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Aktenzeichen / Case Number / N^o du recours : T 117/82

Anmeldenummer / Filing No / N^o de la demande : 79300587.7

Publikations-Nr. / Publication No / N^o de la publication : 0005024

Bezeichnung der Erfindung: Stilt material, method, and copy sheet

Title of invention:

Titre de l'invention :

ENTSCHEIDUNG / DECISION

vom / of / du 21 November 1983

Anmelder/Patentinhaber:

Applicant/Proprietor of the patent:

Demandeur/Titulaire du brevet :

Appleton Papers Inc.

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Art. 52 (1), 56

"Inventive step"

Leitsatz / Headnote / Sommaire

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Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number: T 117 / 82

DECISION
of the Technical Board of Appeal 3.2.1
of 21 November 1983

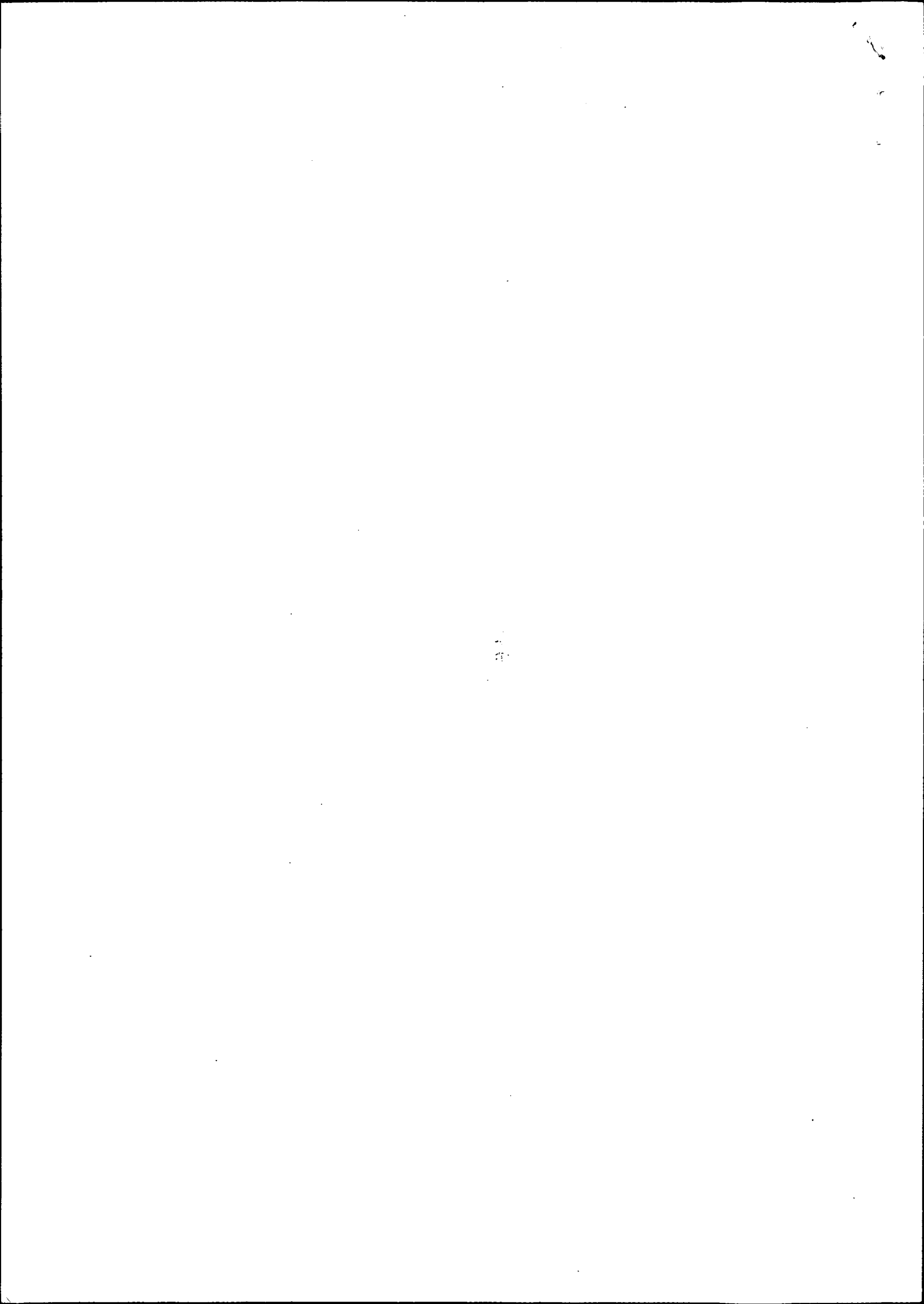
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Decision under appeal: Decision of Examining Division 014 of the European Patent
Office dated 10 March 1982 refusing European patent
application No 79300587.7 pursuant to Article 97(1)
EPC

