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D E C I S I O N
of 20 May 2003

Case Number: T 0850/01 - 3.3.5

Application Number: 95926381.5

Publication Number: 0842129

IPC: C04B 7/44

Language of the proceedings: EN

Title of invention:

Apparatus and method for producing clinker from a hydrous slurry of raw materials

Patentee:

F.L.SMIDTH & CO. A/S

Opponent:

Krupp Polysius AG

Headword:

Clinker/F.L.SMIDTH

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step - no"

Decisions cited:

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Catchword:

-



Case Number: T 0850/01 - 3.3.5

D E C I S I O N
of the Technical Board of Appeal 3.3.5
of 20 May 2003

Appellant: Krupp Polysius AG
(Opponent) Graf-Galen-Strasse 17
D-59269 Beckum (DE)

Representative: Tetzner, Volkmar, Dr.-Ing. Dr. jur.
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Respondent: F.L.SMIDTH & CO. A/S
(Proprietor of the patent) Vigerslev Alle 77
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Representative: Brunner, Michael John
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 20 July 2001
concerning maintenance of European patent
No. 0 842 129 in amended form.

Composition of the Board:

Chairman: R. K. Spangenberg
Members: G. J. Wassenaar
M. B. Günzel

Summary of Facts and Submissions

- I. The appeal is from the decision of the Opposition Division to maintain European patent No. 0 842 129 in amended form, with claims 1 to 4 filed during oral proceedings on 21 June 2001.
- II. Claims 1 and 2 are directed to an apparatus for manufacturing clinker and claims 3 and 4 are directed to a method for manufacturing clinker.

Method claim 3 reads as follows:

"A method for manufacturing clinker according to which method the majority of the raw materials is introduced in a hydrous slurry, the hydrous slurry of raw materials is fed to a gas suspension drier (4) for drying and heated to a temperature below 200EC, whereafter the dried raw material is supplied to a calciner (3) and then burned in a kiln (1), the raw material, after being dried in the gas suspension drier (4) and prior to its entry into the kiln (1), momentarily being heated in the calciner (3) to a temperature beyond 750EC, and which is sufficiently high to ensure destruction of volatile organic compounds, and in which the raw material is fed directly from the gas suspension drier (4) to a separation cyclone (9), characterised in that the raw material is fed directly from the separation cyclone (9) to the calciner (3)."

- III. In the statement of the grounds of appeal the appellant(opponent) maintained that the subject-matter of the claims maintained by the Opposition Division did not involve an inventive step. The arguments were based on the following documents:

- D1: Prospectus "Der neue Zementdrehofen 11" of Alsen-Breitenburg Zement- und Kalkwerke GmbH, Hamburg 1995,
- D2: US-A-3 986 886,
- D3: Pit & Quarry, July 1981, pages 82 to 87,
- D4: Manuscript of "Lyons, Colorado Plant Design Criteria" by Alan J. Kreisberg, presented during the autumn session of the General Technical Committee of the Portland Cement Association in Denver (Colorado) on 12 to 15 September 1988,
- D5: Römpps Chemielexikon, 8th ed.(1983), pages 2094 to 2095.

III. The respondent (patentee) did not reply to the objections put forward by the appellant.

IV. In a communication, dated 19 December 2002, the Board indicated as its preliminary opinion that the appellant's arguments against inventive step of the subject-matter of the independent claims maintained by the Opposition Division were convincing. The following reasons were given:

"Starting from a process as disclosed in D1 the problem underlying the invention can indeed be seen in the removal of an environmental problem if the kiln feed comprises organic material. This problem was known in the art of cement production and discussed in D3 and D4. The solution given therein, ie to feed the raw material without preheating directly into a calciner before it enters the kiln, seems to be a clear

incentive to the skilled person trying to overcome such problems in a cement plant according to D1, to by-pass the preheaters and to feed the dried raw material directly from the cyclone of the suspension dryer into the calciner."

The parties were invited to file observations within a period of 2 months and it was indicated that, as matter stands, it was likely that the decision under appeal would be set aside.

- V. The parties did not reply to this communication.
- VI. The appellant requested that the decision under appeal be set aside and European patent No. 0 842 129 be revoked.

The respondent made no request.

Reasons for the Decision

- 1. The appeal is admissible
- 2. For the reasons set out in the communication dated 19 December 2002 (point 4 of the facts and submissions) the Board holds that the method according to claim 3 as maintained by the Opposition Division does not involve an inventive step. Since the respondent has not replied to this communication the Board sees no reason to make further comments in this respect. In the absence of an allowable set of claims the patent must be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

U. Bultmann

R. Spangenberg