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Datasheet for the decision of 23 July 2021

Case Number: T 1470/19 - 3.3.09

Application Number: 11708634.8

Publication Number: 2681260

IPC: C08J3/03, C09D167/00

Language of the proceedings: EN

Title of invention:
A COATING COMPOSITION AND ARTICLES MADE THEREFROM

Patent Proprietors:
Dow Global Technologies LLC
Rohm and Haas Company

Opponent:
PPG Industries, Inc.

Headword:
Coating composition/DOW

Relevant legal provisions:
EPC Art. 56, 83, 123(2), 123(3)
RPBA 2020 Art. 13(2)

Keyword:
Amendments - added subject-matter (no) - broadening of claim (no)
Inventive step - non-obvious alternative
Sufficiency of disclosure - (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1470/19 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 23 July 2021

Appellant: (Patent Proprietor 1)	Dow Global Technologies LLC 2040 Dow Center Midland, MI 48674 (US)
Appellant: (Patent Proprietor 2)	Rohm and Haas Company 100 Independence Mall West Philadelphia, PA 19106 (US)
Representative:	Boult Wade Tennant LLP Salisbury Square House 8 Salisbury Square London EC4Y 8AP (GB)
Appellant: (Opponent)	PPG Industries, Inc. P.O. Box 3800 West 143rd Street Cleveland, OH 44111 (US)
Representative:	Appleyard Lees IP LLP 15 Clare Road Halifax HX1 2HY (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 6 March 2019 concerning maintenance of the European Patent No. 2681260 in amended form.**

Composition of the Board:

Chairman	A. Haderlein
Members:	C. Meiners
	E. Mille

Summary of Facts and Submissions

I. The present appeals were filed by the opponent and the patent proprietors against the opposition division's interlocutory decision, which found that the European patent No. 2 681 260 as amended in the form of the seventh auxiliary request filed during the oral proceedings before the opposition division met the requirements of the EPC. As all the parties are appellants, they will be referred to as the patent proprietors and the opponent.

II. With its notice of opposition, the opponent had requested that the patent be revoked in its entirety *inter alia* on the grounds for opposition under Article 100(a) EPC in combination with Article 56 EPC (lack of inventive step), Article 100(b) EPC, and Article 100(c) EPC.

III. The following documents, which are relevant to the present decision, have been cited by the opponent in the opposition and appeal proceedings:

D1 JP3577778 B2
D1a Machine English translation of JP3577778 B2
D1b Professional English translation of paragraphs 37 to 40 of JP3577778 B2
D2 US 2007/0142570 A1
D3 JPH10-7944 A
D3a English translation of JPH10-7944 A
D4 WO 2007/030334 A2
D5 WO 01/28306 A2
D6 US 5,869,567
D7 US 2010/0143837 A1
D8 US 5,356,989

IV. Together with the statement setting out the grounds of appeal, the patent proprietors filed the then main request and the then first and second auxiliary requests. They also filed a third and a fourth auxiliary request with the reply to the opponent's statement setting out the grounds of appeal. Furthermore, the proprietors filed auxiliary requests 5 to 8 with a letter dated 18 June 2021 in response to a communication from the board pursuant to Article 15(1) RPBA 2020.

V. In the oral proceedings before the board, which took place on 23 July 2021, the proprietors declared that auxiliary request 7 was their main request.

VI. Claim 1 of the main request, as the sole claim, reads as follows:

"A method for producing an aqueous dispersion comprising the steps of:
selecting from 75 to 95 percent by weight of one or more first polyesters, based on the total solid content of the dispersion, the one or more first polyesters having an acid number in the range of from less than 15 and wherein the first polyester is a hydroxyl functional thermosetting polyester having a molecular weight of greater than 5000 g/mol;
selecting from 1 to 25 percent by weight of one or more stabilizing agents comprising at least one second polyester, based on the total solid content of the dispersion, the one or more stabilizing agents comprising at least one second polyester having an acid number equal to or greater than 15;
selecting one or more neutralizing agents;

melt-blending said one or more first polyesters, one or more stabilizing agents in the presence of water and one or more neutralizing agents;
thereby producing an aqueous dispersion having a solid content of 45 to 65 percent, based on the total weight of the dispersion, and wherein the volume average particle size of the dispersion is less than 5 µm (microns)."

VII. The opponent's arguments, where relevant to the decision, may be summarised as follows:

It had strong reservations about the admission of the seventh auxiliary request of 18 June 2021. The discrepancy between the weight ranges for the solids content of the dispersions and the amount of water in the dispersions of claim 1 as granted had already been put forward in its notice of opposition. The filing of the request could therefore not be taken as a response to the board's preliminary opinion, which was in line with the corresponding arguments put forward by the opponent. It was therefore difficult to argue that exceptional circumstances applied in the present case. What is more, the request had only been filed a few weeks before the oral proceedings.

Claim 1 did not meet the requirements of Article 123(2) EPC. The ranges for the first polyesters and stabilising agents comprising the second polyesters were not complementary. In addition, the weight ranges for these components were only disclosed in the original description in the context of the composition of the aqueous dispersions prepared and not in relation to the components used in the process for preparing the aqueous dispersions. There would have been a mass loss of the components used during the compounding of the

components in the preparation of the aqueous dispersions.

The subject-matter of claim 1 contravened the requirements of Article 123(3) EPC since the claim allowed for the presence of additional amounts of hydroxyl functional first polyesters which were not thermosetting, such as thermoplastic hydroxyl functional first polyesters, for which the weight-percentage limitation stipulated for the first polyesters in claims 1 and 2 as granted did not apply. In the present claim 1, the weight percentage of the first polyester only applied to hydroxyl functional *thermosetting* polyesters as further specified in the claim and no longer to each and every hydroxyl functional polyester as further defined in claims 1 and 2 as granted. Due to the possible mass loss in the process, this would have resulted in embodiments which were encompassed by the present claim 1 but not by claim 2 as granted. Due to this extension of the scope of the claim, claim 1 contravened Article 123(3) EPC.

The subject-matter of claim 1 was insufficiently disclosed. According to claim 1, the dispersion had a volume average particle size of less than 5 µm; however, there were additional features missing from claim 1 which were required to achieve this low particle size. Comparative Example E of the patent in suit was the only example in which an aliphatic first polyester and an aromatic second polyester were used. An average particle size of only 6.8 µm had been obtained for this embodiment. In each of the inventive examples, however, aromatic polyesters had been used for both the first and second polyesters. Consequently, the skilled person was left to carry out trial-and-

error experiments to achieve a dispersion according to claim 1.

Moreover, the subject-matter of claim 1 lacked an inventive step in view of document D1 as the closest prior art. Starting from Example 1, the objective technical problem would merely have been to provide an alternative aqueous polyester dispersion. D1 disclosed the same inventive concept as the patent. The amounts of first and second polyesters and the solids content of the dispersion in Example 1 could be adjusted in view of the teaching of paragraphs [0019 and 0045] of D1, a neutralising agent could be added (cf. paragraph [0046]), and, according to D1, the blending could equally be accomplished by melt-blending of the first and second polyesters (see paragraph [0038] of D1). Hence, a skilled person would have been led to the solution provided by the subject-matter of claim 1 with the expectation of obtaining stable aqueous polyester dispersions by adjusting those four distinguishing features. They would thus have arrived at the subject-matter of claim 1 in an obvious way.

VIII. The proprietors' arguments, where relevant to the decision, may be summarised as follows:

The new main request (designated the "seventh auxiliary request") had been filed in response to the board's preliminary opinion expressed in the communication pursuant to Article 15(1) RPBA and the new objection under Article 123(2) EPC formulated therein. Moreover, the admission of the request would not have led to a different factual framework and would have been compatible with the requirement of procedural economy. It was therefore to be admitted into the appeal proceedings.

Claim 1 also met the requirements of Article 123(2) EPC. There was a pointer in the original application to the combination of the ranges indicated in claim 1 for the content of the first polyesters and stabilising agents comprising the second polyesters with the range provided for the solids content of the dispersions claimed. The solid mass in the final dispersions was the same as that of the components added in the production process yielding the dispersions. In other words, what was added ended up in the final product. Claim 1 was to be construed accordingly. This construction could also be derived from the application as filed.

For these reasons, claim 1 did not contravene the requirements of Article 123(3) EPC either.

With regard to the question of sufficiency of disclosure, the opponent had not provided any evidence demonstrating a lack of reproducibility of the claimed subject-matter. The proprietors also mentioned that the patent specification discussed the compatibility of the polyesters in paragraph [0032]. The factors influencing compatibility of the first and second polyesters would have been understood by a skilled person consulting the specification and the examples provided therein.

