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D E C I S I O N
of 4 May 1995

Case Number: T 0625/92 - 3.3.2

Application Number: 87907629.7

Publication Number: 0332632

IPC: B01J 20/18

Language of the proceedings: EN

Title of invention:
Method of producing dealuminised zeolite Y of high hydrophobicity

Applicant:
MUNTERS ZEOL AB

Opponent:
-

Headword:
Dealuminised zeolite/MUNTERS ZEOL

Relevant legal provisions:
EPC Art. 123(2), 111(1)

Keyword:
"Broadening of claim"
"Remittel after removal of broadening"

Decisions cited:
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Catchword:
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Case Number: T 0625/92 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 4 May 1995

Appellant:

MUNTERS ZEOL AB
St. Gråbrödersgatan 12
S-223 78 Lund (SE)

Representative:

Sedvall, Bengt Gustaf
B. Sedvall Patentbyrå
Box 7182
S-103 88 Stockholm (SE)

Decision under appeal:

Decision of the Examining Division of the European
Patent Office dated 19 February 1995 refusing
European patent application No. 87 907 629.7
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. A. M. Lançon
Members: G. J. Wassenaar
C. Holtz

Summary of Facts and Submissions

- I. European patent application No. 87 907 629.7 (publication No. 0 332 632) was refused by a decision of the Examining Division. The decision was taken on the basis of an amended set of Claims 1 to 6.

Amended Claim 1 read as follows:

A method of **increasing** the hydrophobicity of dealuminised zeolite Y being dealuminised by **leaching in acid**, by treatment with gaseous halogen silane **or other different methods of dealuminising zeolites**, characterized in that the dealuminised zeolite is washed with water, leached with acid and then heat-treated at a temperature of 800-1100°C.

(The underlined words were added to Claim 1 as originally filed)

- II. In its decision the Examining Division took the view that the amended Claim 1 contravened Article 123(2)EPC because the new additional feature "leached in acid or other different methods of dealuminising zeolites" extended the claimed subject matter beyond the content of the application as originally filed.

- III. The Appellant lodged an appeal against this decision. With the Statement of Grounds of Appeal, the Appellant refuted that said additional feature violated Article 123(2)EPC. Essentially it was put forward that on page 1, lines 23 to 25 of the description as originally filed it was stated that according to the state of the art the zeolite may be dealuminised in other ways of which two possible ways were mentioned so that introduction of these other ways in the

pre-characterising portion of Claim 1 would not extend the subject matter beyond the application as originally filed.

- IV. During further prosecution, whereby the Board expressed as a preliminary opinion that on the basis of the claims then on file it was unlikely that the decision under appeal would be reversed, the appellant filed a new set of Claims 1 to 5 which were identical to the claims as originally filed.
- V. The Appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the Claims 1 to 5 filed by telefax dated 11 April 1995.

Reasons for the Decision

1. The appeal is admissible.
2. *Article 123(2) EPC*

Since the present set of claims is identical to the claims as originally filed and the description remained unamended, there is no basis for an objection under Article 123(2)EPC.

3. *Novelty and inventive step*

In the contested decision novelty and inventive step were not attacked. On the contrary it was indicated in section III.3 that the application seemed to contain patentable subject matter within the meaning of Articles 52 to 56 EPC. From the contested decision it is not evident whether the Examining Division was satisfied

that the application as originally filed fulfilled all the requirements of the EPC. Since the task of the Board is primarily to check the validity of the arguments given in the decision under appeal and not to investigate on its own motion, the Board considers it appropriate to exercise its power under Article 111(1) EPC to remit the case to the first instance 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 first instance for further prosecution.

The Registrar:



P. Martorana

The Chairman:



P. A. M. Lançon

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Gu 29.05.95
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