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D E C I S I O N
of 24 March 2003

Case Number: T 0054/03 - 3.2.3
Application Number: 95106314.8
Publication Number: 0685279
IPC: B22D 11/04, B22D 11/22,
B22D 11/07

Language of the proceedings: EN

Title of invention:

Method for the continuous casting of peritectic steels

Patentee:

Danieli & C. Officine Meccaniche S.p.A.

Opponent:

SMS Demag AG

Headword:

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Relevant legal provisions:

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

Keyword:

"Revocation - on application by patentee"
"Basis of decisions - patentee (agreement of)"

Decisions cited:

T 0073/84

Catchword:

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Case Number: T 0054/03 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 24 March 2003

Appellant:
(Opponent)

SMS Demag AG
Eduard-Schloemann-Strasse 4
D-40237 Düsseldorf (DE)

Representative:

Valentin, Ekkehard, Dipl.-Ing.
Patentanwälte
Müller-Grosse-Pollmeier-Valentin-Gihske
Hammerstrasse 2
D-57072 Siegen (DE)

Respondent:
(Proprietor of the patent)

Danieli & C. Officine Meccaniche S.p.A.
I-33042 Buttrio (UD) (IT)

Representative:

Petraz, Gilberto Luigi
GLP S.r.l.
Piazzale Cavedalis 6/2
I-33100 Udine (IT)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office dated 29 October 2002,
posted on 5 November 2002 rejecting the
opposition filed against European patent
No. 0 685 279 pursuant to Article 102(2) EPC.**

Composition of the Board:

Chairman: C. T. Wilson
Members: F. Brösamle
V. Di Cerbo

Summary of Facts and Submissions

- I. With decision of 29 October 2002 the opposition division rejected the opposition against European patent No. 0 685 279 and maintained the patent in its granted form; the written decision was posted on 5 November 2002.
- II. Against the above decision the opponent lodged an appeal on 6 January 2003 paying the fee on the same day and filing the statement of grounds of appeal on 28 February 2003.
- III. With letter dated 7 March 2003 the proprietor of the patent declared that he no longer approves the text in which the patent has been granted and will not submit an amended text of it.

Reasons for the Decision

1. The appeal is admissible.
2. The Board cannot decide whether the appeal is wholly or partially justified. The patent proprietor withdrew his approval of the text of the patent as granted during the appeal proceedings and at the same time stated that he would not be submitting an amended text. There is therefore no text of the patent on the basis of which the Board can consider the appeal: under Article 113(2) EPC the European Patent Office must consider the European patent only in the text submitted to it, or agreed, by the proprietor of the patent, see T 0073/84,OJ EPO 1985, 241.

3. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the proprietor's will. If the patent proprietor withdraws his approval, expressed before the first instance, of the text of the patent as granted and declares that he will not be submitting an amended text, it may be inferred that he wishes to prevent any text whatever of the patent from being maintained.

4. However, the patent proprietor cannot terminate the proceedings by telling the EPO that he is surrendering the European patent, since this is not provided for in the Convention. Thus he would only be able, as far as national law permitted, to surrender the patent *vis-à-vis* the national patent offices of the designated Contracting States under the relevant national law.

5. At the same time, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty, which calls for a clarification of the industrial rights situation. The only possibility in such a case is to revoke the patent, as envisaged for other reasons in Article 102 EPC. The practice followed by the opposition divisions is thus confirmed.

Order

For these reasons it is decided that:

The contested decision is set aside and the patent revoked.

The Registrar:

The Chairman:

A. Counillon

C. T. Wilson