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Aktenzeichen / Case Number / N^o du recours : T 190/88 - 3.3.2

Anmeldenummer / Filing No / N^o de la demande : 81 200 169.1

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 034 392

Bezeichnung der Erfindung: A metallised composite structure and a process of
Title of invention: preparing same
Titre de l'invention :

Klassifikation / Classification / Classement : B32 B 15/08

ENTSCHEIDUNG / DECISION

vom / of / du 4 October 1990

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Koninklijke Emballage Industrie
Van Leer B.V.

Einsprechender / Opponent / Opposant :

Unilever N.V.

Stichwort / Headword / Référence : Metallised composite structure/VAN LEER

EPÜ/EPC/CBE Article 56

Schlagwort / Keyword / Mot clé :

"Inventive step (yes) - decision of the first
instance reviewed and confirmed"

Leitsatz / Headnote / Sommaire



Case Number : T 190/88 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 4 October 1990

Appellant :
(Opponent)

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Respondent :
(Proprietor of the patent)

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Decision under appeal :

Decision of the Opposition Division of the European
Patent Office dated 4 March 1988 rejecting
the opposition filed against European patent
No. 0 034 392 pursuant to Article 102(2) EPC.

Composition of the Board :

Chairman : P.A.M. Lançon

Members : A. Nuss
C. Holtz

Summary of Facts and Submissions

- I. European patent No. 0 034 392 was granted with seven claims on European patent application NO. 81 200 169.1.

Independent Claims 1 and 2 of the patent as granted read as follows:

"1. A metallised vapour coated composite structure comprising a non-metallic substrate, a laminating adhesive layer on one surface of said substrate, a vapour deposited metal stratum on said adhesive layer, and a lacquer coating on said stratum, that has a non-releasable bond with the surface of said stratum, characterised in that the composite structure is obtainable by applying a liquid lacquer having a contact