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D E C I S I O N
of 21 January 1998

Case Number: T 0391/94 - 3.3.5

Application Number: 84112037.1

Publication Number: 0140221

IPC: C04B 35/04

Language of the proceedings: EN

Title of invention:
Magnesia clinker and method of producing the same

Patentee:
Shin Nihon Chemical Industry Co., Ltd.

Opponents:
Shell Internationale Research Maatschappij B.V.
Radex-Heraklith Industriebeteiligungs AG
Premier Periclase Ltd
Didier-Werke AG

Headword:
-

Relevant legal provisions:
EPC Art. 102(3)(a), 113(2)

Keyword:
"Proprietor's request for revocation of the patent"

Decisions cited:
T 0073/84

Catchword:
-



Case Number: T 0391/94 - 3.3.5

D E C I S I O N
of the Technical Board of Appeal 3.3.5
of 21 January 1998

Opponent as of right: Shell Internationale Research Maatschappij B.V.
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Representative: Zeestraten, Albertus Wilhelmus Joannes
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Appellant: Radex-Heraklith
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Appellant: Premier Periclase Ltd.
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Representative: Casey, Lindsay Joseph
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Appellant: Didier-Werke AG
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Representative: Brückner, Raimund, Dipl.-Ing.
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Respondent: Shin Nihon Chemical Industry Co., Ltd.
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Representative: Strehl Schübel-Hopf Groening & Partner
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 7 March 1994
concerning maintenance of the European patent
No. 0 140 221 in amended form.

Composition of the Board:

Chairman: R. K. Spangenberg
Members: M. M. Eberhard
J. H. van Moer

Summary of Facts and Submissions

- I. An interlocutory decision of the Opposition Division concerning maintenance of the European patent No. 0 140 221 in amended form was posted on 7 March 1994.
- II. The Appellants (Opponents 02, 03 and 04) appealed against this decision by letters filed on 3 May 1994, 3 May 1994 and 11 May 1994, respectively, paid the fee for appeal within the time limit and filed a Statement of Grounds of Appeal on 14 July 1994, 7 July 1994 and 15 July 1994, respectively. They requested that the patent be revoked.
- III. In a letter dated 21 January 1998 the Respondent (Proprietor) requested revocation of the patent.

Reasons for the Decision


1. The appeals comply with Articles 106 to 108 and Rule 64 EPC and are admissible.
2. It follows from the provision according to Article 113(2) EPC that a European patent cannot be maintained against the Proprietor's will. Thus, in view of the Respondent's request for revocation of his patent, the present European patent has to be revoked (cf. T 73/84; OJ EPO 1985, 241).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The European patent No. 0 140 221 is revoked.

The Registrar:


A. Townend

The Chairman:


R. Spangenberg

