

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [X] To Chairmen
(D) [] No distribution

D E C I S I O N
of 18 November 2002

Case Number: T 1222/01 - 3.3.5

Application Number: 95908664.6

Publication Number: 0742781

IPC: C01C 3/02

Language of the proceedings: EN

Title of invention:
Preparation of hydrogen cyanide

Applicant:
E.I. DU PONT DE NEMOURS AND COMPANY

Opponent:

-

Headword:
Hydrogen cyanide/DU PONT

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
"Ground of appeal removed during prosecution"

Decisions cited:

-

Catchword:

-



Case Number: T 1222/01 - 3.3.5

D E C I S I O N
of the Technical Board of Appeal 3.3.5
of 18 November

Appellant: E.I. DU PONT DE NEMOURS AND COMPANY
1007 Market Street
Wilmington,
Delaware 19898 (US)

Representative: Abitz, Walter, Dr.-Ing.
Patentanwälte Abitz & Partner
Poschingerstrasse 6
D-81679 München (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 28 May 2001
refusing European patent application
No. 95 908 664.6 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: R. K. Spangenberg
Members: G. J. Wassenaar
J. H. Van Moer

Summary of Facts and Submissions

- I. European patent application No. 95 908 664.6 was refused by a decision of the Examining Division. The application was based on the International Application No. PCT/US95/00 969, published under No. WO 95/21 126.
- II. In a communication under Rule 51(4) EPC of 15 October 1998 the Examining Division indicated that it intended to grant a patent with claims 1 to 9 filed by the appellant with the letter dated 13 August 1997. With a letter dated 12 February 1999 the appellant filed a new claim 1 which no longer contained the feature of induction heating at a frequency of 0.5 to 30 MHz, which was already present in claim 1 as originally filed. After various communications and oral proceedings the application was refused on the ground that, because of the deletion of said feature, claim 1 was amended in such a way that it contained subject-matter which extended beyond the content of the application as filed.
- III. The appellant lodged an appeal against this decision. In the statement of grounds of appeal arguments were put forward why in this case it was allowable to delete said feature.
- IV. In a communication pursuant to Article 11(2) of the rules of procedure of the Boards of Appeal, the Board expressed as its preliminary opinion that the deleted feature was presented in the original application as an essential feature for performing the invention so that its deletion would contravene the requirements of Article 123(2) EPC.

- V. With the letter dated 4 November 2002 the appellant submitted a new claim 1 in which said feature was reintroduced and requested grant of the patent on the basis of the communication under Rule 51(4) EPC of 15 October 1998.

Reasons for the Decision

New claim 1 corresponds to claim 1 of the set of claims on the basis of which the Examining Division intended to grant the patent according to its communication under Rule 51(4) EPC. The appellant's present request can be regarded as an approval of the text on EPO Form 2035.3 sent with said communication. The reason for the refusal of the application is thereby removed. The Board sees no reason to question the finding of the Examining Division that the application with the text indicated in said communication meets the requirements of the EPC.

Order

For these reasons it is decided:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division with the order to grant a patent with the documents according to EPO Form 2035.3 sent with the communication under Rule 51(4) EPC of 15 October 1998.

The Registrar:

The Chairman:

U. Bultmann

R. Spangenberg