With regard to inventive merit, document D4 represented the closest prior art since it was directed to the same purpose as the patent. The opponent had not demonstrated that the route to the claimed subject-matter provided in D1 was equally as valid as that in D4. The opponent had established four distinguishing features (amounts of first and second polyesters, absence of a neutralising agent in Example 1 and a

lower solids content than required by claim 1); however, Example 1 did also not include the melt-blending step required in claim 1. What is more, the implicit anticipation of the acid numbers of the first and second polyesters required in claim 1 was merely an assertion by the opponent. There were so many changes to be made in order to arrive at the subject-matter of claim 1 that a skilled person would not realistically consider implementing them, and therefore would not arrive at something falling within the ambit of claim 1.

IX. Final requests

The opponent requested that the opposition division's decision be set aside and that the patent be revoked in its entirety.

The proprietors requested that the decision under appeal be set aside and that the patent be maintained on the basis of the sole claim in auxiliary request 7 filed with the letter dated 18 June 2021 as the main request, or alternatively on the basis of the former main request filed with the statement of the grounds of appeal or one of the auxiliary requests 1 or 2 filed with said statement, or on the basis of the auxiliary requests 3 or 4 filed with the reply to the opponent's statement of the grounds of appeal, or on the basis of auxiliary requests 5, 6 or 8 filed with the patent proprietors' letter dated 18 June 2021.

Reasons for the Decision

Main request (auxiliary request 7 of 18 June 2021)

1. *Admission of auxiliary request 7 into the appeal proceedings (Article 13(2) RPBA 2020)*

The opponent essentially argued that the discrepancy between the weight ranges for the solids content of the dispersions and the amount of water in the dispersions of claim 1 as granted had already been put forward in the statement of the grounds for opposition. There were hardly any exceptional circumstances that applied in this case which would have justified taking the seventh auxiliary request (the new main claim) into account.

The board takes the view that filing the seventh auxiliary request on 18 June 2021 was a legitimate response by the proprietors to the objection under Article 123(2) EPC to claim 1 of all the previous requests (the then main request and the former first to fourth auxiliary requests) that was newly raised in point 5.1.5 of the communication pursuant to Article 15(1) RPBA. Such an objection had not been raised by the opponent. Whether a "corresponding" objection had been raised by the opponent under Article 83 EPC is not sufficient for denying the presence of exceptional circumstances, in particular because Articles 83 and 123(2) EPC impose different requirements. In addition, in its communication, the board also put forward further arguments in relation to the assessment of sufficiency of disclosure which went beyond the objections raised by the opponent. The proprietors filed the request more than one month before the oral proceedings. The amendment only concerns the deletion

of claim 1 of auxiliary request 2 as filed with the statement setting out the grounds of appeal. This deletion addresses the objections under Article 83 and Article 123(2) EPC raised by the board in its communication. The board thus holds that there are exceptional circumstances justified by cogent reasons. Moreover, the admission of the request does not raise new issues, is suitable for resolving the issues which were raised by the board, and is not detrimental to the procedural economy. The opponent also had sufficient time to study the new request in order to prepare its case.

Consequently, the board decided to take the seventh auxiliary request into account (Article 13(2) RPBA 2020).

2. Amendments (Article 123(2) and (3) EPC)

2.1 Claim 1 is generally based on claim 2 as originally filed. The opponent argued that the provisions of Article 123(2) and (3) EPC were not complied with.

2.2 In this context, the interpretation of claim 1 was contentious between the parties. While the opponent argued that a mass loss was possible in the method in claim 1 when blending the components making up the aqueous dispersion, the proprietors argued that the weight percentages relating to the first polyesters and stabilising agents comprising the second polyesters specified the amounts of the *added* components and of the *final* dispersions at the same time. The entire amount of components contributing to the solids content of the dispersions ended up in the final product.

The board concurs with the proprietors with regard to

this interpretation of claim 1. The wording of claim 1 suggests that the first polyesters and stabilising agents comprising the second polyesters are blended in amounts which correspond to corresponding weight percentages of those components in the solids content of the final dispersions and that the added amounts contribute 1:1 to the solids content (without any hypothetical mass loss during their blending). The first polyesters and stabilising agents comprising the second polyesters are non-volatile components and are typically melt-blended in an extruder, as put forward by the proprietors. As convincingly argued by the proprietors, non-volatile components which are fed into the extruder in the (continuous) melt-mixing operation are expected to leave the extruder without mass loss.

