

**Internal distribution code:**

- (A) [ - ] Publication in OJ  
(B) [ - ] To Chairmen and Members  
(C) [ - ] To Chairmen  
(D) [ X ] No distribution

**Datasheet for the decision  
of 18 March 2021**

**Case Number:** T 1886/17 - 3.3.09

**Application Number:** 10718812.0

**Publication Number:** 2430079

**IPC:** C08J5/00

**Language of the proceedings:** EN

**Title of invention:**

POLYAMIDE COMPOSITE STRUCTURES AND PROCESSES FOR THEIR  
PREPARATION

**Patent Proprietor:**

E. I. du Pont de Nemours and Company

**Opponent:**

Evonik Operations GmbH

**Headword:**

Polyamide composite structures/DU PONT

**Relevant legal provisions:**

EPC Art. 100(a), 54, 56

**Keyword:**

Novelty - main request (yes)  
Inventive step - main request (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 1886/17 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 18 March 2021**

**Appellant:** E. I. du Pont de Nemours and Company  
(Patent Proprietor) 974 Centre Road  
Chestnut Run Plaza, Bldg. 721  
Wilmington, DE 19805 (US)

**Representative:** Heinemann, Monica  
Abitz & Partner  
Patentanwälte mbB  
Postfach 86 01 09  
81628 München (DE)

**Appellant:** Evonik Operations GmbH  
(Opponent) Rellinghauser Straße 1-11  
45128 Essen (DE)

**Correspondence address:** Evonik Degussa GmbH  
CI-IPM-PAT  
Bau 1042 - PB 15  
45764 Marl (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**14 June 2017 concerning maintenance of the**  
**European Patent No. 2430079 in amended form.**

**Composition of the Board:**

**Chairman** A. Veronese  
**Members:** M. Ansorge  
F. Blumer

## Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the proprietor against the opposition division's interlocutory decision holding that the opposed European patent No. 2 430 079 as amended (auxiliary request 2) complied with the EPC.
- II. With its notice of opposition, the opponent had requested revocation of the patent in its entirety on the ground for opposition under Article 100(a) EPC (lack of novelty and lack of inventive step).
- III. The documents submitted during the opposition proceedings included:
- D2: EP 1 788 026 A1
  - D3: WO 2007/149300 A1
  - D4: JP H11-116799A
  - D5: WO 2009/067413 A1
  - D6: DE 695 02 945 T2
- IV. Claim 1 as granted reads as follows:
- "A composite structure having a surface, which surface has at least a portion made of a surface polyamide resin composition, and comprising a fibrous material selected from non-woven structures, textiles, fibrous battings and combinations thereof, said fibrous material being impregnated with a matrix resin composition wherein the matrix resin composition encapsulates and embeds the fibrous material so as to form an interpenetrating network of fibrous material substantially surrounded by the matrix resin composition, wherein the surface polyamide resin

composition is selected from polyamide compositions comprising a blend of:

- a) one or more semi-aromatic polyamides (A), and
- b) one or more fully aliphatic polyamides (B) selected from the group consisting of polyamides containing repeat units derived from aliphatic dicarboxylic acids and aliphatic diamines, polyamides containing repeat units derived from aliphatic aminocarboxylic acids, and polyamides derived from lactams."

Claims 2 to 15 as granted depend on claim 1.

- V. The opposition division decided, *inter alia*, that the subject-matter of claim 1 as granted (main request) and auxiliary request 1 lacked novelty in view of documents D2, D4 and D5, but that the subject-matter of claim 1 of auxiliary request 2 was novel and involved an inventive step in view of D3 as the closest prior art.
- VI. The proprietor (appellant) lodged an appeal against the opposition division's interlocutory decision. In its statement setting out the grounds of appeal it requested that the decision be set aside and the patent be maintained on the basis of the claims as granted (main request) or, alternatively, on the basis of auxiliary request 1, filed by letter of 2 February 2016, or one of auxiliary requests 2 to 5, filed by letter of 7 March 2017 (auxiliary request 2 being the same as decided upon in the impugned decision).
- VII. The opponent lodged an appeal but did not file the statement setting out the grounds of appeal, so hereinafter the opponent is referred to as the

"respondent". It did not reply to the appellant's statement setting out the grounds of appeal either.

