

Veröffentlichung im Amtsblatt
Publication in the Official Journal
Publication au Journal Officiel

Ja/Nein
Yes/No
Oui/Non



16

Aktenzeichen / Case Number / N° du recours : T 257/86 - 3.3.2

Anmeldenummer / Filing No / N° de la demande : 81 302 933.7

Veröffentlichungs-Nr. / Publication No / N° de la publication : 0 046 141

Bezeichnung der Erfindung: Polyvinyl butyral plasticized with
Title of invention: tetraethyleneglycol di-2-ethylhexanoate
Titre de l'invention :

Klassifikation / Classification / Classement : C08L 29/14

ENTSCHEIDUNG / DECISION

vom/of/du 19 April 1988

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet : E.I. Du Pont de Nemours

Einsprechender / Opponent / Opposant : Dynamit Nobel AG

Stichwort / Headword / Référence : Title of invention/DU PONT

EPÜ / EPC / CBE Article 108, Rule 64(b); Rule 56(2), 55(b)

Kennwort / Keyword / Mot clé : "Admissibility of appeal - missing grounds
(no)"
"Opposition requirements" - "Title of invention
- necessity of mentioning"

Leitsatz / Headnote / Sommaire



Case Number : T 257/86 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 19 April 1988

Appellant :
(Opponent 01)

DYNAMIT NOBEL A.G.
Postfach 1209
D-5210 Troisdorf

Representative :
(Proprietor of the patent)

E.I. Du Pont de Nemours and Company
1007 Market Street
Wilmington, Delaware 19898
USA

Representative :

Jones, Alan John
CARPMAELS & RANSFORD
43, Bloomsbury Square
London, WC1A 2RA

Decision under appeal :

Decision of the Formalities Officer
of the Opposition Division of the
European Patent Office dated
2 June 1986 rejecting the opposition
filed against European patent
No. 0 043 269 pursuant to Rule 56(2)
EPC.

Composition of the Board :

Chairman : P. Lançon
Members : O. Bossung
A. Nuss

Summary of Facts and Submissions

- I. As in the case of Decision T 317/86 of 15 April 1988 (scheduled for publication) the appeal is directed against a decision of the formalities officer by which the appellants' notice of opposition was rejected as inadmissible under Rule 65(2) EPC. The only reason for this was that the "title of the invention" under Rule 55(b) had not been communicated within the period set in accordance with Rule 56(2) EPC.
- II. The opponents filed their appeal in due time and paid the fee. Their letter of appeal stated inter alia the following: "We are appealing ... on the basis of the information as to means of redress given in that decision (meaning the contested decision). ... The written statement setting out the grounds of appeal will be filed by 3 October 1986." The appellants, however, failed to observe the deadline for filing and then applied for re-establishment of rights in respect of this time limit, paying the required fee. They request re-establishment of rights in respect of failure to observe the time limit and ask that the decision under appeal be set aside.
- III. The patent proprietors had already asserted before the first instance that the notice of opposition was inadmissible. They request that the application for re-establishment of rights be refused and the appeal rejected.

Reasons for the Decision

1. The inadmissibility of the appeal is dependant only on whether the requirement to file a statement setting out the grounds of appeal pursuant to Art. 108 EPC, third sentence, is met on time. However, irrespective of the delay in filing the promised separate statement of grounds, in this particular

case the notice of appeal itself already incorporated a statement of grounds, as may arise in exceptional circumstances. See in this connection Decision J 22/86 dated 7 February 1987, "Disapproval/MEDICAL BIOLOGICAL" in OJ EPO 7/1987, p. 280, and in particular Reasons 1 and 2 and Headnote I. As in that case, here the decision under appeal is confined to a single point of law. The notice of appeal itself already contains the statement that the appeal is being made "on the basis of the information as to means of redress given in that decision" (meaning the contested decision). Anyone reading the decision under appeal will immediately see what the appellants are concerned with and the extent to which cancellation of the decision is requested. An appeal as this one clearly directed against one particular point in a contested decision therefore does not require any further statement of grounds. The present case is like the aforementioned MEDICAL BIOLOGICAL case in this respect. Re-establishment of rights is therefore not required and the fee must be reimbursed.

2. The appeal, which is thus admissible, must be allowed for the same reasons as stated in Decision T 317/86 mentioned at the beginning, to which the reader is referred.
3. The requirements of Art. 104(1) EPC to allow costs to be awarded in favour of the patent proprietors are not met.

Order

For these reasons, it is decided that:

The contested decision is set aside and the case remitted to the first instance.

The Registrar:
(F. Klein)

The Chairman:
(P. Lançon)