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Aktenzeichen / Case Number / N^o du recours : T 563/88-3.3.1

Anmeldenummer / Filing No / N^o de la demande : 86 301 260.5

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 194 774

Bezeichnung der Erfindung: Method of producing high-density slurry/prill
Title of invention: explosives in boreholes and products made thereby
Titre de l'invention :

Klassifikation / Classification / Classement : C 06B 21/00

ENTSCHEIDUNG / DECISION

vom / of / du 31 January 1989

Anmelder / Applicant / Demandeur : E.I. Du Pont de Nemours and Company
Du Pont Canada Inc.

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 54(1)

Schlagwort / Keyword / Mot clé : "Lack of novelty overcome by amendment-
remittal for further prosecution."

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

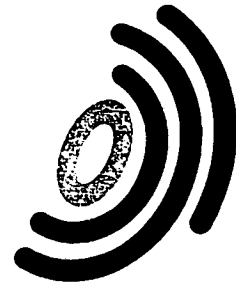
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Boards of Appeal

Chambres de recours



Case Number : T 563/88-3.3.1

D E C I S I O N
of the Technical Board of Appeal - 3.3.1
of 31 January 1989

Appellants :

E.I. Du Pont de Nemours and Company
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Decision under appeal :

Decision of Examining Division 026 of the European Patent Office dated 1 June 1988 refusing European patent application No. 86 301 260.5 pursuant to Article 97(1) EPC.

Composition of the Board :

Chairman : K.J.A. Jahn

Members : R.W. Andrews

C.V. Payraudeau

Summary of Facts and Submissions

- I. European patent application No. 86 301 260.5 filed on 21 February 1986 (publication No. 0 194 774) and claiming priority of 11 March 1985 from a prior application filed in the United States of America, was refused by a decision of the Examining Division 026 of the European Patent Office dated 1 June 1988. The decision was based on Claims 1 to 19 filed on 7 April 1988.

- II. The stated ground for the refusal was that the subject-matter of Claims 8 to 11 lacked novelty in the light of the disclosure in US-A-4 111 727 (1) which discloses an explosive composition consisting essentially of 10 to 40% by weight of a water-in-oil emulsion comprising a liquid carbonaceous fuel having components which form a continuous phase, an aqueous solution of an inorganic oxidising salt forming a discontinuous emulsion phase and an emulsifying agent and 60 to 90% by weight of ammonium nitrate (AN) or ammonium nitrate mixed with fuel oil (ANFO).

The objections raised in connection with the original Claims 1 to 6 and 11 to 19 were maintained against the corresponding Claims 1 to 7 and 12 to 19.

- III. An appeal was lodged against this decision on 28 July 1988 with payment of the prescribed fee. In the Statement of Grounds of Appeal filed on 3 October 1988, the Appellants argued that the material disclosed in document (1) is stated to be a grout-like material having the flow properties of a liquid or plastic mass. This implies that the emulsion binds the particles together into a coherent

mass, having a density of 1.15g ml^{-1} for material having a 30% emulsion content. In contrast thereto, the present composition is a free flowing granular mass generally having a lower density than the prior art composition.

- IV. In their reply to a communication of the Board in which it was stated that in the Board's view the subject-matter of Claims 12 to 15 in accordance with the Appellant's main request lacked novelty, the Appellants agreed to the further prosecution of the application on the basis of their auxiliary request.
- V. The Appellants request that the decision under appeal be set aside and the case remitted to the Examining Division for further prosecution on the basis of text "B" filed on 3 October 1988. The only independent claim of this text reads as follows:

"A method of producing a high-density slurry/prill explosive in a borehole comprising

(a) feeding into a pressure vessel a granular mass of essentially free-flowing slurry-bearing ammonium nitrate (AN) prills, said slurry borne by said prills being a aqueous slurry containing at least one inorganic oxidizing salt in aqueous solution, and the amount of slurry in said granular mass being in the range of 5 to 25 percent of the weight thereof; and

(b) conveying said slurry-bearing prills out of said vessel through a loading hose into a borehole by air at a pressure of at least 200 kPa, whereby a tightly packed mass of crushed and whole slurry-bearing prills is deposited in said borehole."

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. There are no formal objections to the current claims since they are adequately supported by the original disclosure. Thus, the present Claim 1 is based on the original Claim 1 in combination with page 8, line 1 of the general description. Claims 2 to 7 correspond to the original Claims 2 to 6 and 19 respectively.

The newly filed process Claims 8 to 14 are supported by the disclosure in the original product Claims 13, 15, 16, 18 and 7 to 9 respectively.

- 2.1. The outstanding objection raised in the Examining Division's communication of 12 August 1987 has been overcome by including within the terms of the only independent claim the lower limit of 5% for the amount of slurry present in the granular mass.
3. By redrafting the product Claims 8 to 19 on 7 April 1988 as process claims dependent upon a main claim, the subject-matter of which was acknowledged by the Examining Division in its communication of 12 August 1987 as being novel, the Appellants have overcome the only ground for the refusal of the application. Since the Board has no reason to question the validity of this finding of novelty by the Examining Division, the decision under appeal must be set aside.

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 on the basis of text "B" filed on 3 October 1988.



The Registrar



The Chairman

FWD
GR