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Aktenzeichen / Case Number / N^o du recours : T 134/82

Anmeldenummer / Filing No / N^o de la demande : 80 300 945.5

Publikations-Nr. / Publication No / N^o de la publication : 0016662

Bezeichnung der Erfindung: Electrically Conductive Polymeric Compositions
Title of invention:
Titre de l'invention :

ENTSCHEIDUNG / DECISION
vom / of / du 17 December 1984

Anmelder/Patentinhaber:
Applicant/Proprietor of the patent: EXXON
Demandeur/Titulaire du brevet :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Art.83, Rule 27(1)(f),88

"Correction of errors"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number: T 134 / 87/2

DECISION
of the Technical Board of Appeal 3.5.1
of 17 December 1984

Appellant: Exxon Research and Engineering Company
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U S A

Representative: Field, Roger Norton
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Decision under appeal: Decision of Examining Division 052 of the European Patent
Office dated 9 June 1982 refusing European patent
application No 80 300 945.5 pursuant to Article 97(1)
EPC

Composition of the Board:

Chairman: G. Korsakoff

Member: H. Robbers

Member: P. Ford

SUMMARY of FACTS and SUBMISSIONS

- I. European patent application No. 80 300 945.5, filed on 26.03.88, published on 01.10.80 (publication No. 0016662), claiming a priority of 26.03.79, based upon US application No. 23632, was refused by decision of the Examining Division 052 of the European Patent Office dated 09.06.82. The subject of the decision was the claim 1 filed on 24.12.81 as amended by letter of 18.12.81.
- II. The ground for refusal was lack of inventive step having regard to the knowledge of a person skilled in the art and to the state of the art known from US-A-4 118 353 and US-A-4 127 456.
- III. On 22.07.82 the applicant lodged an appeal against the decision, followed by a Statement of Grounds filed on 26.08.82. The appeal fee was duly paid. The appellant requested that the decision be set aside and the appeal fee be refunded.
- IV. The appellant contended that there is no suggestion in the prior art to make the electrically conductive polymer which is the subject of the present invention.
- V. The Board raised objections with regard to:
- (1) inventive step, partly on the basis of new citations;
 - (2) Article 83 EPC, in view of the fact that the fibre used according to the example is not defined properly;
 - (3) some corrections proposed by the appellant.
- The appellant presented at first eight, and finally five sets of seven claims.

REASONS for the DECISION

1. The appeal complies with Articles 106-108 and Rule 64 EPC and is, therefore, admissible.
2. After the second communication by the Board, the appellant requested the aforementioned corrections. These corrections concerned:
 - (a) the length of the fibre used in the description, which should be 0.25 instead of 0.125 inches;
 - (b) the so-called fibre concentrations (percentage of fibre by weight with regard to the total composition) in Tables III and IV of the description.

It was argued that correction (b) appeared to be self-evident and therefore allowable under Rule 88 EPC and that correction (a) would not conflict with the requirements of Article 123(2) EPC. Reference was made to the decision in Case T 13/83 of the Technical Board of Appeal 3.3.1 dated 13 April 1984, reported in Official Journal EPO, 1984, 428.

3. The Board could accept the correction (b) under Rule 88 EPC. The initial percentages by weight of the fibre represented in the Tables III and IV are obviously wrong since they must have been calculated upon the basis of the parts by weight of all components represented in Table II. The figures now proposed by the appellant correspond with the results of such calculations and are obviously the corrections required.
4. Correction (a) can certainly not be accepted on the same basis, as has already been recognised by the appellant. Nor can this correction be accepted in application of the principles applied in Case T 13/83, which concerned a correction of figures which were evidently wrong and resulted from an erro-

neous technical calculation. As the correction required in that case was not immediately obvious because more than one possible correction existed, it was not allowable under Rule 88 EPC. However, it was still possible to accept the amendment without contravening Article 123(2) EPC.

5. In the present case, on the contrary, neither the alleged error nor the requested correction is apparent on the face of the document. The only reason that there is known to be an error is that the appellant's representative has stated in writing that there is one. Accepting that the fibre length given is only half the value that it should be, it is clear that any skilled person who attempted to repeat the experimental work described in the only example would not obtain the results reported and would not know what was wrong. Therefore, as it stands, the only example given is misleading.
6. Since the description filed with a European patent application shall describe in detail at least one way of carrying out the invention claimed using examples where appropriate (Rule 27(1)(f) EPC), it seems inevitable that an application such as the present one, which does and should contain at least one example, must be refused under Article 97(1) EPC, as not complying with Rule 27(1) and Article 83 EPC, if the only permissible amendment to the example or examples given is complete excision.
7. The situation in the present case is quite different from that in Case T 13/83, which is relied upon by the appellant. The material error is not an error of calculation but of information. The only statement made in the description about the fibre used in the example is that a commercial product based upon a poly (acronitrile) precursor was used. That product is not further identified. If it were the case that those skilled in the art would know that the manufacturer or manufacturers

of such products always made them to a certain standard length and to no other length than the reader of the description might be expected to understand that there was an error in the description and to know what was intended. According to the information supplied by the appellant, that is not the case.

8. It is alleged that the appellant's inventors used Magnamite AS-1800 fibre. The undated leaflet on this product which was submitted to the Board shows that the manufacturers were prepared to supply material of 0.25 inch length or any other desired length to special order. Quite apart from the question of the date of this leaflet, therefore, it is wholly inconclusive as evidence in support of the desired correction.
9. It follows that the only possible amendment to the example given would be its complete excision and, in the opinion of the Board, it would not be proper for the present application to proceed to grant with a misleading example or without any example. The application must, therefore, be refused.
10. As the application must be refused for the foregoing reasons, it is unnecessary to consider the acceptability of any of the sets of claims submitted and the requested reimbursement of the appeal fee must be refused.

ORDER

For these reasons,

it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is refused.

P.F.

[Handwritten signature]

J. P. Lee

G. Korsakoff

