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D E C I S I O N
of 3 May 2005

Case Number: T 0678/03 - 3.2.6

Application Number: 97933565.0

Publication Number: 0914508

IPC: D04H 3/14

Language of the proceedings: EN

Title of invention:

Meltspun multicomponent thermoplastic continuous filaments,
products made therefrom, and methods therefor

Patentee:

FIBERWEB NORTH AMERICA, INC.

Opponent:

Firma Carl Freudenberg Patente und Warenzeichen

Headword:

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Relevant legal provisions:

EPC Art. 108

EPC R. 65(1)

Keyword:

"Inadmissibility of appeal - inadequate content of grounds"

Decisions cited:

T 0220/83

Catchword:

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Case Number: T 0678/03 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 3 May 2005

Appellant:
(Opponent)

Firma
Carl Freudenberg
Patente und Warenzeichen
Höhnerweg 2-4
D-69469 Weinheim (DE)

Representative:

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Respondent:
(Proprietor of the patent)

FIBERWEB NORTH AMERICA, INC.
840 Southeast Main Street
Simpsonville
SC 29681 (US)

Representative:

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 25 April 2003
rejecting the opposition filed against European
patent No. 0914508 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. Pricolo
R. T. Menapace

Summary of Facts and Submissions

I. The appeal is from the decision of the Opposition Division posted on 25 April 2003 to reject the opposition filed against European patent No. 0 914 508, granted in respect of European patent application No. 97 933 565.0.

In coming to its decision the Opposition Division considered that the subject-matter claimed in the patent in suit was novel and also involved an inventive step over the available prior art represented in particular by document

D4: EP-A-624 676.

II. The appellant (opponent) lodged an appeal against this decision, received at the EPO on 24 June 2003, and simultaneously paid the appeal fee. With the statement setting out the grounds of appeal, received at the EPO on 25 August 2003, the appellant requested that the patent be revoked or maintained in a form restricted to only some specific embodiments.

III. With letter dated 5 January 2004 the respondent (patentee) requested that the appeal be rejected as inadmissible, or that it be dismissed and the patent maintained as granted or on the basis of the auxiliary requests filed with letter of 28 February 2003 during opposition proceedings.

IV. A summons to oral proceedings scheduled to take place on 3 May 2005 was issued by the Board on 24 September 2004. In a communication pursuant to Article 11(1)

- Rules of Procedure of the Boards of Appeal annexed to the summons, the Board expressed its preliminary opinion that it would appear that the appeal did not meet the requirements of Article 108 EPC, the statement of grounds being insufficient as regards the legal and factual reasons why the decision under appeal should be set aside, and gave the reasons underlying its opinion.
- V. With telefax received on 2 May 2005, one day before the date of oral proceedings, the representative of the appellant informed the Board that he would not attend the oral proceedings and requested a decision based on the contents of the file. The representative of the respondent having been informed thereof then stated that he also would not attend.
- VI. Oral proceedings took place on 3 May 2004 as scheduled. As announced the day before, the duly summoned parties were not present and the oral proceedings were held without them (Rule 71(2) EPC). At the end of the oral proceedings, the decision to reject the appeal as inadmissible was given orally.

Reasons for the Decision

1. As to the reasons for the inadmissibility of the appeal reference is made to the Board's communication of 24 September 2004. Since no comments on these reasons have been submitted by the appellant, it is sufficient to emphasise solely the essential aspects.

2. In the decision under appeal, the Opposition Division explained why the subject-matter of the two independent claims 1 and 6 of the patent in suit is novel and also involves an inventive step over the prior art represented in particular by document D4.

3. As to novelty, the Appellant limited himself in the grounds of appeal to the statement that he maintained his view that the subject-matter of claim 1 of the patent in suit was not novel over document D1, because no differences could be recognised between the kind of polymers used, the method for making the multi-component filaments, their stretching and eventual deposit on a collection conveyor, the further treatment of the filaments after deposit being of no relevance.

This statement is, however, a mere allegation of lack of novelty, in that in substance it contains nothing from which a reason or an argument can be derived as to why the finding to the contrary in the decision under appeal was incorrect.

4. Said statement was followed by extensive submissions in support of the allegation that the teaching of the patent in suit could not be carried out over the whole range claimed.

However, these submissions cannot be counted as grounds for the appeal in that they relate to the ground of opposition under Article 100(b) EPC which had, however, not been raised in the opposition proceeding before the first instance.

5. Furthermore, the notice of appeal contained a statement referring to the notice of opposition in respect of claims 2 - 10, followed by a discussion of split energy of filaments and electrostatic charges.

Again, neither that statement, by its very nature, nor the further submissions provide any adequate basis for identifying what the Appellant's line of reasoning is, in support of his request that the impugned decision, which was based on the finding that the subject-matter of independent claims 1 and 6 was both novel and inventive over D4, be set aside.

6. Therefore, since the appellant did not state the legal or factual reasons why the contested decision should be set aside so as to ensure that the appeal may be assessed objectively, the statement of grounds submitted for the appeal cannot be accepted as substantively adequate grounds within the meaning of Article 108, third sentence, EPC (see e.g. T 220/83, point 4). Thus, pursuant to Rule 65(1) EPC, the appeal is to be rejected as inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau