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**Datasheet for the decision  
of 8 November 2021**

**Case Number:** T 3272/19 - 3.3.03

**Application Number:** 10185812.4

**Publication Number:** 2277946

**IPC:** C08L33/04

**Language of the proceedings:** EN

**Title of invention:**

ACRYLIC BLENDS

**Patent Proprietor:**

Mitsubishi Chemical UK Limited

**Opponent:**

ARKEMA FRANCE

**Relevant legal provisions:**

EPC R. 124(1)

**Keyword:**

Minutes of oral proceedings - request to record statement in the minutes (refused)

**Decisions cited:**

G 0002/88



**Beschwerdekammern**

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Case Number: T 3272/19 - 3.3.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.03**  
**of 8 November 2021**

**Appellant:** ARKEMA FRANCE  
(Opponent) Département Propriété Industrielle  
420, rue d'Estienne d'Orves  
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**Representative:** SSM Sandmair  
Patentanwälte Rechtsanwalt  
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**Respondent:** Mitsubishi Chemical UK Limited  
(Patent Proprietor) Cassel Works  
New Road  
Billingham TS34 1LE (GB)

**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  
8 October 2019 concerning maintenance of the  
European Patent No. 2277946 in amended form.**

**Composition of the Board:**

**Chairman** D. Semino  
**Members:** O. Dury  
W. Ungler

## **Summary of Facts and Submissions**

- I. With letter of 10 June 2021 the Respondent/Patent Proprietor requested that the minutes of the oral proceedings held on 11 February 2021 be corrected because they did not correctly reflect a part of the oral proceedings.

In particular, it was requested that the statement

"The Chairman informed the parties of the preliminary opinion of the Board that the conclusion to be drawn with regard to the main request would apply mutatis mutandis to auxiliary requests 1 to 4. The parties agreed on the preliminary opinion of the Board."

be replaced by

"The Chairman asked the parties to confirm whether their arguments in relation to Auxiliary Requests 1 to 4 were the same as for the Main Request with respect to novelty over D9. The parties confirmed that their arguments for Auxiliary Requests 1 to 4 were the same."

A declaration by Mr. Walsh, who represented the Respondent/Patent Proprietor during these oral proceedings together with Mr. Mason, was additionally filed in support of that request.

- II. By communication dated 14 July 2021, the Board gave its preliminary opinion explaining why it intended to refuse the Respondent's request to correct the minutes of the oral proceedings held on 11 February 2021.

- III. With letter of 14 September 2021, the Respondent submitted further arguments in reply to the Board's communication.
- IV. With letter of 14 September 2021, the Appellant/Opponent requested that the Respondent's request to correct the minutes of the oral proceedings held on 11 February 2021 be rejected.
- V. With letter of 6 October 2021 the Appellant provided further arguments in support of its request to reject the Respondent's request for correction.

### **Reasons for the Decision**

- 1. As indicated in the Board's communication dated 14 July 2021, on the basis of its own notes and recollection of the oral proceedings, the Board confirms that the minutes correctly reflect the part of the oral proceedings referred to in the Respondent's request for correction.
- 2. While this reason alone could be sufficient to refuse the request, in view of the fact that in the declaration of Mr. Walsh it is considered "non-sensical that the Respondent-Proprietor would agree that the conclusion to be drawn with regard to the Main Request would apply mutatis mutandis to Auxiliary Requests 1, 2 and 4" (point 25 of the declaration, first two lines after subpoint iv.), the Board carefully considered whether there were objective reasons for the Board to exclude that such an agreement would be given. However, as indicated in the Board's communication of 14 July 2021, the Board considers it not to be the case

for the following reasons.

2.1 In the Board's view, it was made clear during the whole proceedings that, in view of decision G 2/88 (OJ EPO, 1990, 93), the crucial point for the decision regarding novelty of the main request over D9 was whether or not the feature "high Tg" specified in operative claim 1 was a feature related to a specific use of the compositions defined in said claim 1 (i.e. leading to a new application), whereby the use mentioned in the claim did not appear to be distinguishable from the ones disclosed in the examples of D9 but rather appeared to constitute a property of said composition itself. Indeed, this was identified in section 7.4.1 of the Board's communication dated 14 August 2020 (preliminary opinion of the case sent in preparation of the oral proceedings). In the following section of that communication, it was further indicated that an additional argument of the Respondent regarding the feature "high Tg" did not appear convincing (section 7.4.2). Further down in the communication, it was also pointed out that no additional arguments were put forward by the Respondent in respect of *inter alia* auxiliary request 1 (sections 9 and 9.2) so that the same issues as for the main request were also relevant for auxiliary request 1, this in spite of the fact that the amendments made were said to appear to address the issue of the definition of the feature "high Tg" (section 9.3).

