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**Datasheet for the decision  
of 4 December 2025**

**Case Number:** T 0304/24 - 3.3.02

**Application Number:** 18717649.0

**Publication Number:** 3592812

**IPC:** C09D5/00

**Language of the proceedings:** EN

**Title of invention:**

SOLVENT SYSTEM AND METHOD OF PREPARING WATER BASED AEROSOL BASE  
PAINT

**Patent Proprietor:**

Wisespray International Oy

**Opponents:**

European Aerosols GmbH  
Peter Kwasny GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 84, 56

**Keyword:**

Claims - clarity (yes)

Inventive step - (yes)

**Decisions cited:**

G 0003/14

**Catchword:**

-



**Beschwerdekammern**  
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Case Number: T 0304/24 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 4 December 2025**

**Appellant:** European Aerosols GmbH  
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**Representative:** Ullrich & Naumann PartG mbB  
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**Appellant:** Peter Kwasny GmbH  
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**Respondent:** Wisespray International Oy  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
3 January 2024 concerning maintenance of the  
European Patent No. 3592812 in amended form.**

**Composition of the Board:**

**Chairman**            M. O. Müller  
**Members:**            A. Lenzen  
                             R. Romandini

## **Summary of Facts and Submissions**

- I. Opponents 1 and 2 (appellants 1 and 2) lodged an appeal against the opposition division's decision (decision under appeal) that European patent No. 3 592 812 (patent) in amended form meets the requirements of the EPC.
- II. Reference is made in the present decision to the following document filed with the opposition division:  
  
D2 US 4,420,575
- III. With the reply to the statements of grounds of appeal, the patent proprietor (respondent) filed, *inter alia*, the set of claims of auxiliary request 1c'.
- IV. In preparation for the oral proceedings, which had been arranged at the parties' request, the board issued a communication under Article 15(1) RPBA. In it, the board summarised the parties' submissions from the statements of grounds of appeal and the reply to them, and expressed its preliminary opinion on selected issues.
- V. By letter dated 4 August 2025, the respondent filed a further substantive submission.
- VI. By letter dated 20 November 2025, appellant 2 indicated that it would not be attending the scheduled oral proceedings.
- VII. Oral proceedings before the board were held by videoconference on 4 December 2025 in the presence of appellant 1 and the respondent. The respondent made

auxiliary request 1c', filed with the reply to the statements of grounds of appeal, its main request. At the end of the oral proceedings, the chair announced the order of the present decision.

VIII. The parties' final requests at the end of the oral proceedings, insofar as they are relevant to this decision, were as follows:

- Appellant 1 requested that the decision under appeal be set aside and that the patent be revoked in its entirety. Appellant 2 requested the same in writing.
- The respondent requested that the decision under appeal be set aside and that the patent be maintained in amended form based on the set of claims of the main request, filed as auxiliary request 1c' with the reply to the statements of grounds of appeal.

IX. Summaries of the parties' submissions, where relevant to the present decision, are set out in the reasons for the decision below.

## **Reasons for the Decision**

Main request

1. Claim 1 of the main request reads as follows:

*"A method of preparing a water based, aerosol base paint to be tinted, having an extended shelf life, into an aerosol can with a volume V, said aerosol base paint comprising a binder, a water-compatible solvent, as well as a propellant and co-solvent if*

*necessary characterized in that the method, comprises the following steps of:*

- selecting an alkyd resin, an oil-modified alkyd resin, a polyurethane resin, a polyurethane-modified alkyd resin or a polyurethane-modified alkyd resin having oil content at least 30% w/w as the binder,*
- dispensing into an aerosol can, whose filling volume is V whereby said V is at least 250 ml, said binder and a water-compatible solvent into which binder is dispersed or emulsified,*
- generating an overpressure in the aerosol can by adding a propellant 18-60% by weight and by sealing the aerosol can wherein propellant is DME or a mixture of DME along with butane, propane, CO<sub>2</sub> or HFC-134a, preferably the propellant is DME,*

*characterized in that the binder is added in an amount which is 18-85% w/w of a total weight of the aerosol paint to be tinted."*

2. Amendments (Article 123 EPC) and clarity (Article 84 EPC)
  - 2.1 Neither of the appellants raised an objection under Article 123 EPC against the claims of the main request. The board likewise sees no reason why the present claims should not be in compliance with Article 123 EPC.
  - 2.2 In the statement of grounds of appeal, appellant 2 argued that the amounts of binder (18 to 85 wt.%) and propellant (18 to 60 wt.%) in claim 1 above could add

up to 103 wt.%, i.e. more than 100 wt.%. This did not make sense.

