



Veröffentlichung im Amtsblatt	<input checked="" type="checkbox"/>	Ja/Nein
Publication in the Official Journal	<input checked="" type="checkbox"/>	Yes/No
Publication au Journal Officiel	<input checked="" type="checkbox"/>	Oui/Non

Aktenzeichen / Case Number / N^o du recours : T 136/84

Anmeldenummer / Filing No / N^o de la demande : 81 300 006.4

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 32414

Bezeichnung der Erfindung: Reformat upgradeing

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement :C 10G

ENTSCHEIDUNG / DECISION

vom / of / du 6 March 1985

Anmelder / Applicant / Demandeur : Mobil Oil

~~Patentinhaber / Proprietor of the patent /
Titulaire du brevet~~

~~Einsprechender / Opponent / Opposant~~

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Art. 54 and 84

"Clarity of claims" "Essential features"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number: T 136 /84

DECISION
of the Technical Board of Appeal 3.3.1
of 6 March 1985

Appellant: Mobil Oil Corporation
150 East 42nd Street
New York, New York 10017
U S A

Representative: Alan Harry West
Mobil Court
3 Clements Inn
London WC2A 2EB
England

Decision under appeal: Decision of Examining Division 029
Office dated 10 January 1984
application No 81 300 006.4
EPC
of the European Patent
refusing European patent
pursuant to Article 97(1)

Composition of the Board:

Chairman: K. Jahn
Member: G. Szabo
Member: F. Benussi

Summary of Facts and Submissions

- I. European patent application 81 300 006.4 filed on 2 January 1981 and published on 22 July 1981 with publication number 32 414 claiming the priority of the prior application of 10 January 1980 (US 111 042) was refused by the decision of the Examining Division 029 of the European Patent Office dated 10 January 1984. The decision was based on claims 1 to 19. Claims 1, 13 and 14 were worded as follows:

"1. A process for upgrading reformates and reformer effluents which comprises contacting the same at a temperature between 800°F (427°C) and 1050°F (566°C), a pressure between 50 psig (447kPa) and 1000 psig (6996 kPa), and a liquid hourly space velocity between 0.1 and 10 with a catalyst comprising a zeolite having a silica to alumina mole ratio of at least 200 to 1 and a constrain index within the approximate range of 1 to 12.

13. A process according to any of claims 1 to 11 wherein said reformat or reformer effluent and said catalyst are contacted in a conventional reforming operation containing a series of reactors.

14. A process according to claim 12 wherein said reactor is a swing reactor."

- II. The reasons given for the refusal referred to lack of novelty as far as claims 1 to 12 and 15 to 19 were concerned and stated that the features of claims 13 and 14 were not inventive. The EP-A-812 cited in the search report disclosed all the features of the main claim. A selected portion of the reformat was clearly subjected

to the claimed process conditions in the cited document. Had the claims been limited to "total reformates and total reformer effluents" (emphasis added), this would have established novelty. In the absence of argumentation on the part of the applicant, the earlier objections against the subordinate claims had to be maintained.

- III. On 5 March 1984 the applicants lodged an appeal against the decision of 10 January 1984 with the payment of the appropriate fee and submitted a Statement of Grounds on 10 May 1984. Although the appellants argued that the terms of the claim were clear and distinguished the same from the state of the art, the main claim, was nevertheless amended as a reply (received 31.12.1984) to objections from the rapporteur. Accordingly, the first lines of the main claim now reads: "...process for upgrading a full range reformaté or full-range reformer effluent which comprises ..."
- IV. The appellants requests that the decision under appeal be set aside and the patent be granted or referred back to the Examining division.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. There is no formal objection to the current version of the claims since it is adequately supported by the original disclosure. The amended terms referring to "full range" reformates and reformer effluents are supported by lines 11 and 33 of page 2, and by other

references in the specification which establish the equivalency of the two terms (cf. page 1, lines 30 and 31; page 2, line 16; page 3, line 17 et seq, and page 4, lines 32 and 33).

3. The terms of the claim must be clear on their own, and the necessity to resolve unambiguities by reference to the specification and drawings should be avoided. The term "reformate points to the origin of the material, like the alternative term "stocks from reformers" in EU-A-812. It appears that a usage of such terms to parts of the material cannot always be excluded, unless the wording makes it clear that the totality, i.e. the "full range" of the material is involved. In the absence of evidence to the contrary from the appellants, that the terms in question absolutely and necessarily excluded the parts thereof or any further steps, however small, which influenced the composition, some doubt as to their exact scope remains. The additional necessity for clarification or conformation comes from the fact that there is relevant prior art which must be seen to be expressly excluded from the ambit of protection. The new claims satisfy these conditions.

4. The amendment establishes the novelty of the main claim and that of the rest of the claims since these are all fully dependent on the former. As regards the inventive step, the decision of the first instance only objected in this respect to claims 13 and 14. The statement that the features of these claims are not inventive can only mean that these claims although novel, fail to impart an inventive step to the otherwise already unpatentable combination. No further reasoning was given in this respect, but an earlier communication suggested

(18.02.1982) that the use of conventional reactors or a swing reactor cannot represent an inventive step. This may of course be correct as long as the broader claims lack novelty and remain unamended.

5. Although the communication from the Examining Division expressed doubts about the inventive character of the subject matter of the main claim even if this were to be amended so as to remove the objection of lack of novelty, the matter of inventive step has not been finally assessed. It is in the Board's view proper procedure in respect of the rights of the applicant that the question of patentability of the significantly amended main claim be considered by the first instance. Under these circumstances the Board deems it inappropriate to decide the issue but makes use of its power under Article 111(1) EPC to remit the case to the Examining Division for further prosecution.

Order

It is decided that

1. The decision of the Examining Division of 10 January 1984 is set aside.
2. The case is remitted to the Examining Division for further prosecution on the basis of amended claims 1 to 7 (received on 31 December 1984) and claims 8 to 19, as originally filed.

The Registrar

The Chairman

J. R. G. 24/2
151/1/85