2.3 This interpretation can also be directly and unambiguously derived from the application as filed. In particular, steam was prevented from forming at the operating temperature by the presence of a back-pressure regulator (cf. the first paragraph on page 30 of the description as filed). In line with this interpretation of claim 1, the end-points of the weight-percentage range for the added water are complementary to the lower and upper end-points of the range of the solids content of the final dispersion in claim 1 as originally filed. The amount of added water as required in the original claim 1 is also repeated on page 14, lines 9 to 10 of the description as filed for the final aqueous dispersion obtained. Analogously, the same weight-percentage ranges for the first polyesters and stabilising agents comprising the second polyesters disclosed in the original claim 1 for the melt-blending components are indicated on page 5, line 29 and page 8, line 11 of the description as filed, respectively. Hence, selecting a different weight-percentage range

for the first polyester and/or stabilising agent comprising a second polyester, disclosed in the original description in the context of the composition of the final aqueous dispersions, and introducing such alternative limits on the amounts of the first and second polyesters into the original claim 1 or incorporating such ranges for the amounts of said components into the original claim 2 does not, in the board's opinion, result per se in fresh subject-matter that contravenes the requirements of Article 123(2) EPC.

2.4 With regard to the specific amendments made to claim 2 as originally filed, the following is observed.

The range of from 75 to 95 percent by weight of one or more first polyesters as further specified in the original claims 1 and 2 is disclosed on page 6, line 7 of the description as filed. Likewise, the weight-percentage range of from 1 to 25 percent by weight for the stabilising agent comprising the second polyester as further specified in the original claims 1 and 2 is disclosed on page 8, line 16 as filed. These ranges are the narrowest ranges disclosed in the original description for those components and are supported by the examples in the application (cf. the entries in Table 2). The range for the solids content of from 45 to 65 percent of the dispersion is disclosed on page 14, line 30 as filed. It is the narrowest range supported by the examples.

There is thus a pointer to the selected combination of the ranges for the first polyesters, stabilising agents comprising the second polyesters and solids content of the dispersions as required in claim 1 of the seventh auxiliary request in the original application

documents.

The opponent's argument that the upper end-point of the weight-percentage range for the first polyesters and the lower end-point of the weight-percentage range for the stabilising agents did not add up to 100 percent by weight, based on the total solids content of the dispersion, does not invalidate this finding; the one or more neutralising agents can equally contribute to the solids content when non-volatile neutralising agents such as polymeric amines are selected (cf. page 14, line 2 of the description as filed). Hence, this argument cannot be regarded as a counter-indicator against the direct and unambiguous disclosure of said feature combination in the original application documents.

Claim 2 as originally filed is the independent method claim for the preparation of the aqueous dispersions specified in independent claim 1 as originally filed. The characterisation of the first polyesters as hydroxyl functional thermosetting polyesters with a molecular weight of > 5000 g/mol is based on page 6, lines 9 to 12, of the description as filed. This range is equivalent to the wording "medium to high molecular weight" used in lines 11 and 12 on page 6 as filed.

Applying the above-mentioned feature combination of the narrowest supported ranges to the original claim 2 and limiting the first polyester(s) to hydroxyl functional thermosetting polyesters having a molecular weight of greater than 5000 g/mol, based on page 6, lines 9 to 12 as filed, directly and unambiguously supports the feature combination in claim 1 of the seventh auxiliary request. Therefore, the subject-matter of claim 1 meets the requirements of Article 123(2) EPC.

2.5 As set out in point 2.2 above, claim 1 should be construed as specifying the weight percentages of the added amounts of the first polyesters and stabilising agents *and* construed such that those limitations concerning the weight-percentage ranges of said components also define their content in the corresponding final dispersions (based on the total solid content of the dispersions). A possible mass loss of those components during preparation of the dispersions should thus be ruled out when interpreting the scope of claim 1. This means that added components contributing to the solids content end up in the final dispersion. Hence, the opponent's considerations that, due to a possible mass loss of the first polyesters and/or the stabilisers comprising the second polyester during melt-blending, claim 1 comprised embodiments which were not included in the scope of claims 1 and 2 as granted do not hold.

Therefore, the board concludes that the subject-matter of claim 1 meets the requirements of Article 123(3) EPC.

3. Sufficiency of disclosure (Article 83 EPC)

3.1 The opponent argued that a mandatory feature of claim 1 was that the dispersion had a volume average particle size of less than 5 µm. As evidenced by the patent, there were additional features which were missing from claim 1 that were required for achieving this low particle size. These features and the means for determining them, however, were only vaguely discussed in the patent. Claim 1 contained no features enabling a compatible blend of the first and second polyesters, according to the opponent; however, such compatibility

was essential for obtaining a stable water-borne dispersion as claimed with a particle size of less than 5 µm.

