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D E C I S I O N
of 17 May 2000

Case Number: T 0761/95 - 3.2.5

Application Number: 89905989.3

Publication Number: 0418269

IPC: D01D 5/098

Language of the proceedings: EN

Title of invention:

Process and apparatus for high speed melt spinning

Patentee:

NORTH CAROLINA STATE UNIVERSITY

Opponents:

HOECHST Aktiengesellschaft
Rhone-Poulenc Viscosuisse SA

Headword:

-

Relevant legal provisions:

EPC Art. 107

Keyword:

"Inadmissibility of a party's appeal against a decision
allowing its sole request"

Decisions cited:

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Catchword:

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Case Number: T 0761/95 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 17 May 2000

Appellant: NORTH CAROLINA STATE UNIVERSITY
(Proprietor of the patent) 103 Holladay Hall
Campus Box 7003
Raleigh
North Carolina 27695-7003 (US)

Representative: Brock, William
Urquhart-Dykes & Lord
1 Richfield Place, Richfield Avenue
Reading RG1 8EQ
Berkshire (GB)

Respondent: Hoechst Aktiengesellschaft
(Opponent I) Zentrale Patentabteilung
Postfach 80 03 20
D-65903 Frankfurt (DE)

Respondent: Rhone-Poulenc Viscosuisse SA
(Opponent II) Patentabteilung
CH-6020 Emmenbrücke (CH)

Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 6 July 1995
concerning maintenance of European patent
No. 0 418 269 in amended form.

Composition of the Board:

Chairman: P. Michel
Members: W. R. Zellhuber
J. C. M. De Preter

Summary of Facts and Submissions

- I. The appellant (proprietor of the patent) lodged an appeal on 7 September 1995 against the decision of the Opposition Division of 6 July 1995 to maintain the patent No. 0 418 269 in amended form and paid the appeal fee on 9 September 1995. The statement setting out the grounds of appeal was received on 7 November 1995.
- II. In its statement setting out the grounds of appeal the appellant requested that the decision under appeal be set aside to the extent that the Opposition Division did not maintain the patent without a specific restriction to claim 1 and that the patent be maintained on the basis of its main request or of its auxiliary request annexed to its statement.
- III. In its letter of 28 February 1996 opponent II requested that the appeal be rejected as inadmissible because the appellant had not identified the extent to which cancellation of the decision under appeal was requested (main request).
- IV. In its letter of 13 March 1996 Opponent I requested that the appeal be rejected as inadmissible as at the oral proceedings before the Opposition Division the appellant had withdrawn all its prior requests and had maintained a new main request which was allowed by the decision under appeal (main request).
- V. In its Communication 29 January 1999 the Board expressed the provisional opinion that, since the appellant had not been the subject of an adverse decision, it was not entitled to appeal so that the

appeal did not appear to be admissible in accordance with Article 107 EPC.

- VI. In its letter of 11 August 1999 and at the oral proceedings held on 17 May 2000 the appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or on the basis of the claims filed as main request with letter of 30 December 1994 (first auxiliary request) or on the basis of the claims as allowed by the Opposition Division (second auxiliary request).

Reasons for the Decision

1. As appears from the minutes of the oral proceedings before the Opposition Division the appellant presented after the first interruption new claims 1 to 5 with the heading "main request" and an amended description, both annexed to the decision under appeal, and withdrew all its other requests.

This was not contested by the appellant at the oral proceedings of 17 May 2000. However, the appellant submitted that it had been "affected by the attitude of the Opposition Division" so that the appeal was admissible.

2. For an appeal to be admissible a party must be adversely affected by the "decision under appeal" (Article 107 EPC).

Even if the appellant had been disappointed by the Opposition Division's attitude vis-à-vis its then valid requests when the oral proceedings were resumed after

the first interruption, nothing prevented the appellant from maintaining these requests. However, it then withdrew all its prior requests and filed a new sole request which was eventually allowed.

Therefore, the appellant is not adversely affected within the meaning of Article 107 EPC so that its appeal has to be rejected as inadmissible. Thus the decision under appeal stands as the final decision.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

A. Townend

P. E. Michel