Composition of the Board:

Chairman: G. Andersson
Member: C. Maus
Member: P. Ford



SUMMARY OF FACTS AND SUBMISSIONS

- I. European patent application No. 79 300 587.7, filed on 10 April 1979, published under publication number 0 005 024 and claiming the priority of a previous application of 25 April 1978, was refused by the decision of the Examining Division 014 dated 10 March 1982.

The decision was based on the original claims 1 to 19.

- II. In its decision, the Examining Division held that the sheet material according to Claim 1, the method according to Claim 10 and the stilt material according to Claim 13, did not involve an inventive step having regard to US patent specifications No. 2 655 453, 3 617 334 and 3 743 604.

- III. On 28 April 1982, the appellants lodged an appeal against this decision, paying the fee for appeal at the same time. The statement setting out the grounds of appeal was received on 6 July 1982.

The appellants maintained only the original Claim 1. They were of the opinion that the stilt material according to this claim did not follow from the cited state of the art in an obvious manner.

- IV. As a result of the objections raised during the procedure before the Board of Appeal, the appellants submitted a single new claim and a new description on 8 September 1983. This claim reads as follows:

"Sheet material carrying a coating of pressure-rupturable microcapsules (20) interspersed by a stilt material consisting of wholly solid bodies in close juxtaposition with the microcapsules and serving to protect the microcapsules against accidental rupture, characterised in that the bodies are agglomerates (21) in which mineral particles (22) are dispersed in a matrix (24) of coacervated polymer".

The appellants requested that the decision be set aside and the patent be granted with the above claim and that the appeal fee should be reimbursed.

- V. For the original claims and description, reference is made to publication No. 0 005 024.

REASONS FOR THE DECISION

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC; it is, therefore, admissible.
2. The present claim corresponds in the main with original Claim 1. It differs from the original text in as much as it recognises that the microcapsules of the sheet material according to the closest prior art (French patent specification No. 2 170 687) are already interspersed by a stilt material consisting of wholly solid bodies, and that, therefore, it can only be desired to protect bodies being agglomerates in which mineral particles are dispersed in a matrix of coacervated polymer.

The claim thus meets in this respect the formal requirements of the Convention (Rule 29(1) EPC).

3. The examination as to whether or not a sheet material according to the single claim is disclosed in the documents cited in the search report and additionally in the communication of the Examining Division produces the result that the subject-matter of the claim is new having regard to this state of the art.
4. On the question of whether or not this prior art could suggest the sheet material according to the claim, the following should be observed:
 - 4.1 The person skilled in the art learns from French patent specification No. 2 170 687 to solve the problem of preventing an accidental rupture of the microcapsules containing a printing fluid during handling or storage of capsule-coated sheets by using cellulose fibre flocs, granular starches or granular polymer as wholly solid bodies which protrude further from the surface of the sheet carrying the capsule coating than do the capsules themselves and which thus bear the brunt of any pressure acting on the sheet during handling or storage. From this publication, he cannot gather the idea of constituting the bodies as agglomerates in which mineral particles are dispersed in a matrix of coacervated polymer.
 - 4.2 It is true, that US patent specification No. 3 617 334 proposes the utilisation of agglomerates for protecting microcapsules against accidental rupture, which contain a complex coacervate of two polymers or, more generally, a matrix of coacervated polymer. However, these agglomerates are intended to overcome the disadvantages which, according to the description of US patent specification No. 3 617 334, are caused by the utilisation of the known solid stilt material (cf. column 1, lines 17 to 19

