

Internal distribution code:

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

**Datasheet for the decision
of 7 May 2025**

Case Number: T 1441/23 - 3.3.05

Application Number: 17157549.1

Publication Number: 3366362

IPC: B01D39/08, B01D39/16

Language of the proceedings: EN

Title of invention:

A PROTECTIVE VENT AND METHOD FOR PRODUCING A PROTECTIVE VENT

Patent Proprietor:

Sefar AG

Opponent:

SAATI S.p.A.

Headword:

Vent/SEFAR

Relevant legal provisions:

EPC Art. 56

Keyword:

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

Case Number: T 1441/23 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 7 May 2025

Appellant: SAATI S.p.A.
(Opponent) Via Milano 14
22070 Appiano Gentile (CO) (IT)

Representative: Faggioni, Carlo Maria
Fumero S.r.l.
Via Sant' Agnese, 12
IT-20123 Milano (IT)

Respondent: Sefar AG
(Patent Proprietor) Hinterbissaustrasse 12
9410 Heiden (CH)

Representative: Wunderlich & Heim Patentanwälte
PartG mbB
Irmgardstraße 3
81479 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 2 June 2023
rejecting the opposition filed against European
patent No. 3366362 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chair G. Glod
Members: T. Burkhardt
R. Winkelhofer

Summary of Facts and Submissions

I. The opponent's (appellant's) appeal lies from the opposition division's decision to reject the opposition to European patent No. 3 366 362 B1.

II. Of the documents discussed at the opposition stage, the following are relevant to the present decision.

D1 WO 2010/124899 A1

D6 WO 2013/043397 A2

D11 WO 2016/141902 A1

D12 J.I.B. Wilson, "Textile surface functionalisation by chemical vapour deposition (CVD)", Chapter 6 in "Surface modification of textiles", Editor Q. Wei, Woodhead Publishing in Textiles: Number 97, 2009, 126-138

III. With its grounds of appeal, the appellant further submitted the following documents.

D21 G. Buyle, "Nanoscale finishing of textiles via plasma treatment", Materials Technology, 24(1), 2009, pages 46-51
(submitted as D18, labelled D18neu by the respondent)

D22 "Customer Info Nr 7: Surface treatments for Sefar's woven fabrics", brochure, 2008
(submitted as D19, labelled D19neu by the respondent)

IV. The opposition division came to the conclusion that the patent as granted met the requirements of Article 56 when starting from D1 as closest prior art.

V. Independent claims 1 and 11 of the main request (patent as granted) read as follows.

"1. Protective vent comprising

- at least one carrier layer (11, 15) and*
- an electrospinning membrane (12) which is arranged on the at least one carrier layer (11, 15), wherein the electrospinning membrane (12) is formed from fibers lying one above the other, forming a pore structure, whereby the pore structure is designed, characterized in that*
- the carrier layer (11, 15) comprises a monofilament fabric,*
- a plasma coating (14) is applied both to the electrospinning membrane (12) and to the monofilament fabric of the at least one carrier layer (11, 15),*
- a bonding is provided that connects the carrier layer and the membrane, and*
- a seam is provided as a surrounding edge of the protective vent that is designed to frame and/or reinforce the protective vent."*

"11. Method for producing a protective vent as claimed in one of the claims 1 to 8, wherein

- a carrier layer (11, 15) is provided, and*
- a membrane (12) is arranged on the carrier layer (11, 15), the membrane (12) being produced by the electrospinning method from superimposed fibers having a porous structure, wherein the carrier layer and the membrane form a protective vent membrane characterized in that*

- a monofilament fabric is provided as the carrier layer (11, 15),
 - the protective vent membrane (10) is treated by a plasma coating process, wherein a surface coating (14) is applied both to the carrier layer (11, 15) with the monofilament fabric and to the electrospinning membrane (12), and
 - the protective vent membrane is furnished with a bonding connecting the carrier layer and the membrane
- a seam is provided as a surrounding edge of the protective vent that is designed to frame and/or reinforce the protective vent."

Dependent claims 2 to 10 and 12 to 14 relate to preferred embodiments.

VI. The arguments put forward by the appellant during the appeal proceedings, where relevant to the present decision, can be summarised as follows.

