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**Datasheet for the decision
of 8 September 2010**

Case Number: T 0606/09 - 3.2.08

Application Number: 03075673.8

Publication Number: 1323839

IPC: C22C 21/02

Language of the proceedings: EN

Title of invention:

Aluminium brazing alloy

Patent Proprietor:

Corus Aluminium Walzprodukte GmbH, et al

Opponent:

ALCAN

Headword:

-

Relevant legal provisions:

EPC R. 84(1), 100(1)

Relevant legal provisions (EPC 1973):

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Keyword:

"Lapse of patent"

"Termination of appeal proceedings"

Decisions cited:

G 0001/90

Catchword:

-



Case Number: T 0606/09 - 3.2.08

DECISION
of the Technical Board of Appeal 3.2.08
of 8 September 2010

Appellant: ALCAN
(Opponent) Alcan France S.A.S.
PROPRIÉTÉ INDUSTRIELLE
217, Cours Lafayette
F-69451 Lyon Cedex 06 (FR)

Representative: -

Respondent: Corus Aluminium Walzprodukte GmbH
(Patent Proprietor) Carl-Spaeter-Straße 10
D-56070 Koblenz (DE)

Representative: Müller, Frank Peter
Müller Schupfner & Partner
Patentanwälte
Bavariaring 11
D-80336 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
28 January 2009 concerning maintenance of
European patent No. 1323839 in amended form.

Composition of the Board:

Chairman: T. Kriner
Members: R. Ries
E. Dufrasne

Summary of Facts and Submissions

- I. Opposition was filed against European patent 1 323 839.
- II. The opposition division decided that the patent was to be maintained in amended form on the basis of the fifth auxiliary request.
- III. The opponent filed an appeal against that decision.
- IV. With letter dated 27 April 2010, the respondent/proprietor informed the Board that the patent had lapsed in all designated Contracting States where it had originally been validated, by non-payment of the annuities.
- V. That was confirmed by the information available to the European Patent Office, for all the designated Contracting States for which corresponding information was provided to the European Patent Office.
- VI. With a communication dated 11 May 2010 the parties were informed by the Board of that situation and the appellant/opponent was informed that pursuant to Rule 84(1) EPC the opposition proceedings could be continued if a corresponding request was filed within two months.
- VII. No reply was received to that communication and then in particular no request for continuation of the proceedings was filed by the appellant/opponent.

Reasons for the Decision

1. Absent any specific provision concerning continuation of appeal proceedings in case a European patent has lapsed in all the designated Contracting States, Rule 100(1) EPC prescribes that the provisions relating to proceedings before the department which has taken the decision impugned shall apply to appeal proceedings.

According to Rule 84(1) EPC, if the patent has lapsed in all designated Contracting States, the opposition proceedings may be continued at the request of the opponent.

On the basis of the above-mentioned Rule 100(1) EPC, Rule 84(1) EPC applies mutatis mutandis to the appellant/opponent in appeal proceedings.

2. In the present case no request for continuation of the proceedings has been filed by the appellant/opponent.
3. Therefore, the proceedings have to be terminated (G 01/90, JO OEB 1991, 275, Reasons, 7.).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman:

V. Commare

T. Kriner