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D E C I S I O N
of 29 July 2004

Case Number: T 0955/02 - 3.3.3

Application Number: 94104628.6

Publication Number: 0617053

IPC: C08F 8/04

Language of the proceedings: EN

Title of invention:

Process for hydrotreating resins to lighten color

Patentee:

Eastman Chemical Resins, Inc.

Opponent:

Exxon Chemical Company

Headword:

-

Relevant legal provisions:

EPC Art. 108

EPC R. 65(1)

Keyword:

"Missing Statement of Grounds"

Decisions cited:

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Catchword:

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Case Number: T 0955/02 - 3.3.3

D E C I S I O N
of the Technical Board of Appeal 3.3.3
of 29 July 2004

Appellant: Eastman Chemical Resins, Inc.
(Proprietor of the patent) 100 North Eastman Road
Kingsport, TN 37660 (US)

Representative: Wibbelmann, Jobst, Dr., Dipl.-Chem.
Wuesthoff & Wuesthoff
Patent- und Rechtsanwälte
Schweigerstraße 2
D-81541 München (DE)

Respondent: Exxon Chemical Company
(Opponent) 5200 Bayway Drive
Baytown, TX 77522 - 2149 (US)

Representative: Dörries, Hans Ulrich, Dr.
Dörries, Frank-Molnia & Pohlmann
Triftstraße 13
D-80538 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office dated
2 July 2002 and posted 18 July 2002 concerning
maintenance of European patent No. 0617053 in
amended form.

Composition of the Board:

Chairman: R. Young
Members: W. Sieber
H. Preglau

Summary of Facts and Submissions

- I. The mention of the grant of European patent No. 0 617 053 in respect of European patent application no. 94 104 628.6, which had been filed on 23 March 1994, claiming a US priority of 26 March 1993 (US 37805), was published on 7 October 1998 (Bulletin 1998/41).
- II. A notice of opposition was filed on 7 July 1999 by Exxon Chemical Company, requesting revocation of the patent in its entirety on the grounds of Article 100(a) EPC, ie lack of novelty and lack of inventive step, and on the grounds on Article 100(b) EPC, ie insufficiency of disclosure.
- III. By an interlocutory decision which was announced orally on 2 July 2002 and issued in writing on 18 July 2002, the opposition division decided that the patent could be maintained in amended form based on the second auxiliary request filed by the proprietor during prosecution of the case before the opposition division.
- IV. Notices of appeal against the above decision were filed by the proprietor on 13 September 2002 and by the opponent on 17 September 2002, the required fees being paid on the respective day.
 - (a) No statement of grounds of appeal was filed by the proprietor within the required time limit.
 - (b) On 18 November 2002, the opponent filed a statement of grounds of appeal.

- V. By a communication dated 14 January 2003 sent by registered letter with advice of delivery, the registry of the board informed the appellant proprietor that no statement of grounds of appeal had been filed and that the proprietor's appeal could be expected to be rejected as inadmissible. The appellant proprietor was given the opportunity of filing observations within two months and attention was drawn to Rule 84a EPC and Article 122 EPC.
- VI. The appellant proprietor did not reply to the registry's communication within the given time limit.
- VII. On 25 June 2003, the appellant proprietor filed submissions in response to the opponent's statement of grounds of appeal. It requested that the opponent's appeal be dismissed since amended Claim 1 clearly met the requirements of the EPC.
- VIII. On 14 July 2004, the appellant opponent withdrew its appeal and requested that the proprietor's appeal be rejected as inadmissible pursuant to Article 108 EPC. In case that the board could not comply with this request, oral proceedings were requested in accordance with Article 116 EPC.

Reasons for the Decision

1. The appellant proprietor has not filed a statement setting out the grounds of appeal. The appellant proprietor's notice of appeal itself contained nothing that could be regarded as a statement setting out the grounds of appeal pursuant to Article 108 EPC.

2. As regards the appellant proprietor's letter filed on 25 June 2003 (point VII, above), it contained only arguments why amended Claim 1, ie Claim 1 as maintained by the opposition division, was patentable but it did not contain a single argument why the opposition division's rejection of Claim 1 as granted was wrong. Hence, also this letter contained nothing that could be regarded as a statement of grounds of appeal.

3. There was, moreover, also no longer any room for *restitutio in integrum*. According to Article 122(2) EPC, a request for *restitutio in integrum* is only admissible within the year immediately following the expiry of the unobserved time limit. In the present case, the time limit to file the statement of grounds of appeal expired on 28 November 2002, starting from the date of the appealed decision (18 July 2002) plus 10 days of delivery according to Rule 78(2) EPC and calculating the time limit of four months to file the statement of grounds of appeal according to Article 108 EPC. Thus, the one year time limit for *restitutio in integrum* ended on 28 November 2003.

4. Consequently, the appellant proprietor's appeal has to be rejected as inadmissible (Article 108 EPC in conjunction with Rule 65(1) EPC).

Order

For these reasons it is decided that:

The proprietor's appeal is rejected as inadmissible.

The Registrar:

The Chairman:

E. Görgmaier

R. Young