The subject-matter of independent claims 1 and 11 of the main request did not meet the requirements of Article 56 EPC in view of:

- D1 in combination with D6, D11, D12, as also illustrated by D21 and D22
- D11 in combination with the common general knowledge

VII. The patent proprietor's (respondent's) arguments at the appeal stage are reflected in the Reasons below.

VIII. The appellant requests that the decision under appeal be set aside and amended such that the patent be revoked.

The respondent requests that the appeal be dismissed (main request) or the patent be maintained on the basis

of auxiliary requests 1 to 8 submitted with the reply to the appeal.

Reasons for the Decision

Main request (as granted)

1. Article 100(a) in combination with Article 56 EPC

In the appellant's opinion, the main request did not meet the requirements of Article 56 EPC in view of:

- D1 in combination with D6, D11, D12, as also illustrated by D21 and D22
- D11 in combination with the common general knowledge

However, for the reasons set out below, the requirements of Article 56 EPC are met.

- 1.1 The invention relates to a protective vent.
- 1.2 There is agreement among the parties that **D1** is the closest prior art.

D1 discloses, in claim 1 and in the passage on page 9, line 27 to page 10, line 3, a fabric material composite that is construed as the "protective vent" of claim 1. This understanding is in line with paragraph [0027] of the patent.

In D1, nanofibres are deposited on a filtering fabric material. Hence, the composite of D1 comprises a carrier layer, namely the filtering fabric material,

and an electrospinning membrane, namely the nanofibres, which are electrospun (claim 2).

Moreover, D1 discloses the use of "plasma pre-processing" to improve the adhesion of the layers (e.g. page 10, lines 4 to 7; page 12, line 5). However, only the fabric material - not both the fabric material and the electrospinning membrane - is plasma pre-processed, as already concluded by the opposition division (page 9, item iii) in point II.16.3 of the impugned decision). The expression "pre-processing" used in D1 makes clear that the membrane is not plasma-treated.

This distinguishing feature has not been disputed.

- 1.3 There is agreement between the parties that the objective problem to be solved is the provision of a protective vent with enhanced properties. This was also the view taken by the opposition division.
- 1.4 It is proposed that this problem be solved by the protective vent of claim 1, which is characterised among other things by the application of the plasma coating to *both* the carrier layer and the electrospinning membrane.
- 1.5 It has not been disputed that this problem has been solved with success, and there is no reason to deviate from this conclusion.
- 1.6 In the appellant's view, the subject-matter of claim 1 was rendered obvious by the combination of D1 with any of D6, D11 and D12, as also illustrated by D21 and D22.

This is not convincing.

D11 discloses plasma spraying for applying nanofibres to a textile carrier (paragraph bridging pages 7 and 8). **D11** also discloses the possibility of applying the plasma to both layers (page 4, lines 29 to 30). However, as correctly concluded by the opposition division (see impugned decision, page 12, penultimate paragraph to page 13, second paragraph), **D11** does not contain any teaching that, starting from **D1**, applying a plasma coating to both layers enhances the properties of the composite.

As set out in the impugned decision (page 12, last paragraph), **D6** does not contain such a teaching either.

Notwithstanding the question of whether the combination of **D1** with document **D12** is admissible (Article 12(4) and (6) RPBA), the appellant has not indicated that **D12** provides any incentive for applying a plasma coating to both layers in order to solve the problem posed.

Notwithstanding the question of whether **D21** and **D22** should be admitted into the appeal proceedings (Article 12(4) and (6) RPBA), these documents do not provide any teaching that "plasma coating" both the carrier layer and the electrospinning membrane makes it possible to solve the problem (see for example **D21**, page 50, second paragraph of the right-hand column, and **D22**, page 1, first paragraph of the right-hand column).

- 1.7 While there was agreement among the parties that **D1** was the closest prior art, the appellant further considered **D11** to be an alternative starting point.

Notwithstanding the question of whether sufficient reasoning has been submitted for this objection within

the meaning of Article 12(3) RPBA, it has not been disputed that D11 at least fails to disclose a *monofilament* fabric layer.

The appellant has not disputed that the technical problem (the provision of a protective vent with enhanced properties) is solved by this feature. However, it has failed to demonstrate an incentive in the cited prior art (e.g. in **D1**) for employing such a monofilament fabric layer to solve this technical problem.

1.8 Consequently, the subject-matter of claim 1 involves an inventive step (Article 56 EPC).

1.9 Independent method claim 11 includes the step of applying plasma coating to *both* the carrier layer and the electrospinning layer.

For the reasons set out above for product claim 1, the subject-matter of independent method claim 11 and of dependent claims 2 to 10 and 12 to 14 also involves an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



C. Vodz

G. Glod

Decision electronically authenticated