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**Datasheet for the decision  
of 13 November 2012**

**Case Number:** T 1476/07 - 3.3.05

**Application Number:** 02009227.6

**Publication Number:** 1253660

**IPC:** H01M 8/02

**Language of the proceedings:** EN

**Title of invention:**

Electrochemical solid-state device comprising lanthanide calcium manganite

**Patentee:**

AIR PRODUCTS AND CHEMICALS, INC.

**Opponent:**

L'AIR LIQUIDE, SOCIETE ANONYME POUR L'ETUDE ET L'EXPLOITATION  
DES PROCEDES GEORGES CLAUDE

**Headword:**

Solid-state device/AIR PRODUCTS AND CHEMICALS, INC.

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

"Disapproval of the text of the claims by the patentee -  
revocation"

**Decisions cited:**

T 0073/84

**Catchword:**

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Case Number: T 1476/07 - 3.3.05

**DECISION**  
of Technical Board of Appeal 3.3.05  
of 13 November 2012

**Appellant:**  
(Opponent)  
L'AIR LIQUIDE, SOCIETE ANONYME POUR L'ETUDE ET  
L'EXPLOITATION DES PROCEDES GEORGES CLAUDE  
75, Quai d'Orsay  
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**Representative:**  
Conan, Philippe Claude  
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**Respondent:**  
(Patent Proprietor)  
AIR PRODUCTS AND CHEMICALS, INC.  
7201 Hamilton Boulevard  
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**Representative:**  
Sommer, Andrea  
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**Decision under appeal:**  
Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
11 July 2007 concerning maintenance of European  
patent No. 1253660 in amended form.

**Composition of the Board:**

**Chairman:** G. Rath  
**Members:** H. Engl  
C. Vallet

## Summary of Facts and Submissions

I. European patent EP-B-1 253 660, which relates to an electrochemical solid-state device comprising lanthanum calcium manganite, was granted with 16 claims.

II. The granted patent was opposed under Article 100(a) EPC (lack of inventive step).

The opposition division maintained the patent in amended form on the basis of claims 1 to 4 filed during oral proceedings on 22 June 2007.

III. The opponent (henceforth: the appellant) filed a notice of appeal by letter dated 4 September 2007. The grounds of appeal were received by letter dated 23 November 2007. The appellant requested that the patent be revoked.

IV. The respondent (patentee) filed its observations by letter of 20 March 2008, accompanied by a set of claims as an auxiliary request.

V. By letter dated 8 October 2012, the respondent informed the board that it no longer approved the text of the patent as granted, that it would not submit any further amended claims or description pages, and that it withdrew its request for oral proceedings.

VI. In its communication dated 19 October 2012, the board *prima facie* interpreted the respondent's declaration to signify loss of interest in the patent in suit. However, the board pointed out that:

- The claims as granted were no longer pending in view of the interlocutory decision of the opposition division which was not appealed by the patentee; and that consequently,

- The claims pending were those maintained by the opposition division (main request) and the claims in accordance with the auxiliary request filed with letter dated 20 March 2008.

Therefore, for the board to terminate the appeal proceedings, the respondent should express its disapproval of the text of the claims as pending. The board informed the parties that in such a case the patent would be revoked pursuant to Article 113(2) EPC.

VII. In reply to the board's communication, the respondent, supplementary to its previous submission, declared its disapproval of the text of the claims as maintained by the opposition division as well as of the claims in accordance with the auxiliary request, filed with letter dated 20 March 2008.

### **Reasons for the Decision**

1. Pursuant to Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent or patent application only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
2. The board notes that in the present case the respondent unambiguously and unconditionally withdrew its approval

of the text in which the patent was maintained by the opposition division. The respondent also withdrew its approval of the text of the claims filed during the appeal procedure as an auxiliary request. Furthermore, the respondent announced that it would not submit further amended claims.

3. In view of the express declarations of the respondent (patent proprietor), there is no version of the European patent having the patent proprietor's consent upon which the board could decide.

The patent must therefore be revoked (see T 73/84, OJ EPO 1985, 241, points 2 and 3 of the reasons).

## **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:

C. Vodz

G. Rath