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Unilever v. Plásticos Gonzalez & Colgate-Palmolive, European Patent Office (EPO Board of Appeal), 28 September 2009

Lars de Haas (V.O.) · Monday, September 28th, 2009 · Landmark European Patent Cases

A claim violates Article 123(2) EPC when an added claim term has two reasonable interpretations, one of which violates article 123(2) EPC. An amendment selecting the interpretation that does not violate Article 123(2) is not allowed during opposition because of Article 123(3) EPC. In the view of the Board the proprietor should not be able to reap any benefit from the fact that an added undisclosed feature is ambiguous, with regard to an added undisclosed feature that is not. If the Board were to construe an ambiguous undisclosed term in a manner favourable to the proprietor it would act against the principle of a fair balance of interests underlying Articles 123(2) and (3) EPC.

The [full summary](#) of this case has been published on [Kluwer IP Law](#).

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