

Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non

Aktenzeichen / Case Number / N° du recours : T 202/86 - 3.3.2

Anmeldenummer / Filing No / N° de la demande : 80 902 305.4

Veröffentlichungs-Nr. / Publication No / N° de la publication : 0 041 070

Bezeichnung der Erfindung: An absorbent and a method of its manufacture

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : C09K 3/32

### ENTSCHEIDUNG / DECISION

vom / of / du 28 February 1990

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /

Titulaire du brevet :

New York Patent Development Corporation

Einsprechender / Opponent / Opposant :

Papyrus Kopparfors AB

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 56

Schlagwort / Keyword / Mot clé :

"Inventive step (yes)"

Leitsatz / Headnote / Sommaire

Europäisches  
Patentamt

Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



Case Number : T 202/86 - 3.3.2

DECISION  
of the Technical Board of Appeal 3.3.2  
of 28 February 1990

Appellant :  
(Opponent)

Papyrus Kopparfors AB  
Box 213  
S-431 23 Mölndal

Representative :

Perneborg, Henry  
Oscar Grahn Patentbyrå AB  
Erik Lindquist Patentbyrå AB  
P.O. Box 19540  
S-104 32 Stockholm

Respondent :  
(Proprietor of the patent)

New York Patent Development Corporation  
Suite 28 A  
45 East 89th Street  
New York, N.Y. 10028

Representative :

Omn, Thorsten  
AB Stockholms Patentbyrå  
Zacco & Bruhn  
P.O. Box 3129  
S-103 62 Stockholm

Decision under appeal :

Decision of Opposition Division of the European  
Patent Office dated 21 May 1986 rejecting  
the opposition filed against European patent  
No.0 041 070 pursuant to Article 102(2) EPC.

Composition of the Board :

Chairman : P. Lançon  
Members : U. Kinkeldey  
E. Persson

## Summary of Facts and Submissions

- I. The Respondent is proprietor of European patent No. 0 041 070 (patent application No. 80 902 305.4).

Claims 1 and 2 read as follows:

"1. An absorbent derived from wood pulp, especially for oil, petroleum products and similar chemicals harmful for the environment, characterized in that it includes an essential constituent burst sulphite reject fibres and preferably the burst fine fraction of reject from a sulphite process, the moisture content thereof having been reduced by rapid forced heating.

2. A method of manufacturing an absorbent derived from wood pulp intended especially for oil, petroleum products and similar chemicals harmful for the environment, characterized in that the fine fraction in the sulphite reject or a mixture therewith as essential constituent is heated forcefully during a short period."

Further independent claims relate to different categories and are directed to a method to recover or collect oil and the like floating on water, using the absorbent of Claim 1; a method of recovering oil and the like on beaches, using the absorbent according to Claim 1; a method of cleaning tanks, containing oil and the like using the absorbent according to Claim 1; a filter for removing oil and the like consisting of an absorbent according to Claim 1 and a method of preventing damages on beaches by oil and the like using the absorbent according to Claim 1.

II. The Appellants (Opponents) filed a Notice of Opposition against the European patent requesting revocation of the patent on the grounds of Article 100 EPC and relied on the following two prior art documents, which had already been considered by the Examining Division:

- (1) AT-B-347 362
- (2) DE-A-2 212 605

III. The Opposition Division maintained the patent as granted.

The reasons for maintaining the patent were in essence the following:

Document (1) referred to the use of reject fractions of paper making as absorbent for spilt oil and the like. Two sorts of reject could be used:

- The coarse reject of the knotter in a chemical pulp (undigested wood "Spuckstoffe"),
- the reject collected in the strainer between the stock and the paper machine ("Ästestoffe").

These materials were dried down to 10% humidity and, if necessary, chemically hydrophobised.

Document (2) disclosed the use for the same purpose of a paper pulp which had been chemically hydrophobised. Also hydrophobised sulphite pulp may be used. After the hydrophobising treatment, the mass can be dried in a high speed stream of hot air or in a conventional manner, however, with the aid of mechanical dispersing means.

