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**D E C I S I O N**  
of 23 March 1995

**Case Number:** T 0533/94 - 3.3.1

**Application Number:** 88118335.4

**Publication Number:** 0315179

**IPC:** C10G 11/18

**Language of the proceedings:** EN

**Title of invention:**

Ultra-short contact time fluidized catalytic cracking process

**Patentee:**

Bartholic, David B.

**Opponent:**

STONE & WEBSTER ENG. CORP.

**Headword:**

Cracking process/BARTHOLIC

**Relevant legal provisions:**

EPC Art. 99, 111(1)  
EPC. R. 55(c), 56(1)

**Keyword:**

"Admissibility of Notice of Opposition - reasons sufficient in support of the grounds for opposition"  
"Remittal to Opposition Division"

**Decisions cited:**

T 0222/85, T 0002/89, T 0199/92, T 0204/91

**Catchword:**

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Case Number: T 0533/94 - 3.3.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.1  
of 23 March 1995

**Appellant:** STONE & WEBSTER ENG. CORP.  
(Opponent) 245 Summer Street  
Boston  
Massachussets 02107 (US)

**Representative:** Wächtershäuser, Günter, Prof. Dr.  
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**Respondent:** Bartholic, David B.  
(Proprietor of the patent) 75 Wetumpka Lane  
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New Jersey 07060 (US)

**Representative:** Patentanwälte  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office of 21 April 1994 pursuant  
to Rule 56 EPC finding the Notice of Opposition to  
be inadmissible.

**Composition of the Board:**

**Chairman:** A. J. Nuss  
**Members:** J. M. Jonk  
R. E. Teschemacher

Summary of Facts and Submissions

I. The Appellant (Opponent) lodged an appeal against the decision of the Opposition Division on the rejection of the opposition against the patent No. 0 315 179 (priority date: 5 November 1987; date of filing: 3 November 1988) as inadmissible pursuant to Rule 56(1) EPC since the requirements of Article 99(1) and Rule 55(c) were not met.

The opposition was based on Article 100(a) EPC and had been filed against the patent as a whole.

II. The Opposition Division held that the Opponent had indicated in the Notice of Opposition the extent to which the patent in suit was opposed, the grounds on which the opposition was based as well as evidence, notably the documents

- (1) US-A-4 419 221 and
- (2) US-A-4 814 067,

presented in support of these grounds. However, the Opponent had failed to present arguments in support of the grounds of opposition as required by Rule 55(c) EPC. They also held that, owing to the lack of such arguments, they were unable to understand the opposition and, therefore, could not reach a reasoned decision based on the submissions of both parties.

III. Oral proceedings were held on 23 March 1995.

IV. The Appellant requested that the decision under appeal be set aside, the citation of document (2) be corrected by replacing US-A-4 814 067 by the publication of the corresponding European patent application, and that the

patent be revoked. Alternatively, he requested that the decision under appeal be set aside and the case be remitted to the Opposition Division for further prosecution.

The Respondent (Patentee) requested that the appeal be dismissed.

V. Claim 1 according to the patent in suit reads as follows:

" A fluidized process for the conversion of a hydrocarbon oil charge-stock to lower molecular weight liquid product comprising:

- (a) atomizing a primary charge-stock to provide a stream of liquid particles of a preselected size;
- (b) introducing said atomized primary charge-stock horizontally into a primary reaction zone;
- (c) introducing a stream of hot fluidized cracking catalyst particles mixed with a gaseous dispersion medium downwardly into said reaction zone at a velocity greater than 304.8 cm/s (10 ft/s) to intimately contact said atomized primary charge-stock therein, to vaporize hydrocarbons in said charge-stock and to crack the hydrocarbons to lower molecular weight product;
- (d) vaporizing a substantial portion of said hydrocarbons to form a mixture of said catalyst particles in the resulting vaporized hydrocarbons and cracking said vaporized hydrocarbons in said reaction zone to form cracked product vapors and spent catalyst;
- (e) rapidly passing a mixture of the resulting cracked product vapors, said medium and a majority of said spent catalyst particles horizontally through said reaction zone and into a reactor separation zone to provide a hydrocarbon/catalyst contact time prior

to passage into said separation zone of not greater than 0.5 s and separating spent catalyst particles from said cracked product, said spent catalyst particles containing deposits of carbonaceous material thereon which reduce the cracking activity of said catalyst;

- (f) passing said spent catalyst particles to a combustion zone;
- (g) contacting said spent catalyst with an oxygen-containing gas in said combustion zone to burn said carbonaceous deposits and to provide a regenerated catalyst and a flue gas;
- (h) recycling the resulting hot, regenerated catalyst to said reaction zone to contact fresh atomized charge-stock; and
- (i) recovering a hydrocarbon product having a molecular weight lower than said charge stock."

VI. The Appellant argued that a Notice of Opposition was addressed to skilled persons being familiar with the examination of novelty and inventive step and that the form of presentation of the substantiation of an opposition was free.

