

Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	OUI/Non

Aktenzeichen / Case Number / N° du recours : T 336/86 - 3.3.1

Anmeldenummer / Filing No / N° de la demande : 81 300 883.6

Veröffentlichungs-Nr. / Publication No / N° de la publication : 0 059 280

Bezeichnung der Erfindung: Preparation of granular sodium tripolyphosphate products

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : C01B 25/41

### ENTSCHEIDUNG / DECISION

vom / of / du 28 September 1988

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :

FMC Corporation

Einsprechender / Opponent / Opposant :

Hoechst AG

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Articles 104(1), 111(1) and 113(2)

Schlagwort / Keyword / Mot clé :

"Revocation of a European patent at request of the proprietor" - "Cost apportionment".

Leitsatz / Headnote / Sommaire

Europäisches  
Patentamt

Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



Case Number : T 336/86 - 3.3.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.1  
of 28 September 1988

**Appellant :**  
(Opponent)

HOECHST AKTIENGESELLSCHAFT, Frankfurt  
-Werk Knapsack-  
Postfach 29 02  
D-5030 Hürth-Knapsack

**Representative :**

**Respondent :**  
(Proprietor of the patent)

FMC Corporation  
2000 Market Street  
Philadelphia Pennsylvania 19103  
USA

**Representative :**

West, Alan H. et al.  
R.G.C. Jenkins & Co.  
26 Caxton Street  
London SW1H 0RJ  
GB

**Decision under appeal :**

Decision of the Opposition Division of the European  
Patent Office dated 5 August 1986 rejecting the  
opposition filed against European patent  
No. 0 059 280 pursuant to Article 102(2) EPC.

**Composition of the Board :**

**Chairman :** K. Jahn

**Members :** R. Andrews

E. Persson

### Summary of Facts and Submissions

- I. In a decision dated 5 August 1986 the Opposition Division rejected the opposition filed against European patent No. 0 059 280 granted upon the subject-matter of European patent application No. 81 300 883.6 filed on 3 March 1981 without any claim to priority.
- II. An appeal was lodged against this decision requesting that the decision under appeal be set aside and the patent in suit revoked.
- III. During oral proceedings held on 8 March 1988 the Appellant submitted Spanish patent No. 487 396. This document, which was later shown to have been published prior to the date of filing of the present application, concerned the same invention as the one disclosed in the patent in suit.
- IV. By a letter filed 10 June 1988 the Respondent requested the unconditional revocation of the European patent, suggesting at the same time an award of costs in his favour on the ground that the oral proceedings could have been avoided if the Appellant had put forward his allegations regarding the prior published Spanish patent a few days earlier. By a letter filed on 27 June 1988 the Appellant contested that the Respondent was entitled to an award of costs and requested an apportionment of costs in his favour under Article 104(1) EPC.

### Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.

2. The Respondent (patentee) has made it clear in his letter filed on 10 June 1988 that he wishes the patent to be revoked. Following the principles stated in Decision T 237/86 dated 11 June 1987, "Abandoned patent/SMS", this Board has therefore to revoke the European patent.
  
3. The oral proceedings held on 8 March 1988 would have been unnecessary if the Appellant had brought Spanish patent No. 487 396 to the attention of the Board and the Respondent at an earlier stage in the proceedings, i.e. as soon as possible after the receipt of the telex on 26 February 1988 informing him of the existence and publication date of the said Spanish patent. However, the Respondent is himself the proprietor of the above-mentioned Spanish patent and, therefore, he should have been aware that, having paid the granting fee and the first annual fee on 27 November 1980, under Spanish law in force at that time the said Spanish patent was available to the public within the meaning of Article 54(2) EPC from that date, i.e. before the application date of the patent in suit. Thus, the failure of both parties to exercise all due care resulted in oral proceedings which proved to be superfluous. In these circumstances the Board takes the view that an award of costs to either of the parties is not justified.

#### Order

For these reasons, it is decided that:

1. The Decision of the Opposition Division dated 5 August 1986 is set aside.

2. European patent No. 0 059 280 is revoked.
3. The requests for an apportionment of costs under Article 104(1) EPC are refused.



The Registrar:



The Chairman:

KWA  
EP