

Internal distribution code:

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

D E C I S I O N
of 4 November 2004

Case Number: T 0398/03 - 3.2.3

Application Number: 95105173.9

Publication Number: 0677707

IPC: F23R 3/40

Language of the proceedings: EN

Title of invention:
Catalytic gas turbine combustor

Patentee:
PRECISION COMBUSTION, INC.

Opponent:
ALSTOM (Schweiz) AG

Headword:
-

Relevant legal provisions:
EPC Art. 111(1)

Keyword:
"Revocation in effect requested by both parties - patent revoked"

Decisions cited:
-

Catchword:
-



Case Number: T 0398/03 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 4 November 2004

Appellant: ALSTOM (Schweiz) AG
(Opponent) Haselstrasse 16/699
CH-5401 Baden (CH)

Representative: -

Respondent: PRECISION COMBUSTION, INC.
(Proprietor of the patent) 25 Science Park
New Haven
Connecticut 06511 (US)

Representative: Boeters, Hans Dietrich, Dr.
Patentanwälte Boeters & Bauer
Bereiteranger 15
D-81541 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 4 March 2003
rejecting the opposition filed against European
patent No. 0677707 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: U. Krause
Members: J. B. F. Kollar
J. P. B. Seitz

Summary of Facts and Submissions

- I. An appeal was lodged by the Appellant (Opponent) against the decision of 6 February 2003 of the Opposition Division, with written reasons posted 4 March 2003, which rejected the opposition against European patent No. 0 677 707 (application No. 95 105 173.9), requesting that said decision be set aside and the patent be revoked *in toto*.

- II. In response to the Board sending a summons to oral proceedings with an accompanying communication, the representative of the Respondent (Patentee) in a letter dated 7 June 2004 transmitted the declaration of surrender signed by the applicants "... the patent is abandoned."

- III. The Board sent a communication pursuant to Rule 60(1) EPC (Rule 66(1) EPC) dated 23 June 2004 asking the Appellant if he wishes the appeal proceedings to be continued after the surrender of the patent.

- IV. No reply to this communication was filed by the appellant in due time. In a telephone conversation date 3 November 2004 the representative of the Respondent continued that the declaration dated 7 June 2004 was meant as a surrender of the patent *ab initio*.

Reasons for the Decision

1. The appeal is admissible.

2. The respondent has indicated that it desires to abandon the patent, *ab initio*. As the appellant likewise requests revocation, the parties' requests in effect coincide, and accordingly the Board in the exercise of its powers under Article 111(1) EPC decided to revoke the patent.

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:

A. Counillon

U. Krause