Datasheet for the decision
of 4 November 2013

Case Number: T 1413/11 - 3.3.09
Application Number: 03255095.6
Publication Number: 1400176
Language of the proceedings: EN
Title of invention:
Frozen aerated products
Patent Proprietor:
Unilever PLC
Unilever N.V.
Opponent:
NESTEC S.A.
Headword:
-
Relevant legal provisions:
EPC Art. 113(2)
Keyword:
"No text agreed by the patentee - revocation of the patent"
Decisions cited:
T 0601/98
Catchword:
-
Case Number: T 1413/11 - 3.3.09

DECISION
of the Technical Board of Appeal 3.3.09
of 4 November 2013

Appellant: NESTEC S.A.
(Accessor)
Avenue Nestlé 55
CH-1800 Vevey (CH)

Representative: Rupp, Christian
Mitscherlich & Partner
Patent- und Rechtsanwälte
Postfach 33 06 09
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Respondent: Unilever PLC
(Patent Proprietor 1)
Unilever House
Blackfriars
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Respondent: Unilever N.V.
(Patent Proprietor 2)
Weena 455
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Representative: Hugot, Alain
Unilever Patent Group
Colworth House
Sharnbrook, Bedford, MK44 1LQ (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
5 April 2011 concerning maintenance of European
patent No. 1400176 in amended form.

Composition of the Board:
Chairman: W. Sieber
Members: J. Jardón Álvarez
K. Garnett
Summary of Facts and Submissions

I. In its interlocutory decision posted on 5 April 2011, the opposition division decided that the European patent No. 1 400 176 could be maintained in amended form according to Article 101(3)(a) EPC.

II. The opponent, Nestec S.A., lodged an appeal against this decision on 7 June 2011 and paid the appeal fee on the same day. The statement of grounds of appeal was filed on 11 August 2011.

III. In a letter dated 11 October 2013 the joint patent proprietors, Unilever PLC and Unilever N.V., informed the board that:
"we no longer wish to maintain European Patent 1 400 176 and hereby withdraw our request that the Appeal be withdrawn".

In a further letter dated 29 October 2013 the patent proprietors clarified that:
"the patent proprietor no longer approves of the text of the patent as granted by the Opposition Division..."

Reasons for the Decision

1. The appeal is admissible.

2. Article 113(2) EPC requires that the EPO may decide upon the European patent only in the text submitted to it, or agreed by the proprietor of the patent. Agreement cannot be held to be given if the proprietor, without submitting an amended text, expressly states
that he no longer approves the text of the patent as granted or previously amended. In such a situation a substantive requirements for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (see, for instance T 601/98).

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The Registrar: The Chairman:

M. Cañueto Carbajo W. Sieber