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**Datasheet for the decision
of 18 October 2016**

Case Number: T 0350/13 - 3.2.06

Application Number: 05740128.3

Publication Number: 1774070

IPC: D01D5/04, D01D5/06, D01F2/28,
D01F2/30, D02G1/12

Language of the proceedings: EN

Title of invention:
CELLULOSE ACETATE TOW AND METHOD OF MAKING SAME

Patent Proprietor:
Celanese Acetate LLC

Opponent:
Solvay Acetow GmbH

Headword:

Relevant legal provisions:
EPC 1973 Art. 54, 56
EPC R. 99(1) (a), 101(2)

Keyword:

Admissibility of appeal - appeal admissible after remedy of deficiencies (yes)

Grounds for opposition - fresh ground for opposition (yes) admitted (no)

Novelty - (yes)

Inventive step - (yes)

Decisions cited:

G 0010/91, T 0624/09, T 2330/10, J 0001/92

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0350/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 18 October 2016

Appellant: Celanese Acetate LLC
(Patent Proprietor) 1601 West LBJ Freeway
Dallas, TX 75234 (US)

Representative: Schön, Christoph
Dr. Schön, Neymeyr & Partner mbB
Bavariaring 26
80336 München (DE)

Appellant: Solvay Acetow GmbH
(Opponent) Engesserstrasse 8
79108 Freiburg (DE)

Representative: Trinks, Ole
Meissner Bolte Patentanwälte
Rechtsanwälte Partnerschaft mbB
Widenmayerstraße 47
80538 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
5 December 2012 concerning maintenance of the
European Patent No. 1774070 in amended form.

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
W. Ungler

Summary of Facts and Submissions

- I. Appeals were filed by both the appellant/opponent and the appellant/patent proprietor against the interlocutory decision of the opposition division in which European patent No. 1 774 070 in an amended form was found to meet the requirements of the EPC.
- II. The appellant/opponent requested that the decision be set aside and the patent be revoked. The appellant/patent proprietor requested that the decision be set aside and the patent be maintained as granted, in the alternative that it be maintained according to a first auxiliary request. It also requested that the opponent's appeal be rejected as inadmissible.
- III. With letter of 9 April 2014 the proprietor filed further auxiliary requests 1 to 4, the auxiliary request already on file being renumbered auxiliary request 5.
- IV. The following documents, referred to by the appellant in its grounds of appeal, are relevant to the present decision:

D5 US-A-3 120 692
D6 US-A-5 591 388
D7 US-A-3 226 795
D12 US-A-5 476 546
D13 Cellulose Acetates: Properties and Applications
P Rustermeyer
D17 WO-A-02/32238
D18 US-A-3 413 698
D19 US-A-3 411 942
D20 Kyocera brochure 'Threaded Guides'

- V. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the opponent's appeal appeared to be admissible.
- VI. Oral proceedings were held before the Board on 18 October 2016, during which the proprietor filed a new auxiliary request 1 and withdrew all other requests for maintenance of the patent.

The final request of the opponent was that the decision under appeal be set aside and the European patent be revoked. The final request of the proprietor was that the decision under appeal be set aside and the patent be maintained according to auxiliary request 1.

- VII. Claim 1 of the new first auxiliary request (the sole request regarding maintenance of the patent) reads as follows:

"A process for making a cellulose acetate tow comprising the steps of:
spinning a dope comprising a solution of cellulose acetate and solvent,
taking-up the as-spun cellulose acetate filaments,
lubricating the cellulose acetate filaments,
forming a tow from the cellulose acetate filaments,
plasticizing the tow with a plasticizer consisting of water by using a spool-type guide,
crimping the tow after plasticizing the tow,
drying the crimped tow, and
baling the dried crimped tow."

- VIII. The proprietor's arguments relevant to the present decision may be summarised as follows:

Regarding admissibility of the opponent's appeal, this

was filed in the name of the representative attorney partnership rather than in the name of the opponent party. The impugned decision was also not correctly identified, with reference being made to the date of the oral proceedings on which the decision was announced rather than the date on which the decision was issued. J1/92 found that under similar circumstances the appeal should be rejected as inadmissible under Rule 101(1) EPC.

Regarding the admittance of objections under Articles 100(b) and (c) EPC, these should not be admitted into the appeal proceedings. No agreement for their admittance was given. Implicit acceptance of the ground for opposition under Article 100(c) EPC was not given through presenting arguments against the alleged lack of basis of the feature 'plasticizer consisting of water'.

