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**Datasheet for the decision
of 4 May 2022**

Case Number: T 0846/21 - 3.2.07

Application Number: 13805476.2

Publication Number: 2928778

IPC: B65B11/48, B32B27/32,
B65D71/08, B65D85/10

Language of the proceedings: EN

Title of invention:
METHOD FOR FORMING A PACKAGE

Patent Proprietor:
Innovia Films Limited

Opponent:
Treofan Germany GmbH & Co. KG

Headword:

Relevant legal provisions:
EPC Art. 83, 113, 116
RPBA 2020 Art. 12(8)

Keyword:

Decision in written proceedings without oral proceedings -
(yes)

Sufficiency of disclosure - (yes)

Decisions cited:

G 0001/03, T 1712/16, T 1713/16

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0846/21 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 4 May 2022

Appellant: Innovia Films Limited
(Patent Proprietor) Station Road
Wigton, Cumbria CA7 9BG (GB)

Representative: Brand Murray Fuller LLP
50 Eastcastle Street
London W1W 8EA (GB)

Respondent: Treofan Germany GmbH & Co. KG
(Opponent) Bergstrasse
66539 Neunkirchen (DE)

Representative: Mai Besier
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65205 Wiesbaden (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 16 April 2021
revoking European patent No. 2928778 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Pieracci
A. Cano Palmero

Summary of Facts and Submissions

- I. The patent proprietor lodged an appeal in the prescribed form and within the prescribed time limit against the decision of the opposition division to revoke European patent No. 2 928 778.
- II. The opposition had been filed against the patent as a whole based on all the grounds for opposition pursuant to Article 100 EPC (lack of novelty and inventive step; insufficiency of disclosure; added subject-matter). The opposition division found that the grounds for opposition of insufficiency of disclosure raised by the opponent prejudiced the maintenance of the patent as granted and as amended according to the first to fourth auxiliary requests, while the fifth auxiliary request was not admitted into the proceedings for not *prima facie* overcoming the objection pursuant to Article 83 EPC.
- III. In the present decision reference is made to the following document:
- D20-1: Supplementary test report of tests performed by the opponent.
- IV. The patent proprietor requests:
- that the decision under appeal be set aside and that the patent be maintained as amended according to the set of claims filed as main request on 11 December 2019, decided upon in the decision under appeal and re-filed with the statement setting out the grounds of appeal,

or, in the alternative, according to the first to sixth auxiliary requests filed with the statement setting out the grounds of appeal, wherein the first to fourth auxiliary requests had already been filed on 10 March 2021 and the fifth auxiliary request had been filed at the oral proceedings before the opposition division.

The patent proprietor requested oral proceedings in the event that the Board was not minded to maintain the patent on the basis of any of the sets of claims according to the main request or to the auxiliary requests.

- V. The patent proprietor's appeal and statement setting out the grounds of appeal were duly notified to the opponent. The opponent neither replied to the appeal nor filed any requests.
- VI. The lines of argument of the patent proprietor are dealt with in detail in the reasons for the decision.
- VII. Independent claim 1 of the patent as amended according to the main request reads as follows:
"A method for forming a naked collation package comprising:
(a) providing an arrangement of packages individually wrapped in a filmic material;
(b) providing a naked collation film for nakedly wrapping said individually wrapped packages, the naked collation film comprising a polyolefinic core layer C, an inner sealing layer A on the inner surface of the naked collation film and a polyolefinic outer sealing layer B on the outer surface of the naked collation film, the material of the inner sealing layer A being selected for

sealing incompatibility with the filmic material of the individually wrapped packages under a specified sealing condition and heat shrinking condition, and the polyolefinic material of the outer sealing layer B being selected for sealing compatibility with B and for sealing compatibility with A under the specified sealing condition, wherein layers A and B are formed of the same or different materials and layer B comprises at least one polyolefinic polymer and a slip promotion component comprising less than 0.2% by weight of the layer of silicone and a non-silicone component in an amount exceeding 0.1% to 3% by weight of the layer;

- (c) arranging the individually wrapped packages in an ordered configuration;
- (d) arranging the naked collation film such that it at least partially surrounds, although is not necessarily in contact with, the ordered configuration of individually wrapped packages; and
- (e) heat shrinking the naked collation film by exposing it to the heat shrinking condition, causing the naked collation film to shrink and closely surround the arrangement of packages, without being sealed to the packages,

wherein the naked collation film exhibits a wide angle haze and/or a narrow angle haze of about 5.0% or lower."

VIII. Independent claim 15 of the patent as amended according to the main request reads as follows:

"A naked collation package comprising an arrangement of individual packages, individually packaged in a filmic material, that are packed together in said naked collation package in a naked collation film, wherein the naked collation film exhibits a wide angle haze and/or narrow angle haze of about 5.0% or lower and

comprises a polyolefinic core layer C, an inner sealing layer A on the inner surface of the naked collation film and a polyolefinic outer sealing layer B on the outer surface of the naked collation film, the material of the inner sealing layer A being selected for sealing incompatibility with the filmic material of the individually wrapped packages under a specified sealing condition and heat shrinking condition, and the polyolefinic material of the outer sealing layer B being selected for sealing compatibility with B and for sealing compatibility with A under the specified sealing condition, wherein layers A and B are formed of the same or different materials and layer B comprises at least one polyolefinic polymer and a slip promotion component comprising less than 0.2% by weight of the layer of silicone and a non-silicone component in an amount of exceeding 0.1% to 3% by weight of the layer; the individual packages being arranged in an ordered configuration and the naked collation film having been heat shrunk to closely surround the arrangement of packages, without being sealed to the packages."

- IX. The wording of the claims according to the auxiliary requests is not reported here as these requests are not relevant for the decision.

