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**Datasheet for the decision
of 18 August 2008**

Case Number: T 0529/08 - 3.3.06

Application Number: 97915181.8

Publication Number: 0909305

IPC: C10L 1/18

Language of the proceedings: EN

Title of invention:

Anti-static additives for hydrocarbons

Patentee:

BAKER HUGHES INCORPORATED

Opponent:

Clariant Verwaltungsgesellschaft mbH

Headword:

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Relevant legal provisions:

EPC Art. 108

EPC R. 50(3), 99(3)

Relevant legal provisions (EPC 1973):

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Keyword:

"Notice of appeal not signed"

"Appeal deemed not to be filed"

"Reimbursement of the appeal fee"

Decisions cited:

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Catchword:

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Case Number: T 0529/08 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 18 August 2008

Appellant: Clariant Verwaltungsgesellschaft mbH
(Opponent) Brünigstrasse 50
D-65929 Frankfurt am Main (DE)

Representative: Mikulecky, Klaus
Clariant Produkte (Deutschland) GmbH
Group Intellectual Property
Am Unisys-Park 1
D-65843 Sulzbach (DE)

Respondent: BAKER HUGHES INCORPORATED
(Patent Proprietor) 3900 Essex Lane Suite 1200
Houston TX 77027 (US)

Representative: Finck, Dieter
V. Fünér, Ebbinghaus, Finck, Hano
Mariahilfplatz 3
81541 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
3 January 2008 concerning maintenance of
European patent No. 0909305 in amended form.

Composition of the Board:

Chairman: P.-P. Bracke
Members: P. Ammendola
A. Pignatelli

Summary of Facts and Submissions

- I. On 13 March 2008, the opponent against patent No. 0909305 filed a notice of appeal against a decision of the opposition division dated 3 December 2007. An appeal fee was paid the same day.

The notice of appeal was not signed. The decision concerning the above cited patent was dated 3 January 2008.

On 20 March 2008 a communication that proceedings before the Board of Appeal 3.3.06 commenced was sent to the parties. Since no statement setting out the grounds of appeal was received within the time limits the parties were informed by a communication dated 23 June 2008 that it was expected that the appeal will be rejected as inadmissible.

In response to this communication, on 26 June 2008 the opponent informed the Board that it considered that the appeal was never filed because the notice of appeal was not signed.

- II. He requested a decision stating that the appeal was not filed and the reimbursement of the appeal fee. He requested oral proceedings in case the Board would not consider the appeal as not to have been filed.
- III. The proprietor of the patent did not file any comments.

Reasons for the decision

The notice of appeal was filed after entry into force of the new version of the EPC (13 December 2007) and was not signed and the person who filed it declared that he did not intend to do so.

Under the new version of the EPC, Article 108 establishes that a notice of appeal is necessary to introduce an appeal and the formal requirements for the notice of appeal are established under Rule 99(3) and Part III of the Implementing Regulations.

According to Article 7 of the Act revising the EPC of 29 November 2000 and Article 1 No. 2 of the decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the EPC of 29 November 2000, Article 108 of the new version shall apply to European patents already granted at the time of its entry into force. According to Article 2 of the Decision of the Administrative Council of 7 December 2006 amending the Implementing Regulations to the European Patent Convention 2000, the Implementing Regulations to the EPC 2000 shall apply to all European patents in so far as the foregoing are subject to the provisions of the EPC 2000.

In this case therefore, Rule 50(3) EPC and Rule 99(3) EPC apply which provide that a notice of appeal which is not signed in due time shall be deemed not to have been filed.

The payment of the appeal fee alone cannot be considered to be a valid filing of an appeal, since the requirements of Article 108 EPC are not fulfilled with the payment order.

Thus, in this case no appeal has been filed.

The proceedings before the Board should not have commenced and have therefore to be discontinued. The appeal fee is reimbursed since it was paid without a legal basis for doing so.

Order

For these reasons it is decided that:

1. The proceedings before the Board of Appeal are discontinued.
2. The appeal fee is reimbursed.

The Registrar:

The Chairman:

G. Rauh

P.-P. Bracke