DECISION
of 14 September 2001

Case Number: T 0758/01 - 3.3.2

Application Number: 94200204.9

Publication Number: 0664959

IPC: A23G 1/00

Language of the proceedings: EN

Title of invention:
Edible fat-containing composition in a substantially solid form for use in a non-frozen aqueous environment

Patentee:
CAMPINA MELKUNIE B.V.

Opponent:
Franz ZENTIS GmbH & Co
Société des Produits Nestlé S.A., Vevey
COMPAGNIE GERVAIS DANONE
Friesland Coberco Dairy Foods B.V.

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Revocation of the European patent as consequence of the patentee's statement stating: "The patentee ... no longer approves the text which was granted"

Decisions cited:
T 0073/84
Catchword:
-
Case Number: T 0758/01 - 3.3.2

DECISION
of the Technical Board of Appeal 3.3.2
of 14 September 2001

Other party: Franz ZENTIS GmbH & Co
(Opponent) Jülicher Strasse 177
DE-52070 Aachen (DE)

Representative: Bauer, Dirk, Dipl.-Ing. Dipl.-Kfm.
Bauer & Bauer Patentanwälte
Am Keilbusch 4
DE-52080 Aachen (DE)

Appellant: Société des Produits Nestlé S.A., Vevey
(Opponent) Service des Brevets
Case postale 353
CH-1800 Vevey (CH)

Representative: Andrae, Steffen, Dr.
Andrae Flach Haug
Balanstrasse 55
DE-81541 München (DE)

Appellant: COMPAGNIE GERVAIS DANONE
(Opponent) 126-130, rue Jules Guesde
FR-92302 Levallois Perret (FR)

Representative: Warcoin, Jacques
Cabinet Régimbeau
20, rue de Chazelles
FR-75847 Paris cedex 17 (FR)

Appellant: Friesland Coberco Dairy Foods B.V.
(Opponent) P.O. Box 124
NL-7940 AC Meppel (NL)

Representative: Jorritsma, Ruurd
Nederlandsch Octrooibureau
Scheveningseweg 82
NL-2517 KZ Den Haag (NL)
Respondent: CAMPINA MELKUNIE B.V.
(Proprietor of the patent) De Bleek 1
NL-3447 GV Woerden (NL)

Representative: Smulders, Theodorus A.H.J., Ir.
Vereenigde
Postbus 87930
NL-2508 DH Den Haag (NL)

Decision under appeal: Decision of the Opposition Division of the European Patent Office posted 9 May 2001 rejecting the opposition filed against European patent No. 0 664 959 pursuant to Article 102(2) EPC.

Composition of the Board:
Chairman: P. A. M. Lançon
Members: J. Riolo
S. U. Hoffmann
U. Oswald
C. Rennie-Smith
Summary of Facts and Submissions

I. In a decision given on 15 February 2001, with written reasons posted on 9 May 2001, the Opposition Division rejected the opposition filed against European patent No. 0 664 959 granted upon the subject-matter of European patent application No. 94 200 204.9.

II. On 5, 6 and 9 July 2001 the Appellants (Opponents 02, 03, and 04) respectively filed Notices of Appeal against this decision and each paid the appropriate fee on the same dates.

III. In a facsimile dated 23 July 2001 the representative of the Respondent (Proprietor of the patent) stated "The patentee ... no longer approves the text which was granted".

Reasons for the Decision

1. The Respondent made it clear through its representative that it no longer approves the text in which the patent was granted without submitting an amended text on which further prosecution of the appeal could be based. Therefore the patent must be revoked (Article 113(2) EPC; see also Decision T 73/84, OJ EPO 1985, 241).
Order

For these reasons it is decided that:

1. The decision of the Opposition Division is set aside.

2. The patent is revoked.

The Registrar:    The Chairman:

A. Townend       P. A. M. Lançon