3.2 First of all, the board notes that claim 1 does not refer to any "compatibility" of the components of the dispersion. What is required in claim 1 is a volume average particle size of the aqueous dispersions of less than 5 µm. The dispersion in Comparative Example E, to which the opponent referred in the context of an alleged lack of sufficiency of disclosure of the subject-matter of claim 1, does not comply with all the limitations imposed by claim 1 (since the first polyester used therein has a molecular weight of 4000 g/mol, and the volume average particle size is 6.8 µm).

As put forward by the opponent, it is mentioned in paragraph [0032] of the patent as granted that when combining aliphatic, high acid polyesters with aromatic, hydrophobic polyesters, a poor dispersion will typically result with large particle sizes of the dispersion. Hence, an important selection criterion is provided in paragraph [0032], which suggests that compatible combinations of first polyesters and second polyesters yield dispersions having the sought volume average particle size of less than 5 µm.

The opponent has not produced any evidence that a skilled person using their common general knowledge, especially that relating to the compatibility of polymers, would be faced with an undue burden of trial and error when seeking to reduce the subject-matter of claim 1 to practice across the full scope of the claim by selecting suitable, compatible combinations of first and second polyesters.

As argued by the patent proprietors, paragraph [0032] of the patent contains relevant information regarding the selection of compatible first and second polyesters and the assessment of the compatibility of the polymers by means of relevant tests proposed in paragraph [0032] of the patent. Those tests include optical inspection of the melt-blended mixture of the first and second polymer and morphology determination by optical microscopy or transmission electron microscopy of the blend.

Consequently, the subject-matter of claim 1 is sufficiently disclosed.

4. Inventive step (Article 56 EPC)

4.1 The patent

The patent relates to the field of coating compositions for lining metal containers, including food or beverage can liners and non-food metal container liners. According to the patent, there was a need for food and beverage can liners as well as non-food container liners that provided improved properties such as resistance to degradation in corrosive media as well as an appropriate level of flexibility (see paragraphs [0001 and 0002] of the patent as granted, especially lines 32 to 34 of paragraph [0002]). The coating compositions are derived from the aqueous dispersions prepared in the patent in suit.

4.2 Closest prior art

While the opposition division held that D4 was the closest prior art, D1 and D5 were also treated as different starting points for the analysis of inventive

step in the impugned decision. In the written appeal proceedings the opponent also mentioned - in passing - D2 to D5 as the closest prior art, whereas, at the oral proceedings before the board, the opponent only took D1 as a starting point. By contrast, the proprietor took D4 as the closest prior art.

Document D4 is directed to a similar technical problem to the patent in suit, namely to providing coating compositions for the protection of metal substrates such as metal food containers that have chemical resistance, substrate adhesion and coating flexibility (cf. paragraph [0006] of D4). It thus addresses the same purpose as the patent. D4 also mentions that said protection includes corrosion protection.

By contrast, neither document D1 nor document D5 mentions the purpose of providing coatings for protecting against corrosive media for lining metal containers that also have an appropriate level of flexibility. Therefore, in the board's view, they are not promising starting points for arriving, in a logical chain of considerations, at something falling within the scope of claim 1 in an obvious manner. They thus do not represent the closest prior art for the subject-matter of claim 1.

D2 and D3 are concerned with powder coatings, which intentionally do not comprise a liquid carrier medium. The teaching of these documents thus does not prompt a skilled person to depart from their core invention by implementing a liquid carrier phase and to arrive at aqueous dispersions having a volume average particle size of less than 5 µm, as further specified in claim 1 for the field of metal container liners. These documents are thus not suitable starting points in a

problem-solution approach for the assessment of inventive merit.

Therefore, the board holds that document D4 is the closest prior art.

By contrast, the opponent relied on document D1 as the starting point for developing its problem-solution approach in the oral proceedings before the board. The board will thus consider the opponent's arguments in the following in view of document D1 as the starting point for the assessment of inventive step.

