

Europäisches Patentamt  
Beschwerdekammern

European Patent Office  
Boards of Appeal

Office européen des brevets  
Chambres de recours

Veröffentlichung im Amtsblatt	Ja/Yes
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/No



Aktenzeichen / Case Number / N° du recours : T 130/84

Anmeldenummer / Filing No / N° de la demande : 79301343.4

Publikations-Nr. / Publication No / N° de la publication : 0007735

Bezeichnung der Erfindung: Process for making sulfurized olefins  
Title of invention:  
Titre de l'invention :

**ENTSCHEIDUNG / DECISION**  
vom / of / du 3 September 1984

Proprietors of the patent: MOBIL OIL CORPORATION  
Stichwort / Headword / Référence : sulfurized olefins/MOBIL OIL

EPO/EPC/CBE Articles 99(1), 112(1) Rule 56(1)

**Leitsatz / Headnote / Sommaire**

A point of law concerning the right of a proprietor of a European patent to file a notice of opposition against that patent is referred to the Enlarged Board of Appeal.

Europäisches  
Patentamt

Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



Case Number: T 130/ 84

## DECISION

of the Technical Board of Appeal 3.3.1

of 3 September 1984

Appellants:  
(Opponents)

MOBIL OIL CORPORATION  
150 East 42nd Street  
New York, New York 10017 (US)

Representative:

Cooper, John Anthony  
Mobil Court  
3 Clements Inn  
London WC2 A 2 EB (GB)

Respondents:  
(Proprietors of  
the patent)

the said MOBIL OIL CORPORATION

Representative:

the said John Anthony Cooper

Decision under appeal:

Decision of the Opposition Division (Formalities  
Section) of the European Patent Office dated  
30 April 1984 finding a Notice of Opposition to  
European patent N° 0007735 to be inadmissible  
pursuant to Rule 56(1) EPC.

Composition of the Board:

Chairman: D. Cadman  
Member: P. Ford  
Member: K. Jahn

SUMMARY OF FACTS AND SUBMISSIONS

- I. On 8 June 1983, European Patent N° 0007735 was granted to the appellants.
- II. On 4 November 1983, the appellants filed a notice of opposition against their own patent. The opposition fee was duly paid.
- III. On 30 March 1984, a Formalities Officer, acting for the Opposition Division, pursuant to item 6 of the notice of the Vice-President of Directorate-General 2, published in Official Journal EPO 1982, page 61, issued the decision under appeal, rejecting the notice of opposition as inadmissible on the basis of Rule 56(1) EPC. The ground for rejection was that the proprietor of a European patent was not allowed to file opposition to his own European patent as he did not fall under the term "any person" in Article 99 EPC.
- IV. On 24 May 1984, the appellants filed an appeal against the said decision. The appeal fee was duly paid and a Statement of the Grounds of the Appeal was filed on 1 August 1984.
- V. In the Statement of Grounds, the appellants submit that there is no reason to interpret the words "any person" in Article 99(1) EPC as meaning "any person save the proprietor of the patent". The appellants make, inter alia, the following points:
  - (1) Such an interpretation is contrary to the plain language of the EPC and there is no basis for it in the preparatory documents of the Convention.
  - (2) Article 115 EPC (observations by third parties), in contrast, uses the same words in a context in which they clearly mean "any third party".
  - (3) The situation is not essentially different from that in which a third party opponent has withdrawn from opposition proceedings and the Opposition Division continues the proceedings, in the public interest, in accordance with Rule 60(2) EPC.

- (4) Opposition procedure before the EPO is based on the investigative principle, not the adversary system of procedure.
- (5) There can be no inherent conflict with the sovereign rights of contracting states if proprietors of European patents are permitted to oppose their own patents.
- (6) It is in the public interest that wrongly granted patents should be limited or revoked.
- (7) Refusing to allow proprietors to oppose their own patents could not be effective if an opposition filed, instead, in the name of an employee of the proprietor, or of a subsidiary or affiliate, could be admissible.

The Technical Board of Appeal is invited by the appellants to consider whether referral of the point of law to the Enlarged Board of Appeal would be appropriate. The appellants request the appointment of an oral hearing in the event that the Board (or the Enlarged Board) is of the opinion that the appeal should be refused.

#### REASONS FOR THE DECISION

1. The appeal complies with Articles 106 to 108 and Rules 1 and 64 EPC and is, therefore, admissible.
2. Article 112(1)(b) EPC empowers a Board of Appeal to refer any question by law to the Enlarged Board of Appeal if it considers that a decision is required on an important point of law and to do so either of its own motion or following a request from a party to the appeal.
3. The answer to the question whether the proprietor of a European patent may file an admissible notice of opposition against that patent is not only decisive for the purposes of the present appeal: it is clearly of considerable general importance.

It is a pure question of law, which is known to be the subject of controversy and it is manifestly in the public interest that it should be answered definitively.

DECISION

For these reasons, pursuant to Article 112(1)(a) EPC, in conjunction with Article 17, Rules of Procedure of the Boards of Appeal (Official Journal EPO 1983, page 17) it is decided that:

The following point of law shall be referred to the Enlarged Board of Appeal for decision:

"May the proprietor of a European patent file an admissible notice of opposition against that patent?"

RF  
/a

J. Rbe

ES Cadman