Moreover, he argued that in the Notice of Opposition as submitted in the present case lack of novelty and lack of inventive step were concluded on the basis of documents (1) and (2).

In this connection he contended that, in a bona fide reading, the Notice of Opposition comprising a comparison of the individual elements of the claims of the present patent with those of the cited documents (1) and (2) in the form of a Table, could only be interpreted with respect to the novelty objection as meaning that document (1) alone or document (2) alone showed all the essential features of Claim 1 and that

the minor deviations indicated in the Notice of Opposition were obviously so trivial that they could not form the basis for an assertion of novelty. Regarding document (2), which was published on 21 March 1989, he admitted that it did not form part of the state of the art, but it would have been obvious to the Patentee and the EPO that this document should be replaced by the corresponding prior filed non-prepublished European patent application.

He also argued that it followed logically from the Notice of Opposition that the objection of lack of inventive step was based on document (1) and that the indicated differences between the claimed subject-matter and that of document (1) were clearly obvious.

He concluded that the notice of appeal satisfied all requirements for admissibility.

VII. The Respondent fully agreed with the reasoning of the Opposition Division in that the content of the Notice of Opposition was not sufficient for the Opponent's case to be properly understood. In this connection he contended that it was not at all clear from the Notice of Opposition, what particular statements therein were alleged to destroy the novelty of the claimed process or to form a basis for an argument on obviousness. In such circumstances the notice of appeal was not admissible as followed from the decision T 222/85 (OJ EPC 1988, 128). He also contended that it was not recognizable that document (2) had been erroneously cited instead of the corresponding prior European patent application, so that this error could not be corrected according to Rule 88 EPC.

VIII. At the conclusion of the oral proceedings the Board's decision to allow the Appellant's alternative request was pronounced.

**Reasons for the Decision**

1. The appeal is admissible.
2. Before examining whether the submitted grounds of opposition under Article 100(a) EPC, namely lack of novelty and lack of inventive step, prevent the maintenance of the disputed patent, it must be decided whether the opposition is admissible.
3. It is accepted jurisprudence with respect to the issue of admissibility of opposition (cf. for instance T 222/85, OJ 1988, 128, under points 4 and 5 of the Reasons; T 2/89, OJ 1991, 51, under points 3 to 5 of the Reasons; and T 199/92, not published in the OJ EPO, under point 1),
  - that the requirement under Rule 55(c) concerning the indication of the facts, evidence and arguments presented in support of the grounds means that the Patentee and the Opposition Division must be able to understand, without undue burden, the case that is being made against the patent in the Notice of Opposition on at least one ground of opposition raised (cf. also T 204/91, not published in the OJ EPO, under points 5 to 7 of the Reasons),
  - that the requirements under Rule 55(c) must be distinguished from the question of the strength of the opponent's case, i.e. whether that case as presented in the Notice of Opposition is also sufficient to bring about the revocation of the patent, and

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- that the question whether a particular Notice of Opposition meets the minimum requirements for admissibility can only be decided in the context of that particular case.

4. In the present case, the Notice of Opposition sets out that, having regard to the description of the patent in suit and the arguments submitted during the proceedings before the Examining Division, the essential feature of the fluidized process for the catalytic conversion of a hydrocarbon oil feed to a lower molecular weight liquid product as claimed in present Claim 1 of the disputed patent involves the provision of an ultra-short hydrocarbon/catalyst contact time of not greater than 0.5 sec. (cf. page 1). It is then submitted that both documents (1) and (2) disclose the production of gasoline from heavy hydrocarbon feed using such short contact times, namely 0.1 to 1.0 sec. and 0.05 to 0.5 sec. respectively (cf. page 2, lines 1 to 12, of the Notice of Opposition).

Furthermore, the Notice of Opposition comprises a summary of both cracking processes described in documents (1) and (2), including a statement with respect to document (1) that

"the downward flow of catalyst into the horizontal reactor is provided by differential system pressures and control valve 18 rather than a gaseous dispersion medium"

(cf. page 2, last two paragraphs, to page 3, first two paragraphs).

Subsequently to this summary, it also comprises a detailed comparison of the individual features (a) to (i) of Claim 1 and the features of the dependent



Claims 2 to 15 of the disputed patent with the relevant technical features of the subject-matter of both documents (1) and (2) in the form of a Table over nine pages, citing columns and lines, as well as a comparison of the individual features of the subject-matter of Claim 1 of the disputed patent with the apparatus of document (1) by correlating the features of Claim 1 with the relevant parts of the apparatus on a copy of the Drawing thereof.

Finally, the Notice of Opposition sets out that

"In view of the detailed comparison set forth in the foregoing, it is believed that the reasons for opposing the patent on heading are adequate and sufficient to corroborate the Opponents' view that the patent on heading lacks novelty and inventive step over the prior art produced herewith, since the technical teachings contained therein were such as to enable the skilled artisan to arrive at the alleged invention without any particular effort".