As far as the prior art did not disclose the use of fibres which were rejected from the sulphite process, the subject-matter of Claim 1 was new.

The problem which was to be solved was to make available an absorbent which was not sticky after having absorbed oil, which is hydrophobic, harmless and very cheap, so that it could be manufactured in quantities required for large scale rehabilitation.

In order to solve the aforementioned problem, the inventor of the patent in suit took advantage of the knowledge that reject fibres from the sulphite process could be made sufficiently absorbent and hydrophobic if they were burst.

Document (1) did not disclose any sulphite pulp to be used as absorbent; on the contrary, the strainer reject should be highly graded in ligin (according to the bottom of page 3 of this document), which led away from the sulphite cooking. Moreover, this document did not specify any drying method. It was believed that in order to obtain a humidity down to 10%, flesh drying was unsuitable.

The base for the absorbent according to document (2) was not reject fibre mass and therefore it was economically much less interesting for large scale use. The teaching of this document points to the treating of any pulp with a hydrophobising agent.

Thus, the above mentioned solution was not suggested by any one of the prior art documents. The subject-matter of the patent in suit, therefore, involved an inventive step.

The description provided enough information to the skilled person to permit him to put the invention into practice.

IV. The Appellants filed a Notice of Appeal against this decision, paid the appeal fee and filed a statement of grounds. No further prior art documents were submitted.

The Appellants argued that after having studied the grounds for the decision in great detail they were of the firm opinion that the grounds for rejecting their opposition were not correct, i.e. they could not agree that the subject-matter of the patent in suit involved an inventive step and that the description provided enough information to the skilled person to permit him to put the invention into practice as stated by the Opposition Division on page 3 of its decision. The Appellants believed that the arguments and statements contained in the written reasoned statement in support of their opposition had not been fully considered by the Opposition Division and, therefore, the Appellants would like to have an unprejudiced reconsideration of their opposition on the grounds already submitted to the Opposition Division.

Therefore, the statement of grounds of appeal was almost identical to the statement of grounds of opposition.

V. In reply, the Respondents mainly relied on the decision of the Opposition Division.

The Appellants request that the decision under appeal be set aside and that the patent be revoked.

The Respondents request implicitly that the appeal be dismissed and that the patent be maintained.

## Reasons for the Decision

1. The appeal is admissible.
2. As can be seen from paragraph IV above, the Appellants relied, in their statement of grounds, on their arguments already submitted in the opposition proceedings. In their opinion, this way of acting is justified because the decision of the Opposition Division was wrong in its entirety. With regard to this way of presenting arguments and the fact that no new prior art documents were filed by the Appellants, the Board has to judge whether the decision of the Opposition Division was correct in the light of documents (1) and (2) and the arguments submitted already before the first instance.
3. The Board agrees with the Opposition Division that the description provides enough information to the skilled person to permit him to carry out the invention. The patent in suit, therefore, fulfils the requirements of Article 83 EPC.
4. The grounds for the decision of the Opposition Division in respect of inventive step as described in detail in paragraph III. above provide, in a logical and reasonable sequence of thinking, the essential grounds for the conclusion that the patent in suit meets the requirements of Article 56 EPC. In conformity with the established practice of the Boards of Appeals, the Opposition Division applied the "problem and solution" approach. Starting from document (1) and combining the knowledge of document (1) with the disclosure of document (2), the decision makes it clear that none of the documents suggested to improve a very important feature of the reject, used as an absorbent of oil and the like, by rapid forced heating with the consequence of burst sulphite reject fibres which are not sticky when absorbing the oil or the like, as it would be

the case according to documents (1) or (2). The Board can fully agree with this view. It is thus the opinion of the Board that the patent in suit is based on an inventive step.

Consequently, the appeal has to be dismissed.

**Order**

**For these reasons, it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

M. Beer

P. Lançon