as originally filed.

The present Claim 1 reads as follows:

"1. Method for preparing a dough product comprising the steps of:

- (a) preparing a farinaceous dough;
- (b) forming one or more sheets of said dough into a layered body;

- (c) slicing the layered body in a direction transverse to the layers; and
- (d) pressing the formed slice characterised in that the pressing forces are such that the thickness of the slice is decreased to such extent that the upper surface area of the slice is increased by a factor 1.5 to 10 but the layers therein are kept separately discernible."

IV. In a communication dated 22 November 1994 the Board informed the Appellant that Claim 1 contained information not derivable from the application as originally filed (Article 123(2) EPC) as well as an unclear term (Article 84 EPC) and that his request was likely to be rejected.

V. The Appellant - although duly summoned - did not appear at the oral proceedings which took place on 31 January 1995. Neither did the Appellant reply to the communication dated 22 November 1994.

Reasons for the Decision

1. The appeal is admissible.
2. The feature in Claim 1 according to which the layers are kept separately discernible is not explicitly mentioned in the original application. According to Claim 1 this feature has a relationship to the range (1.5 to 10) of area increase defined in Claim 1. In other words, Claim 1 contains the information that the layers are kept separately discernible for all values of the factor of area increase.

In the communication dated 22 November 1994 the Board informed the Appellant that this information cannot be derived - either explicitly or implicitly - from the original application (Article 123 (2) EPC).

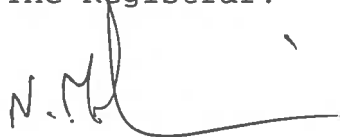
- 2.2 Moreover, in the same communication the Board informed the Appellant that the term "discernible" was not clear (Article 84 EPC) in the absence of an indication as to whether the layers must be perceived by the consumer as separated or whether their separation must be detected by a test.
3. The Board does not see any reason to change its preliminary opinion expressed in the communication dated 22 November 1994, especially in view of the absence of any arguments of the Appellant replying to the objections raised by the Board with this communication.
4. Therefore, the request of the Appellant that a patent be granted has to be rejected because Claim 1 infringes Article 123 (2) EPC and does not comply with Article 84 EPC.

Order

For these reasons it is decided that:

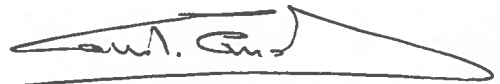
The appeal is dismissed.

The Registrar:



N. Maslin

The Chairman:



C. Andries