5. The Respondent essentially argued that, having regard to the fact that the correlation of the individual features of the claims of the disputed patent with certain statements of documents (1) and (2) in the form of a Table over several pages was made without any indication what particular statements therein were alleged to destroy the novelty of the claimed process or to form the basis for an objection on obviousness, the Notice of Opposition as submitted did not meet in full the requirements of Rule 55(c) EPO since the Opposition Division and the Patentee were at a loss as where to start examining the Opponent's allegations.

6. However, the Board does not share these misgivings.

As indicated above, in the Notice of Opposition the Opponent

- cites - apart from document (2) which does not form state of the art - document (1) in support of his opposition,
- indicates that the most important feature of the claimed subject-matter, namely the short contact time between feed and catalyst, is known from this document,
- summarises the catalytic cracking process described in document (1) and considers that according to this document the introduction of the catalyst into the horizontal reactor is provided by differential system pressures and a control valve rather than by a gaseous dispersion medium,
- compares the individual features of the subject-matter of Claim 1 with relevant statements in this document, quoting columns and lines, and also with the Drawing illustrating the apparatus disclosed therein, and
- concludes that the subject-matter of the disputed patent lacks novelty and inventive step.

In the Board's judgment, having regard to the jurisprudence of the Boards of Appeal indicated above, these reasons in support of the opposition clearly fulfil the requirements for admissibility of the Notice of Opposition set out in Rule 55(c) EPC concerning "indication of the facts, evidence and arguments".

7. In this connection it is observed by the Board that the facts on which the decision T 222/85 (referred to by the Respondent) is based, are not comparable with those of the present case, since in that case 16 documents are cited, without indicating what statements can form the

basis for an objection on novelty or inventive step, imposing an undue burden upon the Opposition Division and the Patentee to understand the attack against the patent in question (cf. point 6 of the Reasons). Moreover, the present case is, in the Board's judgment, much more related to that of the decision T 2/89, in which the Opponent cites two documents and quotes - as in the present Notice of Opposition - relevant passages for the points he considers important (cf. points 3 to 6 of the Reasons). According to this decision, a Notice of Opposition is undoubtedly admissible if the opposition is supported by certain documents and reference is made to the relevant passages therein (cf. point 5 of the Reasons).

8. The fact that in the present Notice of Opposition the correlation of the individual features of the claimed subject-matter with the relevant passages of document (1) is made in the form of a Table and without indicating explicitly what particular statements therein are alleged to destroy the novelty of the claimed process or to form a basis for an argument on obviousness, in the Board's judgment, does not affect its admissibility. In a case like this, wherein the subject-matter of the independent Claim 1 comprises many individual features, the presentation of the Opponent's case in the form of a Table, in the Board's view, rather simplifies the understanding of its substance.

Furthermore, a Notice of Opposition is addressed to the Opposition Division and the Patentee who are not only skilled in the art but also competent in examining novelty and inventive step. Thus, in the Board's view, a detailed and exhaustive discussion of matters which are implicit to such skilled persons is not needed to understand the Opponent's case and, therefore, not an admissibility requirement. In this context, it is

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observed by the Board, that in the present case such skilled persons must be able to compare the features of claimed subject-matter with the indicated relevant statements of the cited prior art and to conclude whether these statements are likely objective to the novelty or to the inventive step.

In addition, it is noticed by the Board, that according to the jurisprudence of the Boards of Appeal the requirements for admissibility within the meaning of Rule 55(c) - as indicated above - must be distinguished from the question whether the statements in the prior art are conclusive and can constitute sufficient reasons for revoking the patent. Thus, the fact that the present Notice of Opposition indicates that the introduction of the catalyst into the horizontal reactor is provided in an alternative way might be relevant to a substantive assessment of its merits, but - in the Board's judgment - does not affect the question of admissibility under consideration.

9. It follows from the above considerations that the Notice of Opposition is admissible and that, therefore, the contested decision must be set aside.
  
10. The Appellant also requested that the citation of document (2) be corrected by replacing US-A-4 814 067 by the publication of the corresponding European patent application, and that the patent be revoked. However, having regard to the facts
  - that the question whether the citation of document (2) can be corrected can only be relevant to the substantive examination,
  - that the first instance did not examine whether grounds for opposition prejudice the maintenance of the disputed patent,

- that the question whether the citation of document (2) can be corrected or the corresponding European patent application can be admitted must be decided in accordance with Rule 88 EPC and Article 114 EPC respectively, and
  - that the parties have the right to a decision in two instances,
- the Board considers it appropriate that this matter be decided by the Opposition Division.

11. In the circumstances of this case, the Board decides accordingly to exercise its power under Article 111(1) EPC to remit the case to the Opposition Division for further prosecution in accordance with Appellant's alternative request.

**Order**


**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division for further prosecution.

The Registrar:

  
E. Gorgmaier

The Chairman:

  
A. J. Nuss



