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INTERLOCUTORY DECISION
of 18 July 2003

Case Number: T 0104/99 - 3.3.7

Application Number: 92309154.0

Publication Number: 0536995

IPC: B01D 71/02

Language of the proceedings: EN

Title of invention:

Microporous aluminosilicate ceramic membranes

Patentee:

WISCONSIN ALUMNI RESEARCH FOUNDATION

Opponent:

Exxon Chemical Patents Inc.

Headword:

-

Relevant legal provisions:

EPC R. 72

Keyword:

"Taking of evidence - witnesses"

Decisions cited:

-

Catchword:

-



Case Number: T 0104/99 - 3.3.7

INTERLOCUTORY DECISION
of the Technical Board of Appeal 3.3.7
of 18 July 2003 concerning taking of
evidence according to Rule 72 EPC

Appellant: WISCONSIN ALUMNI RESEARCH FOUNDATION
(Proprietor of the patent) P.O. Box 7365
Madison
WI 53707-7365 (US)

Representative: McCluskie, Gail Wilson
J.A. KEMP & CO.
14 South Square
Gray's Inn
London WC1R 5JJ (GB)

Appellant: Exxon Chemical Patents Inc.
(Opponent) 4500 Baytown Drive
Baytown, Texas 77520 (US)

Representative: White, Nicholas John, Dr.
White & Associates
Windsor House
Cornwall Road
Harrogate
North Yorkshire HG1 2PW (GB)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 30 November 1998
revoking European patent No. 0536995 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: R. E. Teschemacher
Members: G. Santavicca
B. L. ter Laan

INTERLOCUTORY DECISION

CONCERNING

TAKING OF EVIDENCE ACCORDING TO RULE 72 EPC

1. Evidence shall be taken regarding the assertions of the parties in respect of the prior oral and written disclosure alleged to have taken place at the Sixth International Workshop on Glasses & Ceramics from Gels in Seville (Spain), which was held from 6 to 11 October 1991, regarding:
 - (a) the information content of the poster displayed and presented by Professor Anderson at the poster session of the above Workshop on 7 October 1991 from 16:45 to 17:40;
 - (b) the information content of the oral disclosure by Professor Anderson at the presentation and question time of the above poster;
 - (c) the date and the relevant particulars (how, by whom, etc) of the submission to Professor Esquivias, or to his staff, of the poster, if any, and of article D3 (G. Sheng, L. Chu, W.A. Zeltner and M. Anderson, *Nanoparticulate alumina, silica and aluminosilicate membranes*", Journal of Non-Crystalline solids, 147&148 (1992), pages 548 to 553) which article has been published in the proceedings of the above conference;

by hearing of the witnesses:

(1) Professor Marc A. Anderson
2114 Chadbourne Avenue
Madison, Wisconsin
USA

(2) Mr. Walter A. Zeltner
393 Lake Kegonsa Road
Oregon, Wisconsin
USA

(3) Professor Luis Fedriani Esquivias
University of Cadiz
Spain

2. Each witness is requested to bring with him any written documents which have a connection with the above mentioned asserted facts.
3. The summoning of the witnesses is conditional upon the parties making a deposit of an advance of payment for each witness to secure payment of the costs arising from any possible reimbursement for travel expenses, daily subsistence and loss of earnings (Rule 74 EPC; EPO OJ 1983, pages 100 to 103: "*compensation and fees payable to witnesses and experts*").

The following amounts have to paid:

Prof. Anderson: Euro 10480, to be paid by the
proprietor;

Mr Zeltner: Euro 10480, to be paid by the proprietor;

Prof. Esquivisa: Euro 2786, to be paid by the opponent.

Instead of making a deposit of the advance payment it is also possible to file a waiver of costs signed by the witness.

The deposit/waiver should be filed within two months from notification of this decision.

4. The attention of the parties is drawn to Rule 2(3) EPC according to which witnesses wishing to express themselves in languages other than the official languages of the EPO may be heard only if the party who requested evidence to be taken makes provision for interpretation into the language of the proceedings.
5. The parties are invited to check the correctness of the addresses of the witnesses and to provide the EPO with the postal codes thereof.
6. The present decision may be subject to alteration.
7. The date for the taking of evidence is that of the oral proceedings which will be fixed after the time limit set in point 3 has lapsed, unless the requirements addressed in point 3 have been fulfilled before.

The Registrar:

The Chairman:

C. Eickhoff

R. Teschemacher