

Internal distribution code:

- (A) [] Publication in OJ
(B) [X] To Chairmen and Members
(C) [] To Chairmen

D E C I S I O N
of 12 July 1994

Case Number: T 0169/92 - 3.3.2

Application Number: 86302987.2

Publication Number: 0202780

IPC: C02F 1/56

Language of the proceedings: EN

Title of invention:
Flocculation processes

Patentee:
Allied Colloids Limited

Opponent:
SNF Floerger
Intervener 01: Cyanamid of Great Britain Limited
Intervener 02: Chemische Fabrik Stockhausen GmbH

Headword:
Intervention/ALLIED

Relevant legal norms:
EPC Art. 105, 112

Keyword:
"Admissibility of intervention during appeal proceedings"
"Remittal to the Opposition Division"

Decisions cited:
T 0338/89, T 0390/90, T 0027/92, G 0001/94

Catchword:

-

Case Number: T 0169/92 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 12 July 1994

Appellant: SNF Floerger
(Opponent) 41, rue Jean-Huss
F-42028 Saint-Etienne Cedex (FR)

Representative: Maiwald, Walter, Dr.
Strasse, Maiwald, Meys, Stach & Vonnemann
Postfach 90 09 54
D-81509 München (DE)

Respondent: Allied Colloids Limited
(Proprietor of the patent) Patentabteilung
P.O. Box 38
Low Moor
Bradford
West Yorkshire BD12 0JZ (GB)

Representative: Lawrence, Peter Robin Broughton
Gill Jennings & Every
Broadgate House
7, Eldon Street
London EC2M 7LH (GB)

Other party 01: Cyanamid of Great Britain Limited
(Intervener) Bowling Park Drive
Bradford, West Yorkshire (GB)

Representative: Allam, Peter Clerk
Lloyd Wise, Tregear & Co.
Norman House
105-109 Strand
London WC2R 0AE (GB)

Other party 02: Chemische Fabrik Stockhausen GmbH
(Intervener) Patentabteilung
Bäckerpfad 25
D-47705 Krefeld (DE)

Representative: Klöpsch, Gerald, Dr.-Ing.
Patentanwalt
An Gross St. Martin 6
D-50667 Köln (DE)

Decision under appeal: Decision of the Opposition Division of the European Patent Office dated 2 December 1991 rejecting the opposition filed against European patent No. 0 202 780 pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: P.A.M. Lançon
Members: I.A. Holliday
E.M.C. Holtz

Summary of Facts and Submissions

- I. On 2 December 1991, the Opposition Division took a decision to reject the opposition by the Appellant (Opponent) against European patent No. 0 202 780. A notice of appeal was filed and the appeal fee paid on 12 February 1992 and the Statement of Grounds was filed on 13 April 1992.
- II. On 24 February 1993, a third party (Intervener 1) lodged a notice of intervention under Article 105 EPC and paid the prescribed fee. The notice of intervention was based on the fact that on 1 December 1992, the Intervener had been served a Writ for infringement in the United Kingdom by the Patentee. This date therefore constituted the date on which the infringement proceedings were initiated for the purposes of Article 105(1) EPC. The grounds of intervention were based on Articles 100(a) and 100(b) EPC.
- III. The Board of Appeal notified the parties that it provisionally contemplated a referral to the Enlarged Board of Appeal of whether an intervention, when filed during appeal proceedings, was admissible.
- IV. On 6 November 1993, a second Intervener filed a notice of intervention, stating that they had been requested by the Patentee in a letter dated 20 March 1992 to cease alleged infringement, and that they themselves on 24 September 1993 had instituted proceedings for a court ruling that they were not infringing the patent.
- V. In order not to delay the proceedings already pending before the Enlarged Board of Appeal in G 6/93 as a

result of a referral in decision T 27/92 of 8 July 1993 (to be published in the OJ EPO), the Board on 15 December 1993 notified the parties that a second referral of the same question as in that case was no longer deemed appropriate. However, the Intervener in T 27/92, in a letter dated 6 December 1993, withdrew the intervention, as a result of which the proceedings of G 6/93 were terminated on 16 December 1993.

VI. Differing views having been taken within the Boards of Appeal concerning the admissibility of intervention under Article 105 EPC during the appeal procedure (T 338/89 dated 10 December 1990, not published in OJ EPO and T 390/90, to be published in OJ EPO), the Board, in an interlocutory decision dated 20 December 1993, referred the following question to the Enlarged Board of Appeal:

"Is an intervention, which otherwise complies with the conditions laid down in Article 105 EPC, admissible when filed during pending appeal proceedings?"

VII. The decision of the Enlarged Board of Appeal, G 1/94 (to be published in OJ EPO), was handed down on 11 May 1994. It was held that:

"Intervention of the assumed infringer under Article 105 EPC is admissible during pending appeal proceedings and may be based on any ground for opposition under Article 100 EPC."

VIII. Pursuant to Article 110(2) EPC, the Board issued a communication which accompanied the transmission of decision G 1/94 to the parties. The Board expressed the

view that, having regard to the new grounds of opposition raised by the interventions under Article 105 EPC, there appeared to be a strong case for remitting the file to the Opposition Division.

- IX. In a communication dated 14 June 1994, the Appellant (Opponent) agreed with the Board's view that the case ought to be remitted to the Opposition Division. The Respondent (letter dated 10 June 1994) also accepted the Board's proposal. Intervener 1 (letter dated 10 June 1994) also expressed agreement with the said proposal. Intervener 2 did not respond to the communication.

Reasons for the Decision

1. The admissibility of the appeal by the Opponent was acknowledged in the interlocutory decision of the Board dated 20 December 1993.
2. In the light of the Enlarged Board's decision G 1/94, the two interventions filed during the appeal procedure are also admissible.
 - 2.1 In accordance with Article 105 EPC, second paragraph, last sentence, an intervention shall, subject to any exception laid down in the Implementing Regulations, be treated as an opposition; the Regulations contain no exceptions relevant to the present case.
 - 2.2 Having regard to the new grounds and submissions of the Interveners, the Board, in the communication referred to above, expressed the view that remittal to the

Opposition Division seemed appropriate in order not to deprive the parties of two instances of jurisdiction. The Appellant, Respondent and one of the Interveners each expressed agreement with this course of action. In the circumstances, the present requests of the parties are essentially concurrent.

- 2.3 Accordingly, the Board uses its powers conferred by Article 111 EPC to remit the case to the Opposition Division for further prosecution.

Order

For these reasons, it is decided that:

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

The Registrar:

The Chairman:

P. Martorana

P.A.M. Lançon