As regards the novelty of the subject-matter of claim 1 (Article 54 EPC), D5 did not disclose:

- Drying the crimped tow. This was an active rather than a passive process step, D5 not disclosing such active drying;
- Baling the dried crimped tow. D5 solely disclosed packing of the tow which did not necessarily imply baling;
- The plasticizer consisting of water. In col. 4, lines 34 to 36 of D5, water was indicated as being satisfactory as an antistatic and softening agent, yet there was no disclosure of this being pure water. The plasticizing detailed in para. [0021] of the patent also proved that the claimed plasticizing was very different to simple softening.
- The use of a spool-type guide for applying plasticizer.

The subject-matter of claim 1 also involved an inventive step (Article 56 EPC). The drying and baling of the tow were not relied upon to justify the presence of an inventive step in claim 1. Based on the differentiating feature with respect to D5 of 'plasticizing the tow with a plasticizer consisting of water using a spool-type guide', the objective problem was 'to provide a process wherein fly was reduced'. This was an appropriate technical problem since Fig. 9 of the patent showed the reduction in fly with increasing moisture content of the tow. Using pure water for the plasticizer was not obvious starting from D5. As regards a disclosure of spool-type guides, neither D5 nor D17 disclosed these for the application of a liquid to a tow. Similarly D12 did not disclose such guides and was directed to a process of applying a lubricant to a sheet work piece. D18 (see Fig. 2) and D19 (see Fig. 1) also did not disclose spool-type guides, rather disclosing plain cylinders. The skilled person knew that a spool-type guide had the shape of a spool and would guide the tow between its raised edges whilst applying plasticizer. The result was that proper wetting of the tow prior to crimping could be achieved. Even if a simpler problem of 'providing an alternative for the application of plasticizer' was considered, the claimed solution was still not reached without exercising an inventive step. The opponent's arguments starting from D6 also did not deprive the subject-matter of claim 1 of an inventive step. D6 was not directed to making a tow of cellulose acetate and the manufacturing process comprised drying the tow prior to crimping, it thus presenting a poorer starting point to D5.

IX. The opponent's arguments may be summarised as follows:

Regarding admissibility of its appeal, the name and address of the appellant had been promptly supplied following a request to this effect from the EPO. The decision under appeal was also clearly identifiable from the notice of appeal.

As regards admittance of the objections under Articles 100(b) and (c) EPC, the proprietor had responded and argued with respect to added subject-matter without objecting to the introduction of this ground for opposition, thus implicitly giving its agreement for this ground for opposition to be admitted. The proprietor had only indicated its objection to admitting these grounds in response to the preliminary opinion of the Board which amounted to a change of its case.

Regarding novelty of the subject-matter of claim 1, D5 disclosed all features save for the use of a spool-type guide. Col. 8, lines 29, 44 and 53 referred to a 'temporary' softening liquid, thus implicitly at least disclosing a degree of drying as the liquid was not permanently present. Claim 1 of D5 also disclosed packing the crimped tow which implied baling since no other way of packing the tow was practised in the field. D5 also implicitly disclosed pure water being used for softening the tow (see col. 7, lines 54 to 57; col. 4, lines 34 to 36; claim 3). Softening corresponded to plasticizing as was evident from D13, page 298.

The subject-matter of claim 1 did not involve an inventive step. Starting from D5, claim 1 was differentiated from D5 by the feature 'plasticizing the

tow with a plasticizer consisting of water using a spool-type guide'. The use of a spool-type guide was however commonplace in the art, being a usual device for applying a liquid to a tow. This was evidenced by D12, col. 2, lines 12 to 29; D18, col. 5, lines 17 to 45; D19, col. 1, lines 50 and Fig. 2; and D20, page 3 relating to oiling rollers. A simple cylinder sufficed as a spool-type guide. The claimed subject-matter thus offered no technical advantage over D5 with spool-type guides being a well-known option for applying liquid to a tow. The subject-matter of claim 1 was also not inventive starting from D6, which disclosed the same features of claim 1 as D5. A spool-type guide was known from D7 (see col. 2, lines 62 to 66) or from D18 or from D19 (see above references).