2.2 According to the Board's notes and recollection, the question of novelty was dealt with in the same manner during the oral proceedings: the parties were first heard on novelty of the main request in view of decision G 2/88. By informing the parties of the Board's preliminary opinion that the conclusion to be

drawn with regard to novelty of the main request would apply mutatis mutandis to auxiliary requests 1 to 4, the Board merely adopted the same logic as the one which had already been communicated to the parties in the communication. In view of this, the Board finds that there were no objective reasons for the Board to exclude that such an agreement would be given (in view of it possibly being "non-sensical"). The Board understood that the agreement was given and noted it down in the minutes.

3. As also indicated in the Board's communication dated 14 July 2021, the fact that the Respondent's representatives did not object at any point during the oral proceedings that no separate/additional discussion in respect of novelty of auxiliary requests 1 to 4 had taken place was a further confirmation for the Board that its understanding as reported in the minutes was the correct one.
4. In its letter of 14 September 2021 the Respondent refuted the position laid down in the Board's preliminary opinion provided in the communication of 14 July 2021 and confirmed in above sections 2 and 3. However, the Respondent did not brought forward any facts or arguments that may cause the Board to deviate from the findings indicated in these sections for the following reasons:
  - 4.1 According to the Respondent, the Board's position did not reflect the logical progression of the proceedings for a number of reasons which are analysed in what follows.

4.2 The Respondent put forward that section 9.2 of the Board's preliminary opinion provided in the communication dated 14 August 2020 only used conditional language in relation to auxiliary request 1 and addressed also further substantive aspects relating to amended features of auxiliary request 1. Thus, according to the Respondent, said preliminary opinion could not have been a basis for the expectation that the conclusion arrived at with respect to the main request in the oral proceedings would apply *mutatis mutandis* to auxiliary requests 1, 2 and 4. Moreover, the Board did not reiterate their preliminary remarks during the oral proceedings, in particular on the reading of "high Tg" not being a new application but a property of the material.

However, in the Board's view, it might have been (implicitly) derivable from sections 9.2 and 9.3 of the Board's communication dated 14 August 2020 that the amendments made in auxiliary request 1 did not appear to address the Board's concerns identified in sections 7.4.1 and 7.4.2, which were directed to the reading of the feature "high Tg" (for the reasons indicated in the last sentence of section 2.1 above).

In addition, the conditional language used in section 9.2 of the Board's communication dated 14 August 2020 is held to be appropriate, since the communication expressed a preliminary opinion of the Board and issues identified therein for the main request might not necessarily need to be discussed at the oral proceedings for auxiliary requests depending on the course of the proceedings. Moreover, there was no need for the Board to reiterate any preliminary remark at the oral proceedings, which, by their own nature, were meant to give the parties the possibility

to take position on the points under dispute, in particular with regard to the preliminary opinion of the Board.

For these reasons, the Respondent's arguments are not convincing.

- 4.3 The Respondent additionally put forward that, in its communication dated 14 July 2021, the Board had referred to its preliminary opinion provided in the communication of 14 August 2020 but not to its decision. Also, there was no evidence in that decision that the amendments to claim 1 made in auxiliary request 1 were considered by the Board.

As to the first point, the Board notes that, in order to determine whether there were objective reasons for the Board to exclude that the disputed agreement would be given at the oral proceedings, it was appropriate to consider the situation at the point in time of the agreement. At that point in time the communication was known to the parties, while the decision was not. Therefore, only the content of the communication was considered to be relevant to address the issue.

As to the second point, the Board considers that it is not relevant for the request of correction of the minutes, but related to the petition of review also filed by the Respondent, on which it is not appropriate for the Board to take position.

5. In view of the above, the Respondent's arguments submitted with letter 14 September 2021 provide no cause for the Board to deviate from its preliminary conclusion indicated in the communication dated



14 July 2021.

6. As an aside it is noted that there appears to be no compelling reasons why the minutes of the oral proceedings were contested so long after they had been received by the parties (about three and a half months). In particular, should the Respondent's representative have considered that these minutes did not reflect what had happened during the oral proceedings, a prompt request of correction at a point in time in which the recollection of all participants was still much fresher in mind would have seemed appropriate.
  
7. For these reasons, the Respondent's request to correct the minutes of the oral proceedings held on 11 February 2021 is to be refused.

## Order

### For these reasons it is decided that:

The Respondent's request for correction of the minutes of the oral proceedings held on 11 February 2021 is refused.

The Registrar:

The Chairman:



B. ter Heijden

D. Semino

Decision electronically authenticated