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D E C I S I O N
of 20 July 2004

Case Number: T 1123/03 - 3.4.3

Application Number: 88302739.3

Publication Number: 0286289

IPC: H01L 39/14

Language of the proceedings: EN

Title of invention:
A method of preparing a superconducting oxide and superconducting oxide metal composites

Patentee:
MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Opponent:
Siemens AG

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Proprietor no longer approves the text as granted - revocation of the patent"

Decisions cited:
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Catchword:
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Case Number: T 1123/03 - 3.4.3

D E C I S I O N
of the Technical Board of Appeal 3.4.3
of 20 July 2004

Appellant: (Opponent)
Siemens AG
Postfach 22 16 34
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Representative:
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Respondent: (Proprietor of the patent)
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Representative:
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Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 20 August 2003 rejecting the opposition filed against European patent No. 0286289 pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: R. K. Shukla
Members: G. L. Eliasson
P. Mühlens

Summary of Facts and Submissions

I. In a decision dated 20 August 2003 the Opposition Division rejected the opposition which had been filed against European patent No.: 0 286 289.

II. On 16 October 2003 the opponent (appellant) lodged an appeal against that decision and paid the corresponding fee on the same day. A statement of grounds of appeal was filed on 17 December 2003.

III. In a letter dated 26 May 2004 the respondent's (proprietor's) representative stated that the European patent had been abandoned.

In a reply dated 13 July 2004 to a communication of behalf of the Board the respondent's (proprietor's) representative stated that the proprietor no longer approved the text of the granted patent and that no new text would be filed.

Reasons for the Decision

1. The appeal complies with Article 106 to 108 and Rule 64 EPC and is therefore admissible.

2. In accordance with Article 113(2) EPC, the EPO can maintain the patent only in the text agreed by the proprietor of the patent. Agreement cannot be held to be given if the proprietor, without submitting an amended text, expressly states that he no longer approves the text of the patent as granted or previously amended. In such a situation a substantive

requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (Case Law of the Boards of Appeal, 4th edition 2001, VII.D.11.3, page 540 of the English version).

Order

For these reasons it is decided that:

1. The decision of the Opposition Division dated 20 August 2003 is set aside.

2. European patent No. 0 262 289 is revoked.

The Registrar: The Chairman:

D. Meyfarth R. K. Shukla