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I N T E R L O C U T O R Y
D E C I S I O N
of 20 December 1993

Case Number: T 0169/92 - 3.3.2

Application Number: 86302987.2

Publication Number: 0202780

IPC: C02F 1/56

Language of the proceedings: EN

Title of invention:
Flocculation processes

Patentee:
Allied Colloids Limited

Opponent:
SNF Floerger

Intervener:
01) Cyanamid of Great Britain Limited
02) Chemische Fabrik Stockhausen GmbH

Headword:
Intervention/ALLIED COLLOIDS

Relevant legal norms:
EPC Art. 105, 112

Keyword:
"Admissibility of intervention during appeal proceedings"
"Question of uniform application of the law"
"Referral to the Enlarged Board of Appeal"

Decisions cited:
T 0338/89, T 0390/90, T0027/92

.../...

Catchword:

The following question is referred to the Enlarged Board of Appeal:

Is an intervention, which otherwise complies with the conditions laid down in Article 105 EPC, admissible when filed during pending appeal proceedings?

Case Number: T 0169/92 - 3.3.2

**I N T E R L O C U T O R Y
D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 20 December 1993**

Appellant: SNF Floerger
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office dated 2 december 1991
concerning maintenance of European patent
No. 0 202 780 in amended form.

Composition of the Board:

Chairman: P.A.M. Lançon
Members: E.M.C. Holtz
M.M. Eberhard

Summary of Facts and Submissions

- I. On 2 December 1991, the Opposition Division took a decision to reject the opposition by the Appellant (Opponent) against European patent No. 0 202 780. A notice of appeal was filed and the appeal fee paid on 12 February 1992 and the Statement of Grounds was filed on 13 April 1992.
- II. On 24 February 1993, a third party (Intervener 1) lodged a notice of intervention under Article 105 EPC and paid the prescribed opposition fee.
- III. The notice of intervention was based on the following:
- On 1 December 1992, the Intervener had been served a Writ for infringement in the United Kingdom by the Patentee, which date therefore constituted the date on which the infringement proceedings were initiated for the purposes of Article 105(1) EPC. The grounds of intervention were that none of the claims of the patent was in fact patentable and that the patent did not disclose the invention in a manner sufficiently clear for it to be carried out by a person skilled in the art.
- IV. The Board of Appeal notified the parties that it provisionally contemplated a referral to the Enlarged Board of Appeal of whether an intervention, when filed during appeal proceedings, is admissible.

The Intervener and the Patentee both expressed a wish to have oral proceedings before the Enlarged Board.

V. On 6 November 1993, a second Intervener filed a notice of intervention, stating that they had been requested by the Patentee in a letter dated 20 March 1992 to cease alleged infringement, and that they themselves on 24 September 1993 had instituted proceedings for a court ruling that they were not infringing the patent.

In order not to delay the proceedings already pending before the Enlarged Board of Appeal in G 6/93 as a result of a referral in decision T 27/92 of 8 July 1993, to be published in the OJ EPO, the Board on 15 December 1993 notified the parties that a second referral of the same question as in that case was no longer deemed appropriate.

VI. The Intervener in T 27/92, in a letter dated 6 December 1993, withdrew the intervention, as a result of which the proceedings of G 6/93 were terminated on 16 December 1993.

Reasons for the Decision

1. The appeal in the present case is admissible.
2. The formal requirements for interventions under Article 105 EPC have been complied with in the present case. Nevertheless, the admissibility of an intervention at the appeal stage has been questioned in cases before the Boards of Appeal:

Decision T 338/89 of 10 December 1990, not published in the OJ EPO, presumed interventions to be admissible at the appeal stage and thus discussed only whether or not

the specific requirements regarding time limits etc under Article 105(1) EPC had been met.

Decision T 390/90 of 15 December 1992, to be published in the OJ EPO, on the contrary concluded that interventions could not be admissible at the appeal stage.

Before the decision in T 390/90 had been handed down, the present Board had already communicated its provisional opinion in another case, T 886/91, to admit a similar intervention also raised at the appeal stage.

Finally, decision T 27/92 of 8 July 1993, to be published, referred the question of admissibility of interventions to the Enlarged Board of Appeal (G 6/93).

3. Having regard to the fact that the procedure in G 6/93 has been terminated as a result of the withdrawal of the intervention in T 27/92, the issue whether an intervention is admissible at the appeal stage remains unresolved. In the present Board's view a question of uniform application of the law has arisen through decisions T 338/89 and T 390/90 which requires clarification by the Enlarged Board (Article 112 EPC).
4. Since the circumstances of the present case are similar to those of T 27/92 and the present Board agrees on all the main points raised in that decision, there is no need here to repeat all the arguments already discussed there. The salient points of reasoning in that decision are to be found in points 6 to 12.

Order

For the reasons stated above, the following question is referred to the Enlarged Board of Appeal:

Is an intervention, which otherwise complies with the conditions laid down in Article 105 EPC, admissible when filed during pending appeal proceedings?

The Registrar:

The Chairman;

P. Martorana

P. Lançon