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D E C I S I O N
of 9 November 1994

Case Number: T 0558/93 - 3.2.1

Application Number: 86113208.2

Publication Number: 0216382

IPC: F17C 9/02, F17C 13/02, G05D 16/00

Language of the proceedings: EN

Title of invention:
Gas supply system for variable demand application

Patentee:
UNION CARBIDE CORPORATION

Opponent:
Linde Aktiengesellschaft, Wiesbaden

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Proprietors' request for revocation of the patent"

Decisions cited:
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Catchword:
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Case Number: T 0558/93 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 9 November 1994

Appellant:
(Opponent)

Linde Aktiengesellschaft, Wiesbaden
Zentrale Patentabteilung
D-82049 Höllriegelskreuth (DE)

Representative:

-

Respondent:
(Proprietor of the patent)

UNION CARBIDE CORPORATION
39 Old Ridgebury Road
Danbury
Connecticut 06817 (US)

Representative:

Schwan, Gerhard, Dipl.-Ing.
Elfenstrasse 32
D-81739 München (DE)

Decision under appeal:

Decision of the Opposition Division of the
European Patent Office dated 13 April 1993
rejecting the opposition filed against European
patent No. 0 216 382 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: F. A. Gumbel
Members: S. Crane
J.-C. de Preter

Summary of Facts and Submissions

- I. In a decision dated 13 April 1993 the Opposition Division rejected the opposition filed against European patent No. 0 216 382
- II. The Appellants filed an appeal against this decision on 15 June 1993 paid the fee for appeal on the same date and filed a Statement of Grounds of Appeal on 25 June 1993, in which they requested that the patent be revoked. They also requested refund of the appeal fee.
- III. In a letter dated 17 October 1994 the Respondents (Proprietors of the patent) stated that they no longer approved the text in which the patent was granted and did not intend to submit an amended text.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rules 1(1) and 64 EPC. It is therefore admissible.
2. The Respondents have stated that they no longer approved the text in which the patent was granted and that they would also refrain from submitting an amended test. Since it follows from the provision according to Article 113(2) EPC that a European patent cannot be maintained against the Proprietors' will, the present European patent has to be revoked (cf. T 73/84; OJ EPO 1985, 241).
3. The request for refund of the appeal fee is based on the contention of the Appellants that the Opposition Division did not take proper account of their submission of 19 February 1993 relating to the interpretation of a

prior art document. However, having regard to points 4.5 and 4.6 of the contested decision it is apparent that the Opposition Division has given this document proper consideration and merely come to a different conclusion as to its teachings than the Appellants, that conclusion corresponding in essence to the one put forward by the Respondents in their submission of 14 October 1992. The fact that the contested decision does not go into detail to refute the arguments put forward by the Appellants does not mean they were ignored. There has therefore not been any substantial procedural violation here which could justify the refund of the appeal fee.

Order

For these reasons it is decided that:

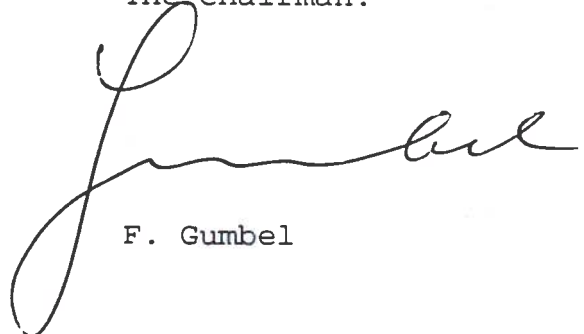
1. The decision under appeal is set aside.
2. The European patent No. 0 216 382 is revoked.
3. The request for refund of the appeal fee is refused.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel