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D E C I S I O N
of 21 October 2002

Case Number: T 0659/99 - 3.3.5

Application Number: 93106629.4

Publication Number: 0567140

IPC: C01B 15/10

Language of the proceedings: EN

Title of invention:

Stable sodium percarbonate, process for producing the same and
bleach detergent composition containing the same

Patentee:

KAO CORPORATION, et al

Opponent:

Solvay Interox Ltd.

Headword:

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Relevant legal provisions:

EPC Art. 99(1)
EPC R. 55c

Keyword:

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Decisions cited:

G 0010/91

Catchword:

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Case Number: T 0659/99 - 3.3.5

D E C I S I O N
of the Technical Board of Appeal 3.3.5
of 21 October 2002

Appellant: KAO CORPORATION
(Proprietor of the patent) 14-10, Nihonbashi
Kayabacho 1-chome
Chuo-ku
Tokyo (JP)

Representative: Hansen, Bernd, Dr. Dipl.-Chem.
Hoffmann Eitle
Patent- und Rechtsanwälte
Postfach 81 04 20
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Respondent: Solvay Interox Ltd.
(Opponent) Baronet Works, Baronet Road
Warrington
Cheshire WA4 6HB (GB)

Representative: Vande Gucht, Anne
SOLVAY S.A.
Dép. de la Prop. Industrielle
Rue de Ransbeek, 310
BE-1120 Bruxelles (BE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 7 May 1999 revoking
European patent No. 0 567 140 pursuant to
Article 102(1) EPC.

Composition of the Board:

Chairman: R. K. Spangenberg
Members: A.-T. Liu
J. H. Van Moer

Summary of Facts and Submissions

- I. European patent No. 0 567 140 was granted with a set of claims consisting of 28 claims, of which claim 1 was directed to a process for producing a stable sodium carbonate and claims 2 to 12 were depending thereon.
- II. A notice of opposition was filed against claims 13, 14, 19 and 20 of the patent.
- III. By letter of 17 March 1999, the patentee filed amended claims as basis for two auxiliary requests.
- IV. At the end of oral proceedings which were held on 21 April 1999, the opposition division decided to revoke the patent.
- V. With the statement of the grounds of appeal, the patentee filed inter alia a set of claims based on claims 1 to 12 as granted. By letter of 16 September 2002, the appellant submitted that these claims were to form the basis for his sole request and that the pages of the description which were annexed to the letter had been amended accordingly.
- VI. By letter of 23 September 2002, the respondent was notified that, in their opinion, the Board did not have the competence to deal with the claims on file. The respondent was also invited to submit his comments on the amended pages of the description.
- VII. By letter dated 8 October 2002, the respondent replied that he did not have any objections concerning the amendments to the description.

VIII. The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of claims 1 to 12 as granted, with the description as amended with the submission of 16 September 2002.

Reasons for the Decision

Article 99(1) EPC provides, *inter alia*, that "notice of opposition shall be filed in a written reasoned statement". Rule 55c EPC requires the notice of opposition to contain, *inter alia*, "a statement of the extent to which the European patent is opposed".

In the present case, it is explicitly stated in the notice of opposition that the opposition is limited to claims 13, 14, 19 and 20 of the patent as granted. Following the decision of the Enlarged Board of appeal G 10/91 (EPO OJ 1993, 420), the subject-matter of claims 1 to 12 as granted is therefore not included by the opponent in his opposition and the EPO has no competence to deal with these claims.

The description has been correctly adapted to the present claims by limiting the statement of the invention to processes for producing a stable sodium carbonate, without including the products *per se* as part of the invention. These amendments have also been expressly accepted by the respondent.

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 with the order to maintain the patent on the basis of the following documents:

claims: 1 to 12 as granted,

description: pages 3, 5, 10 to 20 as granted;
pages 2, 4, 6 to 9 as submitted with the
letter of 16 September 2002.

The Registrar:

The Chairman:

U. Bultmann

R. Spangenberg