

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 10 September 2024**

Case Number: T 1765/22 - 3.3.09

Application Number: 16205569.3

Publication Number: 3175719

IPC: A23L33/10, A23L33/17, A23L33/00

Language of the proceedings: EN

Title of invention:
A NUTRITIONAL COMPOSITION

Patent Proprietor:
Semper AB

Opponents:
Société des Produits Nestlé S.A.
FrieslandCampina Nederland B.V.
Arla Foods amba
N.V. Nutricia

Headword:
Nutritional composition/HERO

Relevant legal provisions:
EPC Art. 113(2)

Keyword:

Basis of decision - text submitted or agreed by patent proprietor (no) - revocation of the patent at request of the patent proprietor

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1765/22 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 10 September 2024

Appellant: Société des Produits Nestlé S.A.
(Opponent 1) Entre-deux-Villes
1800 Vevey (CH)

Representative: Rupp, Christian
Mitscherlich PartmbB
Patent- und Rechtsanwälte
Karlstraße 7
80333 München (DE)

Appellant: FrieslandCampina Nederland B.V.
(Opponent 2) Stationsplein 4
3818 LE Amersfoort (NL)

Representative: FrieslandCampina IP Department
Bronland 20
6708 WH Wageningen (NL)

Appellant: Arla Foods amba
(Opponent 3) Sønderhøj 14
8260 Viby J (DK)

Representative: Zacco Denmark A/S
Arne Jacobsens Allé 15
2300 Copenhagen S (DK)

Appellant: N.V. Nutricia
(Opponent 4) Eerste Stationsstraat 186
2712 HM Zoetermeer (NL)

Representative: Nederlandsch Octrooibureau
P.O. Box 29720
2502 LS The Hague (NL)

Respondent: Semper AB
(Patent Proprietor) Box 1101
172 22 Sundbyberg (SE)

Representative: Novitas Patent AB
P.O. Box 55557
102 04 Stockholm (SE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
23 May 2022 concerning maintenance of the
European Patent No. 3175719 in amended form.**

Composition of the Board:

Chairman A. Haderlein
Members: A. Veronese
N. Obrovski

Summary of Facts and Submissions

- I. Appeals were filed by opponents 1 to 4 (appellants 1 to 4) against the opposition division's decision finding that the European patent as amended according to auxiliary request 4, filed as auxiliary request 1A with the letter dated 20 January 2022, meets the requirements of the EPC.
- II. With its reply to the statements setting out the grounds of the appellants' appeals the patent proprietor (respondent) requested that the appeals be rejected or, alternatively, that the patent be maintained on the basis of one of auxiliary requests 1B to 19D, filed during the opposition proceedings.
- III. The appellants requested that the decision under appeal be set aside and that the patent be revoked in its entirety.
- IV. With its letter dated 15 August 2024, the respondent declared that it no longer approved its agreement to the text of the patent as granted. Furthermore, it withdrew all its claim requests and submitted that it would not file any further request.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. This principle, according to which the text of the patent is at the disposition of the proprietor, has to be strictly observed also in opposition and opposition-appeal proceedings.

2. As the patent proprietor (respondent) declared that it no longer approved the text of the patent as granted and withdrew all its requests, there is no text of the patent on which the board can base its consideration of the opponent's appeal.

3. If the proprietor of a European patent states in opposition or appeal proceedings that it no longer approves the text in which the patent was granted, and does not submit any amended text, the patent is to be revoked (Case Law of the Boards of Appeal, 10th edition 2022, IV.D.2, third paragraph and III.B.3.3, first paragraph).

4. Therefore, the patent must be revoked, without any preceding substantive examination.

Order

For these reasons it is decided that:

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



K. Götz-Wein

A. Haderlein

Decision electronically authenticated