4.3 Distinguishing features

The analysis of inventive merit in the decision under appeal and in the oral proceedings before the board was based on Example 1 of D1 as the starting point. According to the opponent the claimed subject-matter differed from this example on account of four features. These were i) the specific contents of the first polyesters and ii) of the stabilising agents comprising at least one second polyester of claim 1, iii) the presence of at least one neutralising agent, and iv) the solids content of the aqueous dispersion. The board notes that a further difference resides in v) a melt-mixing step of the first polyester and the stabiliser comprising the at least one polyester, which is not disclosed in Example 1 of D1, as correctly pointed out by the proprietors. While this step is disclosed in paragraph [0038] of D1, the heating temperature of the polyesters in the solvent in Example 1 is 60-80°C, i.e. far below the softening point of resin A1 as the first polyester within the meaning of claim 1. There is thus no melt-mixing of the polyesters in Example 1 of D1.

The board concludes that at least the five above-mentioned differences i)- v) distinguish the subject-matter of claim 1 from Example 1 of D1.

4.4 Technical effect ascribable to distinguishing features and resulting objective technical problem

The board concurs with the opposition division's conclusion that, due to the absence of comparative examples with regard to D1 and especially Example 1 described therein, no technical effect can be formulated which could be ascribable to the mentioned differences.

The resulting objective technical problem thus has to be formulated as that of providing an alternative method for producing an aqueous dispersion. There is no information at hand to suggest that this problem would not have been solved across the full scope of claim 1.

4.5 Obviousness

It is true that the distinguishing features i)- v) are described in the general teaching of D1; however, whilst D1 teaches that a neutralising agent can be added to the dispersions (see paragraphs [0046 and 0048] of D1), no neutralising agent is present in Example 1 (comprising the solvent N-methyl-2-pyrrolidone but no neutralising agent in the sense of paragraph [0046] of D1 and paragraph [0044] of the patent as granted). Example 1 does not disclose a melt-mixing step of the polyesters either. Likewise, the weight ranges for the first polyester (feature i)) and the stabilising agents comprising at least one second polyester (feature ii)) and the solids content of the dispersions (feature iv)) are only generically

disclosed in D1 in paragraphs [0019 and 0045]. By contrast, the solids content of the dispersion in Example 1 is only 25 wt.% (as opposed to 45 to 65% in claim 1), and the weight percentage of the first polyester is only 60 wt.% (as opposed to 75 to 95%) and that of the second polyester is 40 wt.% (as opposed to 1 to 25 wt.%), based on the total solids content of the dispersion.

In view of Example 1 of D1, a skilled person would not have been prompted to depart drastically from the process for producing aqueous polyester dispersions described therein with a realistic expectation of arriving at an alternative method for producing a dispersion. Such a modification to the teaching of Example 1 would imply the implementation of at least five significant modifications to Example 1, as mentioned above. They would therefore not be prompted to adduce any secondary documents for bridging this gap, such as documents D2-D8 as alleged by the opponent.

Consequently, the subject-matter of claim 1 is not obvious in view of document D1 as the closest prior art.

4.6 For the sake of completeness, for the following reasons the claimed subject-matter was not obvious when starting from D4 either, which the board considers to be the closest prior art.

The difference from the subject-matter of claim 1 firstly at least resides in a *melt-blending step* of a first polyester and a stabilising agent comprising a second polyester as further specified in claim 1 of the main request. The second difference is that *water* is

used as the carrier medium, as opposed to an organic solvent-based liquid carrier medium, typically comprising at most 5 wt.% of water based on the total weight of the coating composition (see D4, paragraphs [0066 and 0067]). Therefore, D4 provides teaching that leads away from the preparation of *aqueous* polyester dispersions. In the absence of comparative examples with regard to D4, no technical effect has been corroborated which could be causally linked to these differences.

The objective technical problem would thus be to provide an alternative in terms of the preparation process and the product to be obtained.

The board concludes that D4 provides no prompting to adapt the processes disclosed therein in order to implement a melt-blending step of polyester components as specified in claim 1 and to replace the organic liquid carrier medium used with an aqueous carrier medium in order to arrive at an aqueous polyester dispersion as claimed in claim 1.

Therefore, the subject-matter of claim 1 is not obvious to a skilled person in view of D4 either.

4.7 It is for these reasons that the subject-matter of claim 1 involves an inventive step and therefore also meets the requirements of Article 56 EPC.

Order

For these reasons it is decided that:

The decision under appeal is set aside and the case is remitted to the opposition division, with the order to maintain the patent on the basis of the sole claim of auxiliary request 7 filed with the letter dated 18 June 2021 and a description to be adapted.

The Registrar: The Chairman:

A. Nielsen-Hannerup A. Haderlein

Decision electronically authenticated