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D E C I S I O N
of 14 April 2003

Case Number: T 0416/02 - 3.2.7

Application Number: 94114120.2

Publication Number: 0643019

IPC: C03B 5/16

Language of the proceedings: EN

Title of invention:

Method for processing niter-containing glassmaking materials

Patentee:

PRAXAIR TECHNOLOGY, INC.

Opponent:

L'AIR LIQUIDE, Société Anonyme pour L'Étude et L'Exploitation
des procédés Georges Claude

Headword:

-

Relevant legal provisions:

EPC Art. 102(3)(a), 113(2)

Keyword:

"Proprietor's refusal to agree to the text for maintaining the
patent"

"Appeal procedure closed"

Decisions cited:

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Catchword:

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Case Number: T 0416/02 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 14 April 2003

Appellant:
(Opponent)

L'AIR LIQUIDE, Société Anonyme
pour L'Étude et L'Exploitation
des procédés Georges Claude
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Representative:

Vesin, Jacques
L'AIR LIQUIDE, S.A.
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75, Quai d'Orsay
F-75321 Paris Cedex 07 (FR)

Respondent:
(Proprietor of the patent)

PRAXAIR TECHNOLOGY, INC.
39 Old Ridgebury Road
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Representative:

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Decision under appeal:

Interlocutory decision of the Opposition Division
of the European Patent Office posted
19 March 2002 concerning maintenance of European
patent No. 0 643 019 in amended form.

Composition of the Board:

Chairman: A. Burkhart
Members: H. E. Felgenhauer
C. Holtz

Summary of Facts and Submissions

- I. An interlocutory decision of the Opposition Division concerning maintenance of European patent No. 0 643 019 in amended form was posted on 19 March 2002.
- II. The Appellant (Opponent) appealed against this decision by a letter filed on 22 April 2002, paid the fee for appeal on the same day and filed a Statement of Grounds of Appeal on 18 July 2002. He requested that the patent be revoked in its entirety.
- III. In a letter dated 30 December 2002 the Respondent (Proprietor) gave notice, that he no longer agrees to the version of the patent as maintained by the interlocutory decision of 19 March 2002 and that he will not agree to any other version.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
2. It follows from Article 113(2) EPC that a European patent cannot be maintained against the Proprietor's will. Thus, in view of the Respondent's notice of 30 December 2002, that he will no longer agree to the version of the patent as maintained by the interlocutory decision of 19 March 2002 and that he will not agree to any other version, the present European patent has to be revoked (cf. T 73/84; OJ EPO 1985, 241).
3. In view of the revocation of the patent, the appellant's request has to be considered to be met. Hence, the appeal proceedings are closed.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The European patent No. 0 643 019 is revoked.
3. The appeal procedure is closed.

The Registrar:

The Chairman:

D. Spigarelli

A. Burkhart