Datasheet for the decision of 9 January 2009

Case Number: T 1136/07 - 3.3.09
Application Number: 02250320.5
Publication Number: 1226759
IPC: A23C 9/15
Language of the proceedings: EN
Title of invention:
Method for preparing solid milk product
Applicant:
Kraft Foods Global Brands LLC
Opponent:
-
Headword:
-
Relevant legal provisions:
EPC Art. 54, 56
Relevant legal provisions (EPC 1973):
-
Keyword:
"Process Claims: Novelty, inventive step (yes)"
Decisions cited:
-
Catchword:
-
Case Number: T 1136/07 - 3.3.09

DECISION
of the Technical Board of Appeal 3.3.09
of 9 January 2009

Appellant: Kraft Foods Global Brands LLC
Three Lakes Drive
Northfield, Illinois 60093 (US)

Representative: Smaggasgale, Gillian Helen
W.P. Thompson & Co,
55 Drury Lane
London WC2B 5SQ (GB)

Decision under appeal: Decision of the Examining Division of the European Patent Office orally announced 18 January 2007 and posted 6 February 2007 refusing European application No. 02250320.5 pursuant to Article 97(1) EPC.

Composition of the Board:
Chairman: P. Kitzmantel
Members: W. Ehrenreich
W. Sekretaruk
Summary of Facts and Submissions


The decision was based on a set of Claims 1 to 19 according to the main request, a set of Claims 1 to 19 according to auxiliary request 1 and a set of Claims 1 to 18 according to auxiliary request 2. All sets of claims included identical process Claims 1 to 12, which were directed to a method for preparing a solid milk product, and subsequent product claims comprising an independent product Claim 13 directed to a solid milk product differently characterised in each of the requests.

II. In its decision the Examining Division acknowledged novelty and inventive step of the process claimed in Claims 1 to 12 according to the main, first and second auxiliary requests but considered the product of Claims 13 of all requests to be unclear, contrary to the provisions of Article 84 EPC.

III. On 10 April 2007 the Applicant (hereinafter: the Appellant) filed an appeal against the decision of the Examining Division. The Statement of the Grounds of Appeal was submitted on 15 June 2007. A corrected page 6 of the appeal grounds was filed with the letter dated 18 June 2007.
With its letter dated 2 January 2009 the Appellant filed four new sets of claims as bases for a main request and auxiliary requests 1 to 3. The main, first and second auxiliary requests essentially corresponded to the respective requests submitted during the examination proceedings including identical process Claims 1 to 12, an independent product Claim 13 and subsequent dependent product claims. The set of claims according to the third auxiliary request consisted only of the process Claims 1 to 12.

IV. In the oral proceedings, held on 9 January 2009, the issue of lack of clarity of the product claims according to the main request and auxiliary requests 1 and 2 was discussed. In the course of the discussion, the Board informed the Appellant that these requests were not allowable because of lack of clarity of the product claims. Thereafter, the Appellant withdrew the main request and the auxiliary requests 1 and 2 and requested that the decision under appeal be set aside and that a patent be granted on the basis of auxiliary request 3 filed on 2 January 2009.

Reasons for the Decision

1. The appeal is admissible.

2. The Board concurs with the view of the Examining Division taken in the appealed decision that the process claimed in Claims 1 to 12 according to the
third request is novel over the cited documents and is also non-obvious over the disclosure therein; the main reason being that these citations neither disclose nor suggest the manufacture of a solid milk product as claimed by the specified high shear treatment at the specified temperature conditions.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the Examining Division with the order to grant a European patent on the basis of Claims 1 to 12 filed as auxiliary request 3 on 2 January 2009, after any necessary consequential amendments of the description.

The Registrar

The Chairman

C. Moser

P. Kitzmantel