

Internal distribution code:

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

**Datasheet for the decision
of 4 April 2011**

Case Number: T 2206/08 - 3.3.06

Application Number: 02772347.7

Publication Number: 1442107

IPC: C11B 13/02

Language of the proceedings: EN

Title of invention:

Brine separation in tall soap oil preparation

Patentee:

Linde AG

Opponent:

L'Air Liquide, S.A.

Headword:

Brine separation/LINDE

Relevant legal provisions:

EPC R. 84(1), 100(1)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Lapse of patent"

"Termination of appeal proceedings"

Decisions cited:

G 0001/90

Catchword:

-



Case Number: T 2206/08 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 4 April 2011

Appellant: L'AIR LIQUIDE, SOCIETE ANONYME POUR L'ETUDE ET
(Opponent) L'EXPLOITATION DES PROCEDES GEORGES CLAUDE
75 Quai d'Orsay
F-75007 Paris (FR)

Representative: Conan, Philippe Claude
L'Air Liquide SA
75 Quai d'Orsay
F-75321 Paris Cedex 07 (FR)

Respondent: Linde AG
(Patent Proprietor) Klosterhofstrasse 1
D-80331 München (DE)

Representative: Gellner, Bernd
Linde Aktiengesellschaft
Patente und Marken
Dr.-Carl-von-Linde-Straße 6-14
D-82049 Höllriegelskreuth (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 25 September 2008
rejecting the opposition filed against European
patent No. 1442107 pursuant to Article 101(2)
EPC.

Composition of the Board:

Chairman: P.-P. Bracke
Members: P. Ammendola
J. Geschwind

Summary of Facts and Submissions

I. The Opposition against the European Patent No. 1 442 107 raised by the Appellant/Opponent was rejected by the Opposition Division.

The Appellant filed an appeal from this decision.

With the summons dated 7 February 2011 the Parties were summoned for oral proceedings before the Board to be held on 25 May 2011.

A letter of the Respondent/Proprietor dated 9 February 2011 was received by the European Patent Office reading as follows:

"Auf die Ladung zur mündlichen Verhandlung vom 07/02/11: Die Patentinhaberin teilt hiermit das Erlöschen des Europäischen Patents EP 1 442 107 (Brine Separation in Soap Oil Preparation) in allen Vertragsstaaten des Europäischen Patentübereinkommens mit. Es wird daher die Einstellung des Verfahrens in analoger Anwendung von R 84(1) EPÜ beantragt."

II. The fact that the patent had lapsed in all designated Contracting States was confirmed by the information available to the European Patent Office.

III. With a communication of the Registry of the Board dated 24 February 2011 the Parties were informed of the situation and that according to Rule 84(1) EPC in combination with Rule 100(1) EPC the proceedings have to be terminated after the lapse of the European patent in all the designated Contracting States in the absence of a request by the Opponent for continuation of the

proceedings. The Appellant/Opponent was thus informed in the same communication that the proceedings were only be continued if he filed a request for continuation of the proceedings within two months from the receipt of the communication.

- IV. The Appellant/Opponent replied with a letter of 15 March 2011 reading as follows:
*"Further to the communication of the Registry in respect of the above-mentioned appeal, the Appellant (opponent) informs the Board of Appeal that he **does not request** for continuation of the proceedings".*
- V. Oral proceedings were cancelled by the Board on 31 March 2011.

Reasons for the Decision

Absent any specific provision concerning continuation of appeal proceedings in case a European patent has lapsed in all the designated Contracting States, Rule 100(1) EPC prescribes that the provisions relating to proceedings before the department which has taken the decision impugned shall apply to appeal proceedings. According to Rule 84(1) EPC, if the patent has lapsed in all designated Contracting States, the opposition proceedings may be continued at the request of the opponent within two months of a communication from the EPO informing him of the lapse. On the basis of the above-mentioned Rule 100(1) EPC, Rule 84(1) EPC applies *mutatis mutandis* to the Appellant/Opponent in appeal proceedings.

In the present case the Appellant/Opponent has informed the Board within the required period that he does not request for continuation of the proceedings.

Therefore, the proceedings have to be terminated (see also G 1/90, OJ EPO 1991, 275, point 7 of the reasons, special case of closure of the proceedings).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:

D. Magliano

P.-P. Bracke