VIII. The appellant's arguments, in so far as relevant for the present decision, are as follows:

The opposition division was wrong to reject the claims of the main request for lack of novelty. None of documents D2, D4 and D5 discloses non-woven structures, textiles, fibrous battings or combinations of these as the fibrous material required in claim 1 of the main request.

IX. Requests

The appellant's requests are those set out above in point VI.

The respondent did not formulate any request in its notice of appeal.

## **Reasons for the Decision**

1. Admissibility of the respondent's appeal

Since the respondent did not file the statement setting out the grounds of appeal, and the notice of appeal itself does not contain any grounds, the respondent's appeal must be rejected as inadmissible pursuant to Article 108 EPC in conjunction with Rule 101(1) EPC.

**MAIN REQUEST** (claims as granted)

2. Novelty

2.1 The appellant argued that none of documents D2, D4 and D5 disclosed a composite structure comprising a fibrous material selected from non-woven structures, textiles and fibrous battings as required by claim 1 of the main request. In its opinion, the claimed subject-matter was therefore novel over each of these documents for this very reason.

2.2 It is true that none of documents D2, D4 or D5 unambiguously discloses a fibrous material selected from non-woven structures, textiles, fibrous battings and combinations of these. These documents disclose compositions comprising fibres as fillers, yet these fibres do not necessarily have the structured form of non-woven structures, textiles or fibrous battings.

The subject-matter of claim 1 of the main request is thus novel over each of the aforementioned documents. The same applies to dependent claims 2 to 15 of the main request.

3. Inventive step

3.1 The opposition division refused the main request on the sole ground of lack of novelty over documents D2, D4 and D5. The issue of inventive step was not addressed in relation to the main request.

3.2 However, in the impugned decision the opposition division decided that the subject-matter of claim 1 of auxiliary request 2 involved an inventive step

considering D3 as the closest prior art. The board does not see any reason to depart from the opposition division's finding that D3 is the closest prior art.

3.3 Claim 1 of the main request differs from claim 1 of auxiliary request 2 in that the feature "wherein the matrix resin composition and the surface polyamide resin composition are different" is not present. This feature was, however, not considered crucial by the opposition division in its assessment of inventive step. The determining factor was that the cited prior art did not disclose a composite structure having a surface polyamide resin composition comprising the blend of polyamides A and B defined in claim 1.

3.4 This can be inferred, for example, from the following passages of the decision under appeal:

"The question to be addressed in this context appears to be whether the skilled person would be motivated to consider the blend of polyamides A and B as defined in claim 1 and claim 13 as a solution for the given problem." (See page 10, lines 21 to 24 of the decision.)

"There is no mention in D6 of an overmolding composition, let alone that the specific blend of polyamides A and B according to the auxiliary request 2 would lead to an increased adhesion of the overmolding resin to the composite structure surface. Thus, the OD does not see how the disclosure of D6 may provide any pointer prompting the skilled person to modify the composite structure of D3 in the sense of the opposed patent, i.e. to unambiguously derive the composite structure according to the auxiliary request 2 from the combined teaching of D3 and D6. The OD is therefore of



the opinion that the auxiliary request 2 fulfils the requirements of Article 56 EPC." (See page 10, line 33 to page 11, line 6 of the decision.)

It is clear from these passages that the opposition division based its conclusion that the invention claimed in auxiliary request 2 involved an inventive step on the grounds that D3 did not disclose the claimed blend of a) one or more semi-aromatic polyamides (A) and b) one or more fully aliphatic polyamides (B) and that the cited prior art documents did not hint at providing any such blend.

- 3.5 Since this same feature also characterises claim 1 of the main request, the opposition division's inventive step reasoning applies equally to the main request.
- 3.6 The respondent did not provide any reasons why the opposition division's reasoning and conclusion might be wrong, and the board cannot see any either. It is therefore concluded that the opposition division correctly assessed the question of inventive step. Since its reasoning applies equally to the subject-matter of the main request, this subject-matter involves an inventive step, so the main request is allowable.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



A. Nielsen-Hannerup

A. Veronese

Decision electronically authenticated