Reasons for the Decision

1. Decision in written proceedings

The decision is issued in written proceedings without oral proceedings.

According to Article 12(8) RPBA 2020, the Board may, subject to Articles 113 and 116 EPC, decide the case at any time after filing of the statement of grounds of appeal.

Given the findings and the order of the decision, the patent proprietor's auxiliary request for oral proceedings has not become effective because the Board sets the contested decision aside.

The case is ready for decision on the basis of the patent proprietor's extensive written submissions and the decision under appeal. No submissions or requests have been filed by the opponent.

For this reason, issuing of the decision in written procedure without oral proceedings is in compliance with the requirements of Articles 113(1) and 116(1) EPC.

2. Sufficiency of disclosure (Article 83 EPC)

2.1 The Board shares the view of the patent proprietor that the finding of the opposition division that the invention according to the main request is not sufficiently disclosed is not correct.

- 2.2 As rightly argued by the patent proprietor (see statement of grounds of appeal, point 62), it is established jurisprudence of the boards of appeal that an objection of lack of sufficient disclosure presupposes that there are serious doubts substantiated by verifiable facts. The burden of proof is upon the opponent to establish on the balance of probabilities that a skilled reader of the patent, using his common general knowledge, would be unable to carry out the invention (see the Case Law of the Boards of Appeal (CLB), 9th edition, 2019, II.C.9).
- 2.3 In the present case the Board is of the opinion that the objection of insufficiency of disclosure raised by the opponent and followed by the opposition division is not based on serious doubts substantiated by verifiable facts and that the opponent has not discharged its burden of proof.
- 2.4 The experimental results submitted by the opponent as D20-1, on which the opposition division relied for its finding of insufficient disclosure, show that five out of the eleven samples tested, have the properties defined in the claims, *i.e.* silicon oil less than 2% by weight, non-silicon component between 0.1% and 3% by weight and an angle daze lower than 5%, and that two out of these five samples, number 2 and 9, have a seal stress strength greater than 100 g/25 mm while three, number 4, 5 and 8 have a seal strength lower than 100 g/25 mm, where a seal stress lower than 100 g/25 mm indicates a sealing incompatibility and a sealing stress greater than 100 g/25 mm a sealing compatibility (see point 2.5 of the reasons for the decision).

It is uncontested by the opposition division that samples 2 and 9 thus fulfil all the requirements for the layers set out in claim 1 and 15 of the main request (see point 2.6, first paragraph of the reasons for the decision).

- 2.5 From these facts the Board cannot consider that serious doubts arise that the invention, involving the provision of layers with sealing compatibility, cannot be carried out by a person skilled in the art, since as indicated by the patent proprietor (see statement of grounds of appeal, points 31, 32 and 64) it has in fact been shown by the data submitted by the opponent in combination with the examples of the patent that layers as defined in the claims can be obtained by using the teaching of the patent and common general knowledge.
- 2.6 Furthermore, as correctly argued by the patent proprietor (see the statement setting out the grounds of appeal, points 33 to 36), that the person skilled in the art could arrive at non working embodiments, is irrelevant as long as the person skilled in the art is still capable of reproducing the invention (see G 1/03, point 2.5.2 of the reasons), which cannot be doubted on the basis of the data submitted by the opponent.
- 2.7 The finding of the opposition division (see page 9, second sentence, of the reasons for the decision), that the claimed set of features "seems to be a mere definition of a research program, rather than a clear set of instructions to the skilled person enabling him to carry out the invention" is therefore not convincing as it does not appear to be based on a proper evaluation of the evidence submitted.

2.8 Furthermore, the Board cannot follow the argument of the opposition division that, although the seven different film materials disclosed in the patent are shown to have the claimed properties, the corresponding mixing ratio of PP, PE and PB is not known and the person skilled in the art is thus left to perform trial and error testing to reproduce the examples, so that the invention would not be sufficiently disclosed (see point 2.7, last two paragraphs, of the reasons for the decision).

2.9 The Board, while noting that the validity of the tests results shown in the patent specification does not appear to have been contested either by the opponent or by the opposition division, rather shares the view of the patent proprietor (see point 64 of the statement setting out the grounds of appeal) that it is not required to show every single detail of the examples in the patent specification. From the absence of specific details, in particular the mixing ratio of PP, PE and PB, it cannot be necessarily concluded that the person skilled in the art is not in the position of carrying out the invention taking into account the teaching of the patent and the common general knowledge.

2.10 The Board also shares the view of the patent proprietor (see points 55 to 61 of the statement setting out the grounds of appeal) that decisions T 1712/16 and T 1713/16 cited by the opposition division relate to cases in which the claimed subject-matter is different from the one of the opposed patent.

Furthermore, since it has not been clearly and in detailed manner shown how the reasoning followed by the deciding board in those cases should be applied to the present case (see point 2.8.1 of the reasons for the

decision) the Board does not consider it either appropriate or necessary to further address this issue.

- 2.11 The Board thus concurs with the patent proprietor that the opponent has not discharged its burden of proof with respect to the alleged insufficient disclosure of the invention and that the decision of the opposition division that the opposed patent as amended according to the main request does not fulfil the requirements of Article 83 EPC is not correct.

3. Conclusions

The Board is thus of the opinion that the appealed decision cannot be upheld.

Since no objections have been filed in appeal proceedings by the opponent, the Board does not see any reasons preventing the maintenance of the patent as amended according to the main request.

Order

For these reasons it is decided that:

1. **The decision under appeal is set aside.**
2. **The case is remitted to the opposition division with the order to maintain the patent as amended in the following version**

Description

pages 2 to 18 of the patent specification

Claims:

1 to 15 of the main request filed with letter dated 11 December 2019

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated