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**Datasheet for the decision
of 9 March 2011**

Case Number: T 1449/08 - 3.3.05

Application Number: 99968912.8

Publication Number: 1153454

IPC: H01M 8/10

Language of the proceedings: EN

Title of invention:

Purged anode, low effluent fuel cell

Patentee:

International Fuel Cells, LLC

Opponents:

Wimmer, Stephan
Ballard Power Systems Inc.

Headword:

Full Cell/LFC

Relevant legal provisions:

EPC Art. 113(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Revocation upon the proprietor's request"

Decisions cited:

T 0073/84, T 0201/96

Catchword:

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Case Number: T 1449/08 - 3.3.05

D E C I S I O N
of the Technical Board of Appeal 3.3.05
of 9 March 2011

Appellant: Wimmer, Stephan
(Opponent I) Gudrunstrasse 19
D-80634 München (DE)

Representative: Wimmer, Stephan
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D-80020 München (DE)

Appellant: Ballard Power Systems Inc.
(Opponent II) 4343 North Fraser Way
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Representative: Beyer, Andreas
Wuesthoff & Wuesthoff
Patent- und Rechtsanwälte
Schweigerstrasse 2
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Appellant: International Fuel Cells, LLC
(Patent Proprietor) 195 Governor's Highway
South Windsor
CT 06074 (US)

Representative: Klunker . Schmitt-Nilson . Hirsch
Patentanwälte
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D-80796 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted
3 June 2008 concerning maintenance of European
patent No. 1153454 in amended form.**

Composition of the Board:

Chairman: G. Raths
Members: J.-M. Schwaller
D. Prietzel-Funk

Summary of Facts and Submissions

- I. The present appeal lies from the interlocutory decision of the opposition division posted on 3 June 2008 maintaining the European patent No. 1 153 454 in amended form.
- II. All parties lodged an appeal against that decision.
- III. The appellant/proprietor requested the decision to be set aside and the patent to be upheld as granted, or alternatively the patent to be maintained on the basis of one of the sets of claims submitted as auxiliary requests 1 and 2, respectively, with the grounds of appeal.
- IV. In a letter dated 17 February 2011, the appellant/proprietor declared no longer approving the text in which the European patent was granted.
- V. Following a communication from the board requesting clarification as regards the pending requests, the appellant/proprietor declared in a letter dated 3 March 2011 that it withdrew all pending requests and that it requested revocation of the patent.

Reasons for the Decision

1. Article 113(2) EPC states that the European Patent Office confines its considerations in proceedings to the text of the European patent application or the European patent "submitted to it, or agreed, by the applicant for or proprietor of the patent".

2. It follows from Article 113(2) EPC that a European patent cannot be maintained against the Proprietor's will. Thus, in view of the Respondent's request for revocation of its patent, the present European patent has to be revoked (cf. T 73/84; OJ EPO 1985, 241; T 201/96, item 2 of the reasons).

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:

C. Vodz

G. Rath