Reasons for the Decision

1. Admissibility of the opponent's appeal

1.1 According to Rule 99(1)(a) EPC the notice of appeal shall contain the name and address of the appellant. According to established case law of the Boards of Appeal the requirements of Rule 99(1)(a) EPC are satisfied if the notice of appeal contains sufficient information for identification of the party (cf. T 624/09). Furthermore, deficiencies concerning the indication of the appellant's name and address do not necessarily need to be remedied within the time limit pursuant to Article 108 EPC, but can be remedied later following an invitation under R 101(2) EPC (cf. T 2330/10).

- 1.2 In the present case there was sufficient information available for identification of the appealing party, since the professional representative of the opponent which had acted before the opposition division had filed the notice of appeal by indicating the number of the European patent and the decision of the Opposition Division. Thus, considering the aforementioned indications and the history of the file there was sufficient information available to establish beyond reasonable doubt the identity of the appellant within the time limit under Article 108 EPC.
- 1.3 Moreover, it is to be taken into consideration that the appellant's name and address were submitted within the time limit set by the invitation under Rule 101(2) EPC.
- 1.4 With regard to J 1/92 cited by the patent proprietor, it is noted that the factual circumstances underlying that decision deviate substantially from the constellation in the present case. In J 1/92 the representative indicated explicitly that the appeal was lodged in his 'own name' making it unmistakably clear that it was not lodged on behalf of the adversely affected party, i.e. the applicant, but on behalf of the representative.
- 1.5 According to Rule 99(1) (a) EPC the notice of appeal shall contain an indication of the decision impugned. In the notice of appeal the number and the title of the European patent and the patent proprietor's name were indicated. Furthermore it was stated that the decision of the Opposition Division dated October 26, 2012 was appealed. In that regard it is noted that the date of the oral proceedings before the opposition division, in which the decision had been announced orally, was evidently indicated instead of the date of the written

decision. Nevertheless, the appellant's intention to appeal the decision of the Opposition Division relating to the European patent indicated in the notice of appeal was clearly expressed.

1.6 In view of the above the Board does not follow the patent proprietor's arguments and comes to the conclusion that the requirements of Rule 99(1) (a) and (b) EPC are met in the present case. Thus, the opponent's appeal is admissible.

2. *Admittance of new grounds for opposition*

2.1 As found by the Enlarged Board of Appeal in G10/91, fresh grounds for opposition may be considered in appeal proceedings only with the approval of the patentee.

2.2 In the present case, objections under Article 100(b) EPC and Article 100(c) EPC had not been raised against the claims as granted during the opposition procedure by the opponent. Therefore, in accordance with G10/91, the introduction of these grounds for appeal into the appeal proceedings is dependent on the proprietor giving approval for this. With letter of 19 September 2016 the proprietor explicitly did not agree to these grounds for appeal being introduced into the appeal proceedings.

2.3 The opponent's argument, that the proprietor had implicitly given its approval with respect to Article 100(c) EPC through arguing in response to the opponent's objections, is not persuasive in admitting this ground for opposition. Irrespective of the proprietor at some time responding substantively to the new ground, this cannot be interpreted as an implicit

or binding indication that it approves the introduction of this ground into the appeal proceedings. The decision of the Enlarged Board of Appeal is quite unequivocal in this respect, stating in Reasons 18, second last sentence, that '..if the patentee does not agree to the introduction of a fresh ground for opposition, such a ground may not be dealt with in substance in the decision of the Board of Appeal at all' (underlining added by the present Board). It thus follows that, even if a different impression may have previously been inferred by the opponent through the proprietor's actions, with such agreement being specifically denied in the letter of 19 September 2016, the grounds for opposition under Articles 100(b) and (c) EPC are not admitted into the appeal proceedings.

3. *Novelty (Article 54 EPC 1973)*

3.1 It should be noted that whilst not specifically raised as an objection to the present subject-matter, the issue of novelty was discussed at length with respect to the previously pending main request. With all features of claim 1 of that request being included in the present claim 1, the findings with respect to the features of claim 1 of the previously pending main request concerning novelty with respect to D5 are included here for the purposes of explanation.

3.2 The subject-matter of claim 1 is novel with respect to D5.

3.3 D5 discloses, as also accepted by both parties, the following features of claim 1 (the references in parentheses referring to D5):

A process for making a cellulose acetate tow (col.1, lines 10 to 11) comprising the steps of:

spinning a dope comprising a solution of cellulose acetate and solvent (col.2, lines 45 to 47),
taking-up the as-spun cellulose acetate filaments (col. 2, lines 56 to 59),
lubricating the cellulose acetate filaments (col.3, lines 20 to 21),
forming a tow from the cellulose acetate filaments (col.3, lines 74 to col.4, line 2),
plasticizing the tow
crimping the tow after (softening stated in col.4, lines 34 to 36 to occur prior to crimping) plasticizing the tow (col.4, lines 25 to 27).

- 3.4 The opponent's argument that the feature 'drying the crimped tow' was known from D5 is not accepted. There is no explicit indication in D5 that the tow, after having been crimped, is dried. In this respect it is noted that an active, rather than a passive, 'drying' is claimed such that this feature is interpreted to imply more than a slight evaporation leading to a notional reduction in wetness of the tow. Interpreting this feature simply as evaporation leading to a drying would also, due to the use of an active form (drying) of the verb (to dry), make this claimed feature non-sensical. Even the opponent's references to the 'temporary' nature of the antistatic and softening agent (see e.g. col. 4, lines 34 to 35) do not unambiguously suggest a drying of the tow, since the word 'temporary' could equally be related to the antistatic and softening qualities having a temporary nature.

It is thus held that the feature 'drying the crimped tow' is not known from D5.

- 3.5 The feature 'baling the dried crimped tow' is, contrary to the opponent's arguments, also not known from D5. D5 explicitly mentions just packing of the crimped tow (see the last feature of claim 1 of D5). As correctly identified by the proprietor with reference to established case law, baling is more limited than packing and a generic disclosure does not usually destroy the novelty of a specific feature. Moreover, even if baling might be the most obvious method of packing, the opponent was unable to show that baling was the only method of packing used in the field when wishing to provide a storage or transport package of the crimped tow.
- 3.6 The opponent's arguments regarding D5 disclosing a plasticizer consisting of water also failed to convince.
- 3.6.1 It is firstly noted that the terms 'softening' and 'plasticizing' are evidently synonymous with respect to the process of claim 1. Section 5.3.2.3 of D13 (page 298) entitled 'plasticisers' discusses plasticizers used in the treatment of cellulose acetate. Here it is stated 'Although known as plasticisers, they are really bound softening agents'. As regards softening, water is clearly identified in col. 4, lines 34 to 36 of D5 as being satisfactory in acting as a softening agent for cellulose acetate. The final link between plasticizing and softening is provided by the proprietor's statement on page 5 of its letter of 10 April 2013 that '..plasticizing the tow ... = increasing the tow moisture content'. The proprietor provided no evidence that plasticizing and softening were not synonymous, restricting its submissions to arguing that plasticizing in the context of the patent occurred through the full thickness of the tow rather than

simply on its surface. However, such a limitation is not to be found in claim 1 which simply indicates 'plasticizing the tow' without any indication of the degree of plasticizing. It thus follows that, at least with respect to the process of claim 1, plasticizing and softening relate to a common treatment of the cellulose acetate tow.

3.6.2 Claim 3 of D5 states that the '... softening liquid is largely comprised of water' such that this alone provides no support for the softening agent of D5 consisting of water. Similarly, col. 4, lines 34 to 36 stating that water is satisfactory as a softening agent is not an unambiguous disclosure of the water used being water alone, without any other constituent included. The opponent finally referred to col. 7, lines 54 to 57 which however only identifies the water content of the tow softening the filaments, and thus also fails to unambiguously disclose the application to the tow of solely water.

3.6.3 In summary, therefore, D5 fails to disclose the feature of the plasticizer consisting of water.

3.7 No arguments were presented suggesting that D5 disclosed the use of a spool-type guide. The Board also concurs that this is a feature differentiating the claimed subject-matter from D5.

3.8 The following features of claim 1 are thus not known from D5:

- the plasticizer consisting of water;
- the use of a spool-type guide for plasticizing;
- drying the crimped tow; and
- baling the dried crimped tow.

3.9 The subject-matter of claim 1 is thus novel (Article 54 EPC 1973).

4. *Inventive step (Article 56 EPC 1973)*

4.1 On the basis of D5 being the most promising starting point for considering inventive step, the subject-matter of claim 1 differs herefrom through the features given in point 3.8 above.

