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**Datasheet for the decision
of 18 December 2014**

Case Number: T 1409/11 - 3.3.05
Application Number: 04706074.4
Publication Number: 1590299
IPC: C02F1/28, C02F1/52, C02F1/62,
C02F1/72
Language of the proceedings: EN

Title of invention:
PROCESS FOR REMOVING ARSENIC FROM AQUEOUS STREAMS

Applicant:
Molycorp Minerals, LLC

Headword:
ARSENIC REMOVAL/MOLYCORP

Relevant legal provisions:
EPC Art. 123(2), 111(2)

Keyword:
Amendments - allowable (yes)
Remittal to the examining division for further prosecution
(yes)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1409/11 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 18 December 2014

Appellant: Molycorp Minerals, LLC
(Applicant) 5619 Denver Tech Center Pkwy Suite 1000
Greenwood Village, CO 80111 (US)

Representative: Stiebe, Lars Magnus
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 4 February 2011
refusing European patent application No.
04706074.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Rath
Members: J.-M. Schwaller
P. Guntz

Summary of Facts and Submissions

- I. This appeal lies from the decision of the examining division refusing European patent application No. 04 706 074.4 because claim 1 of each of the five requests then on file did not meet the requirements of Article 123(2) EPC.
- II. In its decision, the examining division held in particular the feature "*cerium 4+ reacts with arsenite*", which was defined in the claimed subject-matter of each request, not to be directly and unambiguously derivable from the application documents as filed.
- III. With its statement of grounds of appeal dated 6 June 2011, the appellant filed six sets of amended claims as a main and as auxiliary requests 1 to 5.
- IV. In a communication dated 4 November 2013, the board questioned in particular the allowability of said requests under Article 123(2) EPC.
- V. With letter of 26 February 2014, the appellant submitted six new sets of claims as a main request and as auxiliary requests I to V.
- VI. In the communication annexed to the summons to oral proceedings dated 19 May 2014, the board expressed its preliminary opinion as follows.

There was no basis in the application as filed (Article 123(2) EPC) for

- a method for removing arsenic from an aqueous feed comprising a step b) carried out in the presence

of a mixture of a cerium-containing compound and an arsenic precipitating agent comprising between 8 to 60 weight % of a cerium +4 compound;

- the feature "the precipitating agent comprises a rare earth having a 3+ oxidation state";
- the feature "lanthanum in the +3 oxidation state".

The subject-matter of the independent claims relating to "a device for removing arsenic from drinking water" on the one hand lacked clarity under Article 84 EPC and on the other hand lacked novelty in the light of document US 4 808 564, which the board was aware of.

VII. At the oral proceedings, which took place on 18 December 2014, the appellant withdrew all the requests previously on file and, after having discussed several claims versions, it decided to maintain one sole set of claims called "Request Oral Proceedings Clean Copy (II)", with claim 1 thereof reading as follows:

"1. A method for removing arsenic from an aqueous feed comprising the following steps:

(a) treating, in an oxidation zone, said aqueous feed having said arsenic as arsenite and arsenate with a cerium-containing compound, wherein said cerium-containing compound contains cerium having a +4 oxidation state, said cerium +4 comprising water insoluble cerium dioxide in the form of a particulate solid oxidizing arsenic in the +3 oxidation state in said arsenite to arsenic in the +5 oxidation state in arsenate; and

(b) contacting said aqueous feed with an arsenic precipitating agent, said arsenic precipitating agent reacting with said arsenate to form insoluble arsenic compounds and a purified aqueous liquid having a reduced arsenic concentration, said arsenic precipitating agent consisting of lanthanum oxide, wherein said cerium-containing compound and said arsenic precipitating agent form a mixture which contains between 8 to 60 weight percent of said cerium +4 compound calculated as an oxide."

Claims 2 to 5 represent particular embodiments of the subject-matter of claim 1, on which they depend.

VIII. After closure of the debate, the chairman established the appellant's request as being that the contested decision be set aside and that a patent be granted on the basis of claims 1 to 5 of the sole request filed at the oral proceedings.

Reasons for the Decision

1. Allowability of the amendments

The board notes that the features which were objected to under Article 123(2) EPC are no longer recited in the claimed subject-matter. The claims have in particular been restricted to an arsenic precipitating agent "consisting of lanthanum oxide".

The claims at issue moreover have a basis as follows in the application as filed in its version published as WO 2004/067452:

- Claim 1: in claims 1 to 5, 7 and 8, in the passage at page 7, lines 25 to 29 and in the example;
- Claim 2: in the passages at page 3, lines 27 and 28 and at page 4, lines 9 to 24 and 30 to 32;
- Claim 3: in the passage at page 7, lines 15 to 18;
- Claim 4: in the passages at page 4, lines 23 to 26 and page 9, lines 33 to 35;
- Claim 5: in the passage at page 8, lines 11 to 14.

It follows that the claims at issue satisfy the requirements of Article 123(2) EPC.

2. The board observes that any claim relating to a device has been removed from the claimed subject-matter, so that the objections under Articles 54 and 84 EPC raised in the board's communication of 19 May 2014 have thereby been overcome.
3. It follows from the above considerations that the reasons which led to the rejection of the patent application no longer apply. The board thus can exercise its discretion under Article 111(1) EPC to remit the case to the examining division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution on the basis of claims 1 to 5 submitted as "Request Oral Proceedings Clean Copy (II)" on 18 December 2014.

The Registrar:

The Chairman:



C. Vodz

G. Rath

Decision electronically authenticated