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**D E C I S I O N**  
of 25 July 2000

**Case Number:** T 0353/95 - 3.3.2

**Application Number:** 85307116.5

**Publication Number:** 0181092

**IPC:** A61M 15/02

**Language of the proceedings:** EN

**Title of invention:**

Apparatus for producing a diagnostic gas composition

**Patentee:**

I J & L A TETLEY MANUFACTURING PTY LTD

**Opponent:**

Altmann & Partner

**Headword:**

Appeal terminated/ALTMANN

**Relevant legal provisions:**

EPC Art. 97(1); 106-108

EPC R. 66(1)

**Keyword:**

"Appellant lost capacity to be party to proceedings - appeal terminated"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0353/95 - 3.3.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.2**  
**of 25 July 2000**

**Appellant:** Altmann & Partner  
(Opponent) Eschenhain 14  
D-38226 Salzgitter (DE)

**Representative:** -

**Respondent:** I J & L A TETLEY MANUFACTURING PTY LTD  
(Proprietor of the patent) Unit 4B/8 Resolution Drive  
Caringbah  
New South Wales 2229 (AU)

**Representative:** Senior, Alan Murray  
J.A. KEMP & CO.  
14 South Square  
Gray's Inn  
London WC1R 5LX (GB)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 3 February 1995  
rejecting the opposition filed against European  
patent No. 0 181 092 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** P. A. M. Lançon  
**Members:** U. Oswald  
J. H. van Moer

## Summary of Facts and Submissions

- I. The appeal contested the decision of the Opposition Division dated 3 February 1995 concerning rejection of the opposition filed against the European patent No. 0 181 092.
- II. In a letter dated 19 April 2000, the Respondent (Patentee) submitted that the Appellant (Opponent) company had ceased to exist the company having been struck off the register of companies. The result of a search was attached showing the following entry in the register of companies (Handelsregister) of Salzgitter:
- "HR B574 ALTMANN & PARTNER GMBH, Salzgitter,
- 30.Juli 1998      Durch Beschluß des Amtsgerichts Salzgitter vom 26.08.1997 (14 N 36/97) ist die Eröffnung des Konkursverfahrens mangels einer den Kosten des Verfahrens entsprechenden Masse abgelehnt worden. Die Gesellschaft ist daher gemäß § 1 des Gesetzes vom 09.10.1934 aufgelöst.
- 09.Dez.1998      Die Gesellschaft ist auf Grund von § 2 des Gesetzes über die Löschung von Gesellschaften und Genossenschaften vom 09.10.1934 wegen Vermögenslosigkeit von Amts wegen im Handelsregister gelöscht."

The Respondent also referred to the case law and concluded that, since it had established that if an Opponent was not identified during the opposition proceedings then the opposition was inadmissible, it

must follow that if the Opponent (Appellant) company ceased to exist then the opposition also became inadmissible.

The Respondent requested that the appeal proceedings must be terminated and the decision of the Opposition Division to maintain the patent as granted must take legal effect immediately.

### **Reasons for the Decision**

1. The appeal as filed on 11 April 1995 fulfilled the requirements of Articles 106 to 108 EPC.
  
2. From the Respondent's submissions, it appears that the Appellant is no longer a legal person and no longer exists. The Board has been able to confirm this having consulted the Salzgitter Administrative Court register file (Amtsgerichtsregisterakte) relating to the Appellant company "Altmann & Partner GmbH" which proves that
  - (a) on 26 August 1997 bankruptcy proceedings in request of the company were not commenced because it lacked sufficient assets to cover the costs of those proceedings,
  - (b) the company was indeed dissolved by decision of the Administrative Court on 30 July 1998 for the same reason and
  - (c) the company was struck off the commercial register *ex officio* because of lack of assets on 9 December 1998.

According to German commercial law, when a company is dissolved because of lack of assets (Vermögenslosigkeit), the final act of liquidation of the company (Vollbeendigung) then follows. The company ceases to exist in legal terms ("ist die Gesellschaft rechtlich nicht mehr existent") and loses its capacity to be a party to legal proceedings ("damit entfällt auch ihre Parteifähigkeit"). That is the case here as is apparent from the decisions of the Salzgitter Administrative Court (Amtsgericht Salzgitter).

Only an existing natural or legal person can be a party to opposition proceedings (Article 99(1) EPC; Lunzer/Singer, The European Patent Convention, London 1995, 99.02). This applies also at the appeal stage since Article 107, first sentence, EPC makes no different provision in this respect (Rule 66(1) EPC).

In these circumstances, the Board can only conclude that, having lost its capacity to be party to any proceedings the original Appellant under Article 107 EPC could no longer be regarded as a party to the present proceedings.

Consequently the appeal has lapsed and the proceedings are at an end.

## **Order**

### **For these reasons it is decided that:**

The appeal proceedings are terminated.

The Registrar:

The Chairman:

M. Dainese

P.A.M. Lançon