4.2 Regarding the features of drying and baling the crimped tow, in its preliminary opinion the Board had indicated that these features appeared not to be directed to solving a common problem to that of the plasticizer consisting of water. Furthermore, the partial objective technical problem associated with the drying and baling could be seen as 'providing an appropriate packaging for the tow' which, in the light of D13, particularly Fig. 4, would be solved by the skilled person while providing these two features of claim 1 without exercising an inventive step. To this preliminary opinion the proprietor offered no counter-arguments, rather indicating that it did not rely on these features in supporting the presence of an inventive step in the subject-matter of claim 1. The Board thus confirms its preliminary opinion, that the features related to drying and baling the tow do not contribute to the subject-matter of claim 1 involving an inventive step.

4.3 With respect to the plasticizer consisting of water, this is also not directed to the solution of a common problem to the feature of using a spool-type guide.

4.3.1 As found under point 3.6 above, D5 fails to unambiguously disclose the plasticizer consisting of

water. The partial objective technical problem associated with this feature can be seen as 'to provide an alternative plasticizer'. The problem presented by the proprietor concerning the reduction in fly cannot be seen as objective since there is no evidence that, relative to the softening which undoubtedly already occurs in D5, that achieved with a plasticizer consisting just of water would achieve a reduced fly, certainly not without the plasticizing occurring through the entire thickness of the tow as discussed in para. [0021] of the patent which is however not included in claim 1.

4.3.2 The proprietor was unable to show any passage in the patent which provided a justification that the use of pure water as the plasticizer offered an advantage over the water disclosed in D5 as providing softening and antistatic properties to the tow. The plasticizer consisting of water is thus seen to be an arbitrary solution to the problem of providing an alternative plasticizer, offering no recognisable advantage over the plasticizer known from D5.

4.3.3 The proprietor's argument that Fig. 9 of the patent showed a reduced fly with increased moisture content of the tow is not accepted as providing any justification for its objective technical problem. No detail is provided in the patent description regarding the conditions under which these results were obtained, particularly that would allow any conclusions to be drawn regarding the effect of using pure water rather than a plasticizer including other constituents. It is accepted that Fig. 9 indicates that an increased moisture content can reduce fly in the tow and also, that from the patent teaching as a whole, the technical effect of applying water to the tow can be to reduce

fly. However, no further indication regarding the effect of water purity on fly can be derived from Fig. 9 nor from any other part of the patent description.

4.3.4 The proprietor's contention that, even in the light of D5, the use of just water as a plasticizer was not obvious, is not accepted. With D5 undoubtedly disclosing the use of water, albeit not unambiguously pure water, as an antistatic and softening agent for the tow, the skilled person seeking purely an alternative plasticizer to that of D5 would certainly choose pure water, not least due to the statement regarding the softening agent in D5 that 'water is satisfactory for this purpose'.

4.3.5 It thus follows that the use of a plasticizer consisting of water is an obvious modification to the process known from D5, which the skilled person would make without exercising an inventive step in order to solve the partial objective technical problem relating to providing an alternative plasticizer.

4.4 As regards the differentiating feature of claim 1 over D5 of 'plasticizing using a spool-type guide', this feature is related to the effective application of the plasticizer to the cellulose acetate tow. The objective technical problem may thus be formulated as 'to provide a suitable way of applying plasticizing fluid to the tow'.

4.4.1 The opponent's argument that a spool-type guide was commonplace in the art is not accepted. Indeed, whilst this guide is not well detailed in the patent other than being flat or curved, flanged or flangeless, made of ceramic or being ceramic coated and having a plurality of openings (see para. [0021] of the patent),

it is nonetheless named 'spool-type' which the Board thus accepts as at least having a shape suitable for guiding the tow and resembling a spool i.e. having raised edge portions on each side of a relatively flatter central guiding portion over which the tow passes. The adjective 'spool-type' at least provides a limitation to the tow guide which could otherwise be anything capable of guiding the tow, such as a plain cylinder for example. The Board also finds that the optional flanges associated with the spool-type guide may be present in addition to the above identified raised edges inherent in the spool shape.

- 4.4.2 This spool-type guide, possessing the essential shape of a spool, has the technical advantage, as regards the application of plasticizer to the tow, of restricting liquid spread in a direction perpendicular to the implicit direction of travel of the tow over the guide, essentially by way of the raised edges stopping or at least largely preventing liquid flow thereover. This will have the consequence of more plasticizing liquid remaining in the vicinity of the tow passing over the guide so that the degree of wetting, and thus plasticizing, of the tow can be maximised.
- 4.4.3 The opponent's argument that such a spool-type guide offers no advantage over plain cylinder-shaped guides is not accepted. A plain cylinder offers no containment of liquid to assist in the transferring of plasticizer to a tow passing thereover. In contrast, the raised edges of the spool-type guide, as described in 4.4.1, achieves a liquid containment and thus an advantage of more thorough wetting of the tow.
- 4.4.4 The documents referred to by the opponent fail to disclose guides which can be considered to be of a

spool-type.

