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Datum/Date
06.12.21

| Zeichen/Reference/Référence | / OPPO01 |
|---|---|
| Anmeldung Nr./Application No./Demande n°//Patent Nr./Patent No./Brevet n° | 09801148.9 / 2384110 |
| Anmelder/Applicant/Demandeur//Patentinhaber/Proprietor/Titulaire | Carlsberg Breweries A/S, et al |

**Appeal number:** **T0564/19-3.3.04**

Please find enclosed a copy of the decision of 01.12.21.

The Registrar I. Aperribay
Tel.: 089 / 2399 - 3341

Annex(es): ☑ Acknowledgement of receipt - EPO Form 3936
☐

**Registered letter**

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The Registry

Name: I. Aperribay

Tel.: 089 / 2399 - 3341

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| Carlsberg Breweries A/S, et al | | | |

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**Appeal number:** T0564/19-3.3.04

**EPA/EPO/OEB Formblatt/Form/Formulaire:** 3032

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**Acknowledgement of receipt of the document specified above**
**Récépissé du document spécifié ci-dessus**

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## Datasheet for the decision of 1 December 2021

**Case Number:** T 0564/19 - 3.3.04

**Application Number:** 09801148.9

**Publication Number:** 2384110

**IPC:** A01H5/10, C12C1/18, C12C7/00, C12C12/00, C12N15/01

**Language of the proceedings:** EN

**Title of invention:**
Barley with reduced lipoxygenase activity and beverage prepared therefrom

**Patent Proprietors:**
Carlsberg Breweries A/S
Heineken Supply Chain B.V.

**Opponents:**
Then, Christoph et al.

**Headword:**
Barley lipoxygenase/CARLSBERG

**Relevant legal provisions:**
EPC Art. 113(2)



This datasheet is not part of the Decision
It can be changed at any time and without notice

**Keyword:**
Basis of decision - revocation of the patent at request of the patent proprietor

**Decisions cited:**
T 0073/84

**Catchword:**


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**Case Number: T 0564/19 - 3.3.04**

# D E C I S I O N
## of Technical Board of Appeal 3.3.04
## of 1 December 2021

| | |
|---|---|
| **Appellant:** (Patent Proprietor 1) | Carlsberg Breweries A/S<br>J.C. Jacobsens Gade 1<br>1799 Copenhagen V (DK) |
| **Appellant:** (Patent Proprietor 2) | Heineken Supply Chain B.V.<br>2de Weteringplantsoen 21<br>1017 ZD Amsterdam (NL) |
| **Representative:** | Høiberg P/S<br>Adelgade 12<br>1304 Copenhagen K (DK) |
| **Appellant:** (Joint Opponent) | Then, Ch./Tippe R./Arbeitsgemeinschaft bäuerl. Landwirtschaft/AG der Umweltbeauftragten i. d. EKD (AGU)/Arche Noah/Bund Naturschutz/ Brot f.d. Welt/Campact/Evang. Dienst auf Lande/ Gen-ethisches Netzwerk/IG Nachbau/Noah/ ProSpecieRara/ Slow Food Deutschland/Umweltinstitut München/ Verband Katholisches Landvolk<br>Frohschammerstr. 14<br>80807 München (DE) |
| **Representative:** | Then Christoph<br>Frohschammerstr. 14<br>80807 München (DE) |
| **Decision under appeal:** | **Interlocutory decision of the Opposition Division of the European Patent Office posted on 21 December 2018 concerning maintenance of the European Patent No. 2384110 in amended form.** |

**Composition of the Board:**

| | |
|---|---|
| **Chairwoman** | G. Alt |
| **Members:** | D. Luis Alves |
| | L. Bühler |

## Summary of Facts and Submissions

I. Appeals were lodged by the patent proprietors and by the joint opponents against the interlocutory decision of the opposition division that European patent No. 2 384 110 in amended form and the invention to which it related, met the requirements of the EPC (Article 101(3)(a) EPC). The patent is entitled "*Barley with reduced lipoxygenase activity and beverage prepared therefrom*".

II. With their statement of grounds of appeal the patent proprietors requested, as a main request, that the decision under appeal be set aside and the patent be maintained as granted or, on an auxiliary basis, that the patent be maintained on the basis of one of the auxiliary requests 1 to 11 filed with the statement of grounds of appeal. They requested oral proceedings in case that the board could not grant their main request.

III. With their statement of grounds of appeal the joint opponents requested that the patent be revoked in its entirety.

IV. The patent proprietors filed a reply to the joint opponents' appeal, maintaining their requests.

V. The board issued a summons to oral proceedings to be held on 7 June 2022 and a communication pursuant to Article 15(1) RPBA.

VI. By letter dated 21 October 2021, the patent proprietors requested revocation of the patent.

VII. With communication dated 27 October 2021 the board informed the parties as follows: "*The board understands that the proprietors' request implies that they no longer approve of the text in which the patent was granted under Article 113(2) EPC, that they withdraw their auxiliary requests 1 to 11 filed with their statement of grounds of appeal, and that they will not file an amended text.*

*The proprietors are invited to inform the board by 19 November 2021, whether the board's understanding is correct. Should no reply be received within the time-limit set, the board will consider this as confirmation of the above understanding. It will therefore then cancel the hearing and issue a decision with the order that the decision under appeal be set aside and the patent be revoked.*"

VIII. No reply from the patent proprietors was received by the set time limit.

IX. The parties were informed by a communication dated 1 December 2021 that the oral proceedings were cancelled.

## Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is admissible.

2. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

3. The patent proprietors requested revocation of the patent, which the board understands to imply that they no longer approve of the text in which the patent was granted under Article 113(2) EPC, that they withdraw all their auxiliary claim requests filed with the statement of grounds of appeal, and that they will not be submitting an amended text (see sections VI. and VII., above). This understanding of the board was not disputed (see section VIII., above)

Hence, there is no text of the patent on the basis of which the board can consider compliance with the requirements of the EPC.

4. It is established case law of the boards of appeal that, under these circumstances, the patent is to be revoked without further examination of the case as to patentability (see also decision T 73/84, OJ EPO 1985, 241).

5. There are also no ancillary issues that would have to be dealt with by the board in the present appeal case.

## Order

## For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chair:

I. Aperribay G. Alt

Decision electronically authenticated