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**Datasheet for the decision  
of 3 September 2007**

**Case Number:** T 0350/07 - 3.3.05

**Application Number:** 00993485.2

**Publication Number:** 1257500

**IPC:** C01B 21/14

**Language of the proceedings:** EN

**Title of invention:**

Process for the separation of a hydroxylammonium salt solution

**Patentee:**

DSM IP Assets B.V.

**Opponent:**

BASF Aktiengesellschaft

**Headword:**

Hydroxylammonium salt solution/DSM IP ASSETS

**Relevant legal provisions:**

EPC Art. 108, 109  
EPC R. 67

**Keyword:**

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**Decisions cited:**

G 0008/91, T 0372/99, T 0752/05

**Catchword:**

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Case Number: T 0350/07 - 3.3.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.05  
of 3 September 2007

**Appellant:** BASF Aktiengesellschaft  
(Opponent) Patente, Marken und Lizenzen  
D-67056 Ludwigshafen (DE)

**Representative:** -

**Respondent:** DSM IP Assets B.V.  
(Patent Proprietor) Het Overloon 1  
NL-6411 TE Heerlen (NL)

**Representative:** van Loon, C.J.J.  
VEREENIGDE  
Johan de Wittlaan 7  
NL-2517 JR Den Haag (NL)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
20 December 2006 concerning maintenance of the  
European Patent No. 1257500 in amended form.

**Composition of the Board:**

**Chairman:** M. Eberhard  
**Members:** J.-M. Schwaller  
S. Hoffmann

## Summary of Facts and Submissions

I. The opponent (appellant) filed a notice of appeal against the Opposition Division's interlocutory decision posted on 20 December 2006. As requested, the European Patent Office debited the appeal fee in the amount of Euro 1065,- from the appellant's deposit account on 28 February 2007.

No statement of grounds of appeal was filed.

II. In a letter dated 24 April 2007 and received on 25 April 2007, the appellant withdrew the appeal and requested reimbursement of the appeal fee. The request for reimbursement was not substantiated.

III. In a communication dated 15 May 2007, the Board informed the appellant that, in a situation where the appeal is deemed to have been filed and, thus, has come into existence, the reimbursement of the appeal fee is governed by the restrictive provisions of Rule 67 EPC.

The appellant did not reply to this communication and did not withdraw the request for reimbursement.

## Reasons for the Decision

1. According to the decision of the Enlarged Board of Appeal of 5 November 1992 (G 8/91; reasons points 4 and 5), appeal proceedings are terminated, in *ex parte* and *inter partes* proceedings alike, in so far as the substantive issues settled by the contested decision at first instance are concerned, when the sole appellant

withdraws the appeal. Therefore, in the present case, the appeal proceedings were terminated on 25 April 2007.

The present Board remains competent to decide on the pending request for reimbursement of the appeal fee, as a mere procedural issue is concerned (T 372/99, reasons point 1; T 752/05, reasons point 1).

2. Reimbursement of appeal fees is possible in a case in which no notice of appeal is filed or deemed to have been filed within the time limit prescribed by Article 108 EPC, so that no appeal has ever existed.

In the present case, the notice of appeal was filed and the due appeal fee paid according to the requirements of Article 108, sentences 1 and 2 EPC. Therefore, the appeal has come into existence and reimbursement of the fee because of non-existence of the appeal is not possible.

3. According to Rule 67 EPC, reimbursement of appeal fees shall be ordered in a case in which the department whose decision is contested considers the appeal to be admissible and well founded and rectifies its decision in accordance with Article 109(1) EPC or where a Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

In the present *inter partes* case, no interlocutory revision was possible and the appeal had been withdrawn before a decision on its admissibility and allowability could be given by the present Board, so that a reimbursement of the appeal fee in whole or in part by

virtue of the possibility indicated above is to be excluded (cf. decision T 372/99, reasons point 4).

Therefore, none of the requirements stipulated by Rule 67 EPC are fulfilled in the present case.

4. From the above it follows that the appellant's request for reimbursement of the appeal fee has to be refused.

### **Order**

#### **For these reasons it is decided that:**

1. The appeal proceedings are terminated.
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

C. Vodz

M. Eberhard