However, as correctly pointed out by the respondent and as stated by the board in its communication under Article 15(1) RPBA, the ranges objected to by appellant 2 already appear in claims 14 and 16 as granted. Therefore, even assuming in appellant 2's favour that the possibility of selecting values from the binder and propellant ranges which add up to more than 100 wt.% would be objectionable under Article 84 EPC, such an objection cannot be entertained in the present case (order of G 3/14).

3. Inventive step (Article 56 EPC)

3.1 With regard to inventive step, appellant 2 had presented its case in the statement of grounds of appeal only in a very general and unspecific manner.

For example, there is no discussion of the features of any specific claimed subject-matter in relation to the concrete disclosure of a closest prior-art document. Such an analysis in the statement of grounds of appeal is not rendered unnecessary by referring to the appellants' notices of opposition, as done by appellant 2, at least not when this reference is likewise made only in very general terms, as in the present case.

The board therefore stated in its communication pursuant to Article 15(1) RPBA that appellant 2 had not submitted a substantiated inventive-step objection. This was not challenged by appellant 2 in the subsequent proceedings. At the oral proceedings, the board thus saw no reason to deviate from its

preliminary opinion. Accordingly, no substantiated objection of lack of inventive step was on file from appellant 2.

3.2 Appellant 1 raised an inventive-step objection only against the subject-matter of claim 1 of the main request starting from D2 as the closest prior art.

3.3 D2 (claim 1) discloses (emphasis in bold added by the board):

*"An aerosol paint ... characterized by a carrier water phase, a film-forming paint phase, and a liquid substantially water miscible propellant phase in mutually compatible admixture; and*

*polymeric, non-volatile, film-forming solids component constituting from about 5-15%, the water from about 15-40%, and said propellant about 20-40% of said aerosol paint:*

*at least one portion of said polymeric film-forming component consisting essentially of **a low molecular weight monomer modified alkyd resin ...**; and*

*at least one other portion of said polymeric film-forming component consisting of **an emulsion polymer latex ...**"*

Therefore, according to claim 1 of D2, the "polymeric, non-volatile, film-forming solids component" comprises two classes of polymers (in bold above), namely (i) a low molecular weight monomer modified alkyd resin and (ii) an emulsion polymer latex.

The aqueous aerosol paint of example 1 (D2, columns 9 and 10) is in accordance with claim 1 of D2 and comprises the following polymers as representatives of polymer classes (i) and (ii):

- (i) 12.2 wt.% of an acrylic modified water dispersible alkyd resin, and
- (ii) 0.8 wt.% of an acrylic emulsion polymer latex.

### 3.4 Distinguishing feature

3.4.1 The water-based aerosol base paint mentioned in claim 1 of the main request comprises a binder. In the rest of the wording of claim 1, this binder is referred to twice.

First, it is stated that one of the following specific compounds

*"an alkyd resin, an oil-modified alkyd resin, a polyurethane resin, a polyurethane-modified alkyd resin or a polyurethane-modified alkyd resin having oil content at least 30% w/w"*

is selected as the binder.

Second, the amount of the binder is restricted to 18 to 85 wt.%.

Accordingly, the wording of claim 1 of the main request establishes, in accordance with what was stated by the respondent, that the amount of the specific compounds quoted above which are selected as the binder must fall within a range of 18 to 85 wt.%.

3.4.2 It was common ground between the parties that the "*polymeric, non-volatile, film-forming solids component*" of D2 corresponds to the binder of claim 1 of the main request.

3.4.3 According to claim 1 of D2, the "*polymeric, non-volatile, film-forming solids component*", and thus the combined polymer classes (i) and (ii), is present in an amount of about 5 to 15 wt.%. In a manner consistent with this, it amounts to about (12.2 + 0.8) wt.% = 13.0 wt.% in example 1 of D2.