As regards D12, (see Fig. 2) rollers are disclosed for applying a liquid lubricant to a sheet workpiece (see col. 2, lines 12 to 29). No part of D12 suggests that the rollers disclosed therein could have a spool-like shape, nor can this be considered implicitly disclosed therein. This document is thus unable to provide the skilled person with a hint to modifying the process known from D5 in such a way that spool-type guides would be used to apply the plasticizer to the tow.

As regards D18 (see col. 5, lines 17 to 45; Fig. 2) and D19 (see col. 1, lines 50 and Fig. 1), these documents each disclose plasticizer applicator rolls (82, 84) which are however plain cylindrical rolls without any raised edges. As a consequence these documents also fail to give the skilled person a hint to the claimed spool-type guides.

D20 is equally unsuited to providing a hint to modify the process known from D5, solve the partial objective problem and reach the claimed subject-matter which uses spool-type guides. The oiling rollers referred to by the opponent on page 3 appear (as far as the quality of the reproduction allows it to be determined) to be plain rollers without raised edges. The opponent also did not suggest this to be otherwise.

- 4.4.5 In summary therefore, when starting from D5 and wishing to solve the three partial objective technical problems, the skilled person would receive no hint to the use of a spool-type guide for plasticizing from the cited documents in order to reach the claimed subject-matter without exercising an inventive step.

- 4.5 The opponent's argument (only presented in the written procedure) that the subject-matter of claim 1 lacked an inventive step when starting from D6 and combining this with the teaching of D7, D18 or D19 is not convincing.
- 4.5.1 As regards D6 as a starting point for considering inventive step, it is noted that D6 concerns the manufacture of solvent-spun cellulose, rather than cellulose acetate, and as such is not as promising a starting point as D5. Nonetheless, even overlooking this factor, the skilled person is not guided by any of D7, D18 or D19 to modify the process known from D6 in order to reach the claimed subject-matter without exercising an inventive step.
- 4.5.2 As suggested above, and leaving aside the fact that D6 does not explicitly concern a process for making a cellulose acetate tow, the subject-matter of claim 1 differs from the process of D6 through the same features as it did from D5:
- the plasticizer consisting of water;
 - the use of a spool-type guide for plasticizing;
 - drying the crimped tow; and
 - baling the dried crimped tow.

With the differentiating features over D6 being the same as those over D5, the three partial objective technical problems remain the same.

- 4.5.3 As regards the claimed solutions to the partial objective problems based on the drying and baling of the tow and on the plasticizer consisting of water, these are found not to involve an inventive step for the same reasons as those presented in the corresponding points of the decision when starting out from D5 (see particularly under points 4.2 and 4.3

above).

- 4.5.4 However, the partial objective technical problem based on the use of a spool-type guide, i.e. 'to provide a suitable way of applying plasticizing fluid to the tow' is not solved through the teaching of D7, D18 or D19.

As regards D7, this discloses a pair of rollers (12, 14) through which the tow is passed for wetting the tow with water. There is however no suggestion that these rollers have a spool-like shape such that no hint can be gained from the disclosure which would lead the skilled person to modify the process of D6 in order to solve the partial problem and include the claimed spool-type guide.

As regards D18 and D19, the same finding applies as that given under point 4.4.4 above, that these documents each disclose plasticizer applicator rolls (82, 84) which are plain cylinders without a raised edge. As a consequence these documents also fail to give the skilled person a hint to the claimed spool-type guides.

- 4.5.5 It thus follows that when starting from D6 and wishing to solve the three partial objective technical problems, the skilled person would receive no hint from D7, D18 or D19 to modify the known process in order to reach the claimed subject-matter without exercising an inventive step.

- 4.6 In summary therefore, the subject-matter of claim 1 is found to involve an inventive step over all the document combinations and arguments presented by the opponent. The requirement of Article 56 EPC 1973 is therefore met.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent as amended in the following version:

Description: pages 5 to 7 of the patent specification, pages 2 to 4 and 8 as filed during the oral proceedings of 26 October 2012.

Claims: 1 to 12 filed during the oral proceedings of 18 October 2016.

Figures: Drawings 1 to 9 of the patent specification.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated