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D E C I S I O N
of 5 April 1994

Case Number: T 0129/92 - 3.2.3

Application Number: 85113014.6

Publication Number: 0218741

IPC: F25J 3/02

Language of the proceedings: EN

Title of invention:

Process to produce a krypton-xenon concentrate and a gaseous oxygen product

Patentee:

Union Carbide Corporation

Opponent:

Linde Aktiengesellschaft, Wiesbaden

Headword:

-

Relevant legal norms:

EPC Art. 102(3)(a), 113(2)

Keyword:

"Non-approval of granted text and non-intention to submit amended text by proprietor"

Decisions cited:

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Catchword:

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Case Number: T 0129/92 - 3.2.3

DECISION
of the Technical Board of Appeal 3.2.3
of 5 April 1994

Appellant:
(Opponent) Linde Aktiengesellschaft, Wiesbaden
Zentrale Patentabteilung
D-82049 Höllriegelskreuth (DE)

Representative: -

Respondent:
(Proprietor of the patent) Union Carbide Corporation
39 Old Ridgebury Road
Danbury
Connecticut 06817 (US)

Representative: Schwan, Gerhard, Dipl.-Ing.
Elfenstrasse 32
D-81739 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office dated 2 December 1991,
posted on 13 December 1991 rejecting the
opposition filed against European patent
No. 0 218 741 pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: C.T. Wilson
Members: H. Andrae
L.C. Mancini

Summary of Facts and Submissions

- I. In its decision dated 13 December 1991 the Opposition Division rejected the opposition filed against the European patent No. 0 218 741.
- II. The Appellant (Opponent) appealed against the decision of the Opposition Division on 12 February 1992, requesting that the patent be revoked. The appeal fee was paid on 12 February 1992 and the Statement of Grounds filed on 31 March 1992.
- III. In a letter dated 14 March 1994 the Respondents (Proprietors of the patent) wrote that the Applicant no longer approves the text as granted and does not intend to submit an amended text.

Reasons for the Decision


1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
2. Since it follows from the provision according to Article 113(2) EPC that a European patent cannot be maintained against the proprietor's will, the present European patent has, therefore, to be revoked (cf. T 73/84, OJ EPO 1985, 241).

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The European patent No. 0 218 741 is revoked.

The Registrar:



N. Maslin

The Chairman:



C.T. Wilson