The board does not share appellant 1's view, which is based on certain passages of D2 (column 7, lines 52 to 55; column 1, lines 7 to 15; column 6, lines 60 to 66), that the total amount of the "*polymeric, non-volatile, film-forming solids component*", i.e. the total amount of polymer classes (i) and (ii), is not limited to 15 wt.%. In column 7, lines 52 to 55 of D2 ("*from 5% to about 15% total of organic polymeric film-forming solids from each of the foregoing classes*"), the range of 5 to 15 wt.% clearly refers to the total amount of the previously mentioned polymer classes and, contrary to appellant 1's argument, not to each polymer class individually. Finally, the passages in column 1, lines 7 to 15, and column 6, lines 60 to 66 merely define the relative proportions of polymer classes (i) and (ii) within the "*polymeric, non-volatile, film-forming solids component*", but not the total amount of that component in the aerosol paint, as argued by appellant 1.

3.4.4 Based on the previous points, it can be concluded that the subject-matter of claim 1 of the main request is distinguished from D2 at least in that the water-based aerosol base paint of claim 1 of the main request

comprises 18 to 85 wt.% of a binder selected from "an alkyd resin, an oil-modified alkyd resin, a polyurethane resin, a polyurethane-modified alkyd resin or a polyurethane-modified alkyd resin having oil content at least 30% w/w", while this amount is lower in D2.

### 3.5 Technical effect and objective technical problem

The respondent pointed to example 8 of the patent. In this example, three different aerosol base paints are compared with each other in terms of their shelf life. The respondent submitted that the distinguishing feature above was associated with an increased shelf life of the water-based aerosol base paint. As appellant 1 agreed with this, the board accepts the respondent's submission. In fact, example 8 tests three formulations. The composition of the first formulation is given in paragraph [0183] of the patent and includes a polyurethane-modified short and medium oil alkyd emulsion as the binder. This binder corresponds to the binder cited in claim 1 of the main request. The compositions of the second and third formulations are given in paragraphs [0184] and [0185] of the patent, respectively. These second and third formulations contain an acrylic dispersion as the binder. An acrylic dispersion does not correspond to any binder cited in claim 1 of the main request. The second and third formulations are thus comparative formulations. As follows from paragraphs [0187], [0189] and [0192] of the patent, the first formulation has a shelf life of three years at 20 °C, while the second and third formulations are not stable and have a short or very short shelf life. Hence, by comparing the first formulation with the second and third formulations, it can be deduced that the binder cited in claim 1 has a

beneficial effect on shelf life. The board considers it credible that the higher binder amount required by claim 1 of the main request compared with that in D2 leads to a longer shelf life. Arguments or evidence to the contrary were not submitted by appellant 1.

Consequently, the objective technical problem is that put forward by the respondent, namely to provide an improved method of providing a water-based aerosol base paint, the improvement being the increased shelf life of the water-based aerosol base paint.

### 3.6 Obviousness

It was undisputed between the parties that polymer class (i) of D2 corresponds to the "alkyd" binder to be selected according to claim 1 of the main request. Therefore, to arrive at the subject-matter of claim 1 of the main request, the skilled person would have had to increase either the total amount of the "*polymeric, non-volatile, film-forming solids component*" in D2 or, alternatively, the amount of its polymer class (i); however, as argued by the respondent, D2 does not address the stability of its aerosol paints, let alone their shelf-life stability. Consequently, D2 does not associate either the "*polymeric, non-volatile, film-forming solids component*" or polymer class (i) with improved shelf life. Faced with the above-mentioned objective technical problem, the skilled person would therefore have had no reason to increase the amount of the "*polymeric, non-volatile, film-forming solids component*" or that of polymer class (i). Apart from D2, appellant 1 did not rely on any other documents in assessing whether the solution to the objective technical problem defined above was obvious. It must therefore be concluded that the subject-matter of

claim 1 of the main request involves an inventive step.  
The main request is allowable.

## 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 with the following claims and a description possibly to be adapted thereto:

Claims 1 to 9 of the new main request, filed as auxiliary request 1c' with the reply to the statements of grounds of appeal.

The Registrar:

The Chairman:



U. Bultmann

M. O. Müller

Decision electronically authenticated