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Aktenzeichen / Case Number / N° du recours : T 320/88 - 3.3.1

Anmeldenummer / Filing No / N° de la demande : 81 301 436.2

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Bezeichnung der Erfindung: A fluidized bed catalytic coal gasification
Title of invention: process
Titre de l'invention :

Klassifikation / Classification / Classement : C103 3/54

ENTSCHEIDUNG / DECISION

vom / of / du 13 March 1989

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Exxon Research and Engineering Company

Einsprechender / Opponent / Opposant :

Siemens AG

Stichwort / Headword / Référence : Arranging oral proceedings/Exxon

EPÜ / EPC / CBE Art. 116, Rule 71 Notice concerning oral proceedings
dated 21 April 1987

Schlagwort / Keyword / Mot clé : "Proposed date for oral proceedings" - no
strong reasons for inconvenience to parties"
- "summons issued for proposed date".

Leitsatz / Headnote / Sommaire

In relation to the fixing of oral proceedings before the EPO, paragraphs 1(a) and 1(b) of the Notice date 21 April 1987 should be read together, and in the context of paragraph 1 as a whole. A telefax from the Registrar of the Board of Appeal which proposes a date for oral proceedings, and which requires strong reasons to be stated within ten days before an alternative date will be considered (in principle, within the same week) is in accordance with paragraph 1(a) and (b) of the Notice. In the absence of any reasons being given with ten days for a proposed date being stated by a party to be inconvenient, the EPO may issue a summons to oral proceedings on the proposed date.

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Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number : T 320 /88 - 3.3.1



D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 13 March 1989

Appellant :
(Opponent)

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Respondent :
(Proprietor of the patent)

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Decision under appeal :

Decision of the Opposition Division of the
European Patent Office dated 11 May 1988
rejecting the opposition filed against European
patent No. 0 062 115 pursuant to Article
102(2) EPC.

Composition of the Board :

Chairman : K. Jahn

Members : G.D. Paterson
R. Andrews

Summary of Facts and Submissions

- I. An appeal from a Decision of the Opposition Division dated 11 May 1988 was filed by the Opponent on 11 July 1988. A statement of grounds of appeal was filed on 12 September 1988 in which oral proceedings under Article 116 EPC were requested. The Respondent filed observations in reply on 14 December 1988.
- II. On 31 January 1989 the Registrar of the Board of Appeal sent a telefax to the representatives of both parties, stating the intention to summon the parties to oral proceedings on 29 August 1989. The telefax went on to state "Unless the EPO receives a reply from you within ten days from the date of the present telefax, it is assumed that the proposed date is acceptable to you and the summons will be issued accordingly. Should strong reasons prevent you from attending the oral proceedings on the date proposed, the EPO is prepared to consider an alternative date, in principle in the same week, provided it is so informed within ten days. Such a date should be agreed beforehand with all parties concerned. The summons will then be issued indicating the alternative date. ...
- Please reply by phone, telex or telefax to Registrar."
- III. On 2 February 1989 the Respondent's representative replied by telefax as follows "... I regret that I shall not be able to attend oral proceedings (Article 116 EPC) on 29 August 1989 or during the week of 28 August 1989. At the moment, I can state that I have no engagements during the weeks beginning 25 September and 2 October 1989, and would be able to attend oral proceedings during dates in either of those two weeks."

Following a telephone conversation on 6 February 1989 between the Registrar and the Respondent's representative, the Registrar replied by telefax to the Respondent on 13 February 1989 as follows:

"Referring to your facsimile dated 2 February 1989 and our telephone conversation of 6 February 1989, we hereby confirm you that unfortunately the date of oral proceedings of 29 August 1989 can only be changed within the week of 28th of August to the first of September 1989 and, that you need the agreement of the opponent to the change. Considering the engagements of the members of the Board from now to October, and in order to bring cases to a conclusion as quickly as possible the Board does not consider an advancing or a postponement of the date of oral proceedings."

Further telephone conversations took place between the representatives of both parties and the Chairman of the Board, in which the Appellant's representative also requested a later date for the oral hearing. On 17 February 1989 the Respondent's representative sent a further telefax, in which the right of the Board to "insist" upon oral proceedings taking place during the week commencing 28 August 1989 was challenged, upon the basis that the telefax sent by the Registrar on 13 February 1989 and quoted above was not consonant with paragraph 1(a) of the Notice dated 21 April 1987 concerning oral proceedings before the EPO (OJ EPO 1987, 168). The Respondent's representative also referred generally to the fact that for a representative of a US company, fixing a date for a hearing is not so easy because instructing attorneys and inventors are in the USA and not available for consultation at short notice.

The telefax ended by stating that the representative would "make provision to attend the oral hearing on 1 September 1989".

In a further telefax dated 20 February 1989, the Respondent's representative suggested that "no effort has been made to find a date convenient to all concerned", and that it appeared that "a Decision has been made by the EPO, notwithstanding inconvenience to the representatives of the two parties to these proceedings, and notwithstanding the provisions stated in 1(a)" of the Notice dated 21 April 1987 referred to above. It was requested that it be confirmed whether or not a Decision had in fact been made that oral proceedings would take place in the proposed week commencing 28 August 1989.

Finally, on 21 February 1989 the Appellant's representative also sent a telefax, stating that neither he nor the Respondent's representative were able to attend the hearing during the proposed week, and suggesting that the hearing should take place during weeks in October or at a later date suitable to the parties.

IV. A telefax was sent to both parties on behalf of the Board on 22 February 1989 stating inter alia as follows:

"... the Board confirms that it has now made a decision to the effect that the oral proceedings in the appeal will be appointed within the week commencing Monday 28 August 1989. Such oral proceedings were appointed for 29 August 1989 by the telefax dated 31 January 1989, and unless the Registrar is informed in writing by both parties within ten days of the date of this telefax that they have agreed to an alternative within the same week, upon the expiry of ten days a summons will be issued for 29 August 1989.

Reasons in writing for the above decision will be issued shortly."

Reasons for the Decision

1. The fixing of a date for oral proceedings in an appeal is initially a matter which is arranged by the Registrar of a Board of Appeal in conjunction with the parties concerned. When a conflict arises between the Registrar and one or more parties as to when such proceedings should take place (as in the present case), the Board itself may decide the matter. In deciding the matter, the Board must be careful to hold a proper balance between the interests of the particular parties concerned and the interest of the Registrar in pursuing the policy of the EPO to bring all cases to a conclusion as quickly as reasonably possible.

2. The procedure by which a date for oral proceedings is currently fixed by the Registrars of the Boards of Appeal is that set out in the "Notice concerning oral proceedings" dated 21 April 1987, paragraph 1. In the Board's view this procedure is very clearly there set out, in sub-paragraphs 1(a) to (e), which should be read as a whole. This procedure should be considered in the context of a steadily increasing number of appeals requiring oral proceedings to be appointed prior to decision; it is stated to be "more flexible" than the previous procedure used.

Paragraph 1(b) provides that before the summons to oral proceedings (under Rule 71 EPC) is issued, the parties will be contacted "by telephone or by telex or similar means". Experience within the Registry has shown that such initial contact by telephone is not normally satisfactory as a method of finding a suitable date.

The choice of means of initial contact by the Registrar is clearly a matter for his discretion under paragraph 1(a).

Paragraph 1(b), which is clearly dependent from 1(a), deals with the procedure when the means of contact is "by telex or similar means", for example telefax. In particular, a definite date is then normally proposed. However, "if there are strong reasons preventing one of the parties from attending on that date", an alternative date may be considered (in principle, but not necessarily, in the same week). However, in this circumstance paragraph 1(b) makes it very clear that the party or parties will be required to inform the office within ten days of a suitable alternative date, such date being agreed with all parties concerned.

3. In the present case, the Registrar followed the procedure of paragraphs 1(a) and (b) by sending the telefax dated 31 January 1989 to both parties. The Board is unable to accept the submission on behalf of the Respondent that such telefax was not consonant with paragraph 1(a) (when 1(a) is read, as it should be, in conjunction with 1(b)).
4. Within ten days from 31 January 1989, by his telefax dated 2 February 1989, the Respondent's representative had stated that he would not be able to attend oral proceedings either on 29 August 1989 or during that week. No reason was given. An alternative period during which he would be able to attend was suggested, but no agreement from the Appellant as to these alternative dates was notified to the EPO within such ten days.

On a strict reading of the Notice, in particular the "requirement" to propose an agreed alternative date within ten days, it would have been in accordance with the procedure laid down in the Notice if, immediately upon

expiry of the ten day period, a summons for 29 August 1989 had been issued by the Registrar. However, in the event, the matter ran on as summarised above, until 22 February 1989.

5. From the point of view of individual parties to oral proceedings before the EPO, it would clearly be desirable to have a date for such proceedings fixed to their mutual convenience. However, the Boards of Appeal are currently receiving far more requests for oral proceedings than they have time to deal with, and this means that all available time must be used for the appointment of hearings. In these circumstances, it is clearly not possible for oral proceedings to be fixed merely in accordance with individual parties' convenience. Regard must also be paid to the requirements of the numerous other parties having outstanding requests for oral proceedings. The Notice dated 21 April 1987 was clearly issued having such considerations in mind. As the final paragraph of paragraph 1 of the Notice states "The new more flexible procedure will therefore be workable only if parties reject the date proposed by the Office only in a limited number of cases, i.e. where there are genuinely strong reasons for requesting an alternative date".

6. As previously stated, only one party replied within ten days of the telefax dated 31 January 1989, and that party gave no reason at all for the alleged inconvenience of the proposed date. It is clearly essential that parties do, as far as possible, reply within the required ten days in order that the fixing of dates for oral proceedings can be managed efficiently, bearing in mind the large number of outstanding proceedings and the large number of members of the Boards of Appeal involved in such proceedings. At the same time as the parties to a particular proceedings are offered a particular date within a particular week, many

other parties to other proceedings are being offered other particular dates within other weeks.

7. Clearly in cases of genuine hardship the Boards of Appeal will not insist upon oral proceedings taking place on dates which are not accepted by parties to such proceedings. On the other hand, if a particular date is not convenient to a particular representative of a party, it may be that such party will have to appoint an alternative representative to attend the proceedings on the fixed date. Of course, if a particular representative had invested a lot of time in the preparation of a particular case, that is a factor which the EPO should take into account.

8. In the present case, the Board is satisfied that no strong reasons have been given by either party, either within the required ten days or subsequently, for their being prevented from attending oral proceedings on 29 August 1989 as originally proposed.

The Board is also satisfied that on the information which has been provided to it by the parties, no undue hardship will be caused to either party if oral proceedings take place on that day. Accordingly, on 22 February 1989, the Board made its decision as set out in the telefax dated 22 February 1989. There having been no notification to the Registrar within the subsequent ten days that an alternative date within the week commencing 28 August 1989 had been agreed between the parties, the oral proceedings will take place on 29 August 1989, and a summons for this date accompanies this decision.

Order

For these reasons, it is decided that:

In the absence of agreement between the parties as to an alternative date for oral proceedings within the week commencing 28 August 1989, the parties are summoned to oral proceedings on 29 August 1989.

The Registrar:

The Chairman:

F. Klein

K. Jahn