of the specification). On these grounds, liquid-containing capsules are encapsulated in the matrix, which release a harmless amount of diluent in case accidental pressure is applied and capsules rupture. From this document the skilled person learns, therefore, that solid stilt material should be avoided on account of its disadvantages. The agglomerates, disclosed in US patent specification No. 3 617 334 could not thus serve as a model for the stilt material according to the claim.

- 4.3 The utilisation of inert capsules in order to minimise the accidental rupture of microcapsules is also proposed in US patent specification No. 3 481 759. In distinction to US patent specification No. 3 617 334, discussed in the preceding paragraph, this publication specifies only the material of the shell of the capsule. Any indication as to the core is thus missing.
- 4.4 US patent specifications No. 3 844 816, 3 839 064, 3 930 101, 4 046 404 and US patent specification No. 2 655 453 cited in the decision under appeal, only describe, like French patent specification No. 2 170 687, stilt materials consisting of wholly inert solid material. All these known stilt materials consist only of one component, e.g. polymer, cellulose (solca flos), starch balls, casein particles, or glass beads. In addition, US patent specification No. 2 655 453 mentions rounded white silica sand, i.e. mineral particles. However, the stilt material is also only silica in this case. This is possible because the coating of the sheet material is a film containing printing fluid, in which the mineral particles are scattered and bonded.

4.5 Furthest away from the subject-matter of the claim are the instructions which the skilled person can gather from British patent specification No. 1 235 991, introduced in the examination procedure by the Examining Division, and from US patent specification No. 3 743 604.

According to the former, small polymer-wall capsules, containing a fluid, are protected against accidental rupture by larger capsules which are enclosed together with the small capsules by polymeric capsule wall material to form a capsule cluster and project further from the cluster than the smaller capsules, thereby giving protection to the smaller capsules against rupture.

US patent specification No. 3 743 604 concerns only a process for producing microcapsules.

4.6 The instructions given by the publications cited by the Examining Division and in the search report can, therefore, neither separately nor in combination inspire the idea of an alternative to the known wholly solid stilt material, consisting according to the claim in an agglomerate in which mineral particles are dispersed fully irregularly in a matrix of coacervated polymer.

4.7 For the foregoing reasons the subject-matter of the claim involves an inventive step (Article 56 EPC). This claim is therefore allowable (Article 52 EPC).

5. The changes in the description have regard to the fact that the appellants maintained only one claim. They serve thus for the clear presentation of the invention as claimed and are not open to objection.

6. The reason given by the appellants for the requested reimbursement of appeal fee was that the application was rejected in reply to the first communication. However, this fact cannot be considered as a substantial procedural violation of the arguments of the appellants do not satisfy the Examining Division of the patentability of the subject-matter under discussion and if the decision under appeal was only based on grounds on which the appellants have had an opportunity to present their comments. In the present case they had this opportunity. A substantial procedural violation in view of which the reimbursement would be equitable does not exist, therefore.

The request thus cannot succeed.

ORDER

For these reasons,

it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division with the order to grant a European patent on the basis of the documents submitted on 8 September 1983 (one claim and description) and the original drawing.
3. The request for the reimbursement of the appeal fee is dismissed.

The Registrar:

J. Rückerl

The Chairman:

G. Andersson