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# Datasheet for the decision of 9 March 2018

**Case Number:** T 0841/15 - 3.3.03

**Application Number:** 06826645.1

**Publication Number:** 1948728

**IPC:** C08K13/00, C08K13/06, C08K5/34, H01B3/18

**Language of the proceedings:** EN

**Title of invention:**
IMPROVED LEAD-FREE INSULATION COMPOSITIONS CONTAINING METALLOCENE POLYMERS

**Applicant:**
General Cable Technologies Corporation

**Relevant legal provisions:**
EPC Art. 54

**Keyword:**
Novelty - (yes)
Remittal to the department of first instance - (yes)

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**Case Number: T 0841/15 - 3.3.03**

# D E C I S I O N
# of Technical Board of Appeal 3.3.03
# of 9 March 2018

| | |
|---|---|
| **Appellant:** (Applicant) | General Cable Technologies Corporation<br>4 Tesseneer Drive<br>Highland Heights KY 41076 (US) |
| **Representative:** | Novagraaf Technologies<br>Bâtiment O2<br>2, rue Sarah Bernhardt<br>CS90017<br>92665 Asnières-sur-Seine Cedex (FR) |
| **Decision under appeal:** | **Decision of the Examining Division of the European Patent Office posted on 7 October 2014 refusing European patent application No. 06826645.1 pursuant to Article 97(2) EPC.** |

**Composition of the Board:**

| | |
|---|---|
| **Chairman** | D. Semino |
| **Members:** | M. C. Gordon |
| | R. Cramer |

## Summary of Facts and Submissions

I. The appeal of the applicant lies against the decision of the examining division refusing the European Patent Application No. 06826645.1.

II. The decision was based on a main request (set of claims filed on 25 July 2014) and on two auxiliary requests.

III. Claim 1 of the main request read as follows:

"1. A lead-free insulation composition for electric cable comprising:
(a) a base polymer comprising 20% to 99% by weight of a metallocene polymer and 1% to 80% by weight of a non-metallocene polymer;
(b) a filler; and
(c) at least one hindered amine light stabilizer;
wherein no ingredients containing lead have been added to said composition."

Claims 2-7 were directed to preferred embodiments of the insulation composition of claim 1.

The wording of the auxiliary requests is not relevant for this decision.

IV. According to the decision claim 1 of the all requests lacked novelty in view of the disclosure of:

D1: US-A-2005/0133248.

V. The applicant (appellant) filed an appeal against the decision. The requests as considered by the examining division were maintained in the statement of grounds of appeal. An auxiliary request for oral proceedings was

made.

In addition a request for reimbursement of the appeal fee and of re-establishment of rights were made in the notice of appeal.

VI. The Board issued a summons to oral proceedings. Following a preliminary study of the case the Board informed the appellant that it was of the opinion that novelty could be recognised for the main request, meaning that the case could be remitted to the first instance for further prosecution.

However further requests made in the notice of appeal required clarification.

VII. In a letter dated 12 February 2018 the appellant indicated agreement with the Board's assessment of novelty and the proposed remittal to the first instance. The requests for reimbursement of the appeal fee and re-establishment of rights were withdrawn, and issue of a decision was requested.

VIII. Thereafter the oral proceedings were cancelled.

IX. The appellant requested that the decision under appeal be set aside and that the application be remitted to the examining division for further prosecution on the basis of the main request, as filed with letter of 25 July 2014, or on the basis of the first or second auxiliary requests, filed during the oral proceedings before the examining division on 11 September 2014.

## Reasons for the Decision

1. Claim 1 of the main request is directed to a composition which is defined as being lead free and further excludes the possibility that an ingredient containing lead is added thereto. Thus the claim is formulated such that it excludes compositions which contain lead.

In document D1 cited as novelty destroying in the decision under appeal claims 1-3 and paragraphs [0022] and [0024] disclose insulation compositions for electric cables defined in an open manner ("comprising") and are silent on the presence of lead, neither permitting nor excluding this. Consequently D1 does formally encompass in its broadest disclosure both compositions which contain lead as well as compositions which are devoid of it. In other words, D1 contains a generic disclosure of compositions comprising the specifically listed components (i.e. the base polymer, the filler and the additive according to claim 1) and open to the presence of any other ingredients without the explicit exclusion of any of them and in particular without the exclusion of lead.

The question to be answered is therefore whether this generic disclosure can be seen as a direct and unambiguous disclosure at least implicitly of a specific composition which does not contain lead.

2. In order to answer this question, the whole of the disclosure of D1 has to be taken into account, including in particular its examples, which give the specific indication of how the teaching of D1 has to be put into practice. As all examples of D1, including both those defined according to the invention in the

document and the comparative ones (see pages 5 to 7) contain lead (paragraph [0080]; page 6, line 1 of the first table and line 7 of the second table), it is not possible to impute a disclosure of compositions without lead - even implicitly - to D1. In this respect it is not considered to be relevant that the ingredient is defined as "minor" in the examples (see paragraph [0079], as this term, in the context of D1 denotes simply the relative quantity of the ingredients.

In the light of these considerations a direct and unambiguous disclosure of a specific composition without lead is not to be found in D1 and novelty of the subject-matter of claim 1 of the main request is to be acknowledged.

Since all remaining claims are dependent on claim 1 this conclusion applies also to these.

3. The appellant has requested remittal to the first instance for further prosecution. In view of the fact that inventive step was not addressed by the examining division the Board is of the opinion that this is the correct course of action.

**Order**

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

1. The decision under appeal is set aside.

2. The case is remitted to the examining division for further prosecution.

The Registrar: The Chairman:

B. ter Heijden D. Semino

Decision electronically authenticated