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**Datasheet for the decision
of 23 February 2021**

Case Number: T 0415/17 - 3.3.02

Application Number: 09788849.9

Publication Number: 2297258

IPC: C09D133/06, C09D131/04

Language of the proceedings: EN

Title of invention:

COATING COMPOSITIONS HAVING INCREASED BLOCK RESISTANCE

Patent Proprietor:

Arkema, Inc.

Opponent:

Celanese Emulsions GmbH

Headword:

Relevant legal provisions:

EPC Art. 100(c), 108, 123(2)
EPC R. 101(1)

Keyword:

Admissibility of appeal - missing statement of grounds
Amendments

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0415/17 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 23 February 2021

Appellant: Arkema, Inc.
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Appellant: Celanese Emulsions GmbH
(Opponent) Am Unisys-Park 1
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Representative: Kinkeldey, Daniela
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 December 2016 concerning maintenance of the
European Patent No. 2297258 in amended form.

Composition of the Board:

Chairman P. O'Sullivan
Members: S. Bertrand
E. Mille

Summary of Facts and Submissions

- I. European Patent n° 2 297 258 was opposed under Article 100 (a) (lack of novelty and inventive step) and (c) EPC.
- II. The appeal by the patent proprietor ("appellant") lies from the interlocutory decision of the opposition division that the European patent in amended form according to auxiliary request 1 submitted during oral proceedings on 20 October 2016 met the requirements of the EPC.
- III. The opposition division came *inter alia* to the conclusion that independent claims 1 and 9 according to the main request (patent as granted) did not fulfill the requirements of Article 123(2) EPC.
- IV. In its statement setting out the grounds of appeal, the appellant contested the reasoning of the opposition division and submitted that the subject-matter of granted claims 1 and 9 did not extend beyond the content of the application as filed. None of the further grounds for opposition prejudiced the maintenance of the patent as granted.
- V. The opponent filed a notice of appeal on 14 February 2017 and paid the appeal fee on the same day. Oral proceedings were requested. By communication of 18 May 2017, the registry of the board informed the opponent that no statement of grounds of appeal had been filed and that it was therefore to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The opponent was

informed that any observations had to be filed within two months of notification of the communication. No reply was received.

VI. By communication of 11 May 2017, the registry informed the opponent that a reply to the grounds of appeal submitted by the appellant should be filed within four months. No reply was received.

VII. By a letter of 29 January 2021, the opponent withdrew its request for oral proceedings.

VIII. Both parties were informed by a communication dated 5 February 2021 that the oral proceedings had been cancelled.

IX. The parties' requests were the following:

The appellant requested:

- that the decision under appeal be set aside and that the opposition be rejected, implying maintenance of the patent as granted, or
- alternatively, that the patent be maintained in amended form on the basis of one of the sets of claims of auxiliary requests 1 to 19 filed with the reply to the statement of grounds of appeal.

The opponent requested that the appeal be dismissed.

X. The appellant's case, where relevant to the present decision, may be summarised as follows:

Article 100(c) EPC

- For the skilled person, the term "*volatile organic compound (VOC)-free coating composition*" used in claim 1 of the main request had the same meaning as the term "*zero VOC coating*"

composition" found in paragraph [0022] of the application as filed, the latter providing basis for the specific amount range of VOC of less than 50 grams/liter recited in contested claim 1.

- Article 100(a) EPC

In the decision under appeal, the opposition division held that the subject-matter of the claims of auxiliary request 1 was novel and involved an inventive step. Since the subject-matter of the claims of the main request was identical to that of the claims of auxiliary request 1, the same conclusion applied thereto.

XI. The present decision is issued without the need for oral proceedings since the opponent withdrew its request for oral proceedings pursuant to Article 116 EPC.

Reasons for the Decision

Admissibility of the opponent's appeal

1. Notice of appeal was filed by the opponent and the appropriate appeal fee was paid in accordance with Article 108, first and second sentence, EPC within two months of notification of the decision (cf. Rule 126(2) and Rule 131(1), (4) EPC, Article 2(1) item 11 RFees).

However, a statement setting out the grounds of appeal was not filed within the four-month time limit provided by Article 108, third sentence, EPC. In addition, neither the notice of appeal nor any other document filed contains anything that could be regarded as a

statement of grounds pursuant to Article 108 EPC and Rule 99(2) EPC.

Therefore, the appeal of the opponent (hereinafter: respondent) has to be rejected as inadmissible pursuant to Rule 101(1) EPC.

Main request (patent as granted)

2. Article 100(c) EPC

2.1 Independent claims 1 and 9 of the main request read as follows:

"1. An aqueous, ~~substantially~~ volatile organic compound (VOC)-free coating composition **having the total amount of VOCs in the coating composition of less than 50 grams/liter**, comprising:

an acrylic latex and a vinyl acetate-ethylene latex, with:

*from ~~about~~ 10 to ~~about~~ 90 weight percent of a vinyl acetate-ethylene polymer, based on total weight of acrylic polymer and vinyl acetate-ethylene polymer, having a T_g , **determined by differential scanning calorimetry**, from ~~about~~ -20 to ~~about~~ 20 degrees Celsius; and*
*from ~~about~~ 10 to ~~about~~ 90 weight percent of an acrylic polymer, based on the total weight of acrylic polymer and vinyl acetate-ethylene polymer, the acrylic polymer ~~including~~ **comprising**, in polymerized form, at least one ethylenically unsaturated (meth)acrylic monomer and ~~about~~ 0.01 to ~~about~~ 10 weight percent, based on total weight of the acrylic polymer, of an acetoacetate moiety containing monomer, where the acrylic polymer has a T_g , **determined by***

differential scanning calorimetry, of from about -20 to ~~about~~-20 degrees Celsius.

9. A method, comprising:

coating a substrate surface with an aqueous, substantially VOC-free coating composition **having the total amount of VOCs in the coating composition of less than 50 grams/liter** ~~including-comprising~~ an acrylic latex and a vinyl acetate-ethylene latex to form a wet coating on the substrate surface, where the acrylic latex and the vinyl acetate-ethylene latex ~~includes~~ **comprises**:

from ~~about~~ 10 to ~~about~~ 90 weight percent of a vinyl acetate-ethylene polymer, based on total weight of acrylic polymer and vinyl acetate-ethylene polymer, having a T_g **determined by differential scanning calorimetry**, from about -20 to about 20 degrees Celsius; and

from ~~about~~ 10 to ~~about~~ 90 weight percent of an acrylic polymer, based on the total weight of acrylic polymer and vinyl acetate-ethylene polymer, the acrylic ~~polymer~~ **including polymercomprising** [sic], in polymerized form, at least one ethylenically unsaturated (meth)acrylic monomer and about 0.01 to about 10 weight percent, based on total weight of the acrylic polymer, of an acetoacetate moiety containing monomer, where the acrylic polymer has a T_g **determined by differential scanning calorimetry**, of from about -20 to about 20 degrees Celsius; and

converting the wet coating on the substrate surface to a dry coating." (strike through and bold text representing text deleted and added, respectively, compared to claims 1 and 9 of the application as filed).

- 2.2 In the contested decision the opposition division concluded that the subject-matter of claims 1 and 9 of the main request extended beyond the content of the application as filed in respect of the expression *"volatile organic compound (VOC)-free coating composition having the total amount of VOCs in the coating composition of less than 50 grams/liter"*.

This expression had replaced the expression *"substantially volatile organic compound (VOC)-free coating composition"* in claims 1 and 9 of the application as filed.

- 2.3 In the view of the opposition division, the definition of a *"zero VOC coating composition"* provided in paragraph [022] of the application as filed, namely that the *"total amount of VOCs in the coating composition is less than 50 grams/liter"*, could not be applied to define the *"(VOC)-free coating composition"* recited in claim 1 of the application as filed.

This was challenged by the appellant. With regard to basis for this feature, the appellant also referred to paragraph [022] of the application as filed and submitted that the terms *"zero VOC"* and *"VOC-free"* related to the same concept, were interchangeable, and thus no distinction could be drawn between them.

The relevant part of paragraph [022] reads *"As used herein, a "zero VOC coating composition" is a coating composition where the total amount of VOCs in the coating composition is less than 50 grams/liter."*

The board agrees with the appellant's arguments. The term *"VOC-free"* used in paragraph [022] of the application as filed cannot be distinguished from the term *"zero VOC"* used in claim 1 of the main request by the skilled person in the art. Both terms equally

indicate the absence of VOC in the coating composition. Furthermore, nothing in the application as filed indicates that a different meaning should be assigned to "VOC-free" and "zero-VOC". Therefore, the board concludes that this feature of claim 1 of the main request finds basis in paragraph [022] of the application as filed.

2.4 The same conclusion applies to claim 9 of the main request, for the same reason.

2.5 As a consequence, the ground for opposition under Article 100(c) EPC does not prejudice the maintenance of the patent as granted.

3. Article 100 (a) EPC - Novelty and Inventive step

The opposition division in the contested decision held that the subject-matter of the first auxiliary request was novel and involved an inventive step. Claims 1 and 9 of this request differ from granted claims 1 and 9 of the present main request respectively only in the replacement of the term "(VOC)-free" with "zero ... (VOC)". As noted above, the board holds the view that the meaning of these terms cannot be distinguished by the person skilled in the art. Thus, the subject-matter of the main request is identical to that of the first auxiliary request. As a consequence, as submitted by the appellant in its statement of grounds of appeal, the conclusion of the opposition division in respect of novelty and inventive step also applies to the subject-matter of the main request.

Since this was not contested by the respondent during appeal proceedings, there is no need for the board to examine the grounds for opposition under Article 100(a) EPC.

It follows that the grounds for opposition under Article 100(a) EPC do not prejudice the maintenance of the patent as granted.

Consequently, it must be concluded that the subject-matter of the main request is allowable.

Order

For these reasons it is decided that:

1. The respondent's appeal is rejected as inadmissible.
2. The decision under appeal is set aside.
3. The patent is maintained as granted.

The Registrar:

The Chairman:



N. Maslin

P. O'Sullivan

Decision electronically authenticated