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Aktenzeichen / Case Number / N^o du recours : T 422/88 - 3.3.2

Anmeldenummer / Filing No / N^o de la demande : 83 304 718.6

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 134 333

Bezeichnung der Erfindung: Treatment of zeolites

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : B01J 29/06

ENTSCHEIDUNG / DECISION

vom / of / du 21 February 1990

Anmelder / Applicant / Demandeur : Mobil Oil Corporation

Patentinhaber / Proprietor of the patent /

Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Zeolites/MOBIL OIL

EPÜ / EPC / CBE Articles 84, 109, 123(2)

Schlagwort / Keyword / Mot clé : "Refused claims amended - requirements of EPC met"

Leitsatz / Headnote / Sommaire



Case Number : T 422/88 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal
of 21 February 1990

Appellant : MOBIL OIL CORPORATION
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USA

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Decision under appeal : Decision of Examining Division 033
of the European Patent Office
dated 25 April 1988 refusing European
patent application No. 83 304 718.6
pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : P. Lançon
Members : A. Nuss
C. Holtz

Summary of Facts and Submissions

- I. European patent application No. 83 304 718.6 was filed on 15 August 1983 and published under No. 0 134 333.

On 25 April 1988, the Examining Division issued a decision refusing the application under Article 97(1) EPC for failure to comply with the requirements of Articles 84 and 123(2) EPC. The decision was based on the claims received on 11 February 1987.

Independent Claim 1 reads as follows:

"A method of preparing a catalyst of enhanced activity, alpha, which comprises forming, in the presence of water, an intimate composite of a zeolite having a constraint index of 1 to 12 and a lattice silicon/non-silicon atomic ratio of at least 250 with a metal oxide binder, the binder constituting from 10 to 90 weight percent of the composite on a dry basis, characterised in that the binder comprises an oxide of aluminium, gallium, boron, iron and/or chromium and that the composite is contacted in the form of extrudate or shaped particles of catalyst with water at a temperature of 100 to 500°C for a period of time sufficient to enhance catalytic activity of the composite."

- II. In its decision, the Examining Division took the view that the originally filed documents did not give a basis for the general statement in Claim 1, that the "lattice silicon/non-silicon atomic ratio is at least 250". It was however accepted that original Claim 20, restricted to aluminosilicates, would form a basis for the claiming of lattice silicon/aluminium atomic ratio of greater than 250. As stated in the penultimate paragraph on page 3 of

the description, the higher silica to alumina ratios of about 500 (silicon/aluminium ratio 250:1) were preferred.

In addition, the method as set out in the description from page 8, line 31 to page 9, last line, was not considered to represent an embodiment of the invention as claimed in Claim 1, as it did not include the step of contacting the composite in the form of extrudate or shaped particles of catalyst with water at a temperature of 100 to 500°C. In view of the inconsistency arising between the description and Claim 1, the extent of protection, and thereby the scope of the claim, was made unclear. New Claim 19 was not considered to be of any help in this respect.

III. On 18 June 1988, a Notice of Appeal was filed together with a debit order for payment of the appeal fee. On 22 August 1988, a facsimile transmission (telecopy) of a written statement setting out the grounds of appeal was received. The original Statement of Grounds, filed by mail, was received on 25 August 1988.

IV. In an additional letter filed on 8 February 1990, the Appellant submitted amendments to the claims and description. The first amendment was to change "non-silicon" (in the fourth/fifth lines of Claim 1) to aluminium, and the second, to delete the description of an embodiment of the invention which commences at line 31 of page 8 of the description, together with Example 35 (and, in consequence, Examples 36 to 50) and Claim 19.

Copies of corresponding replacement pages implementing these amendments were enclosed (see new Claims 1 to 31 and pages 8, 9 and 18 to 26, filed on 8 February 1990). The Appellant considered that thereby the basis of the adverse findings of the Examining Division was removed.

- V. The Appellant requests that the application be remitted to the Examining Division for processing to grant.

New Claim 1 reads as follows:

"1. A method of preparing a catalyst of enhanced activity, alpha, which comprises forming, in the presence of water, an intimate composite of a zeolite having a constraint index of 1 to 12 and a lattice silicon/aluminium atomic ratio of at least 250 with a metal oxide binder, the binder constituting from 10 to 90 weight percent of the composite on a dry basis, characterised in that the binder comprises an oxide of aluminium, gallium, boron, iron and/or chromium and that the composite is contacted in the form of extrudate or shaped particles of catalyst with water at a temperature of 100 to 500°C for a period of time sufficient to enhance catalytic activity of the composite."

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. Present Claim 1 differs from the previous main claim in that the contested expression "silicon/non-silicon atomic ratio" (of at least 250) is now changed into "silicon/aluminium atomic ratio" as required by the Examining Division, which correctly pointed out in its decision that the penultimate paragraph on page 3 of the description stated that the higher silica to alumina ratios of about 500 were preferred.

Since the Examining Division had accepted the conversion from "silica/alumina" (of about 500:1) into

"silicon/aluminium" (of at least 250) made at an early stage of the proceedings, the only point at issue under Article 123(2) EPC has thus to be considered as settled.

In addition, the Appellant has deleted from the description all references to the embodiment of the invention which the Examining Division considered not to be covered by the main claim, so that there is no longer an inconsistency between the description and Claim 1. Under these circumstances, the Board cannot but acknowledge that the requirements of Article 84 EPC are met as well.

In view of the above, the case is indeed ready to be remitted to the first instance for further prosecution as requested by the Appellant.

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution.

The Registrar:

The Chairman:

M. Beer

P. Lançon