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D E C I S I O N
of 8 September 1994

Case Number: T 0626/92 - 3.3.2

Application Number: 86904301.8

Publication Number: 0232302

IPC: C01F 7/06

Language of the proceedings: EN

Title of invention:
CLARIFICATION OF BAYER PROCESS LIQUORS

Patentee:
ALLIED COLLOIDS LIMITED

Opponent:
SNF Floerger

Headword:
Bayer Process Liquors/ALLIED COLLOIDS

Relevant legal norms:
EPC Art. 113(2)

Keyword:
"Basis of decision - no longer approval of the text of the patent - revocation of the European patent"

Decisions cited:
T 0073/84, T 0237/86

Catchword:
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Case Number: T 0626/92 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 8 September 1994

Appellant:
(Opponent)

SNF Floerger
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Representative:

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Respondent:
(Proprietor of the patent)

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Representative:

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office dated 19 February 1992,
posted on 5 May 1992 rejecting the opposition
filed against European patent No. 0 232 302
pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: A. J. Nuss
Members: G. J. Wassenaar
C. Holtz

Summary of Facts and Submissions

- I. In a decision delivered orally on 19 February 1992, with written reasons posted on 5 May 1992 the Opposition Division rejected the opposition which had been filed against European patent No. 0 232 302 granted upon the subject matter of European patent application No. 86 904 301.8, and maintained the patent unamended.
- II. The Opponent lodged an appeal against this decision on 9 July 1992, and filed on 11 September 1992 a written statement setting out the grounds of appeal and requesting the revocation of the patent in full.
- III. In a letter dated 24 August 1994 the Proprietor stated that he no longer approves of the text of the patent as maintained by the Opposition Division and does not intend to supply amendments to the text. It was further stated that the patentee was hereby abandoning the patent and did not wish to defend the opposition before the Board of Appeal.

Reasons for the Decision

1. The appeal is admissible.
2. Since the Proprietor withdrew his approval of the text of the patent as granted and stated that he would not submit an amended text, there is no text of the patent on which the Board can consider the appeal. Since according to Article 113(2) EPC the European Patent Office must consider the European patent only in the text agreed by the proprietor of the patent, the patent cannot be maintained in any form and has, therefore, to be revoked; cf. T 73/84 (OJ EPO 1985, 241).

3. Moreover, the additional statement of the Proprietor that he abandons the patent makes it clear that the Proprietor agrees that the patent should be revoked. Said statement must therefore be considered equivalent to a request that the patent be revoked; cf. T 237/86 (OJ EPO 1988, 261).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The European patent No. 232 302 is revoked.

The Registrar:

The Chairman:

P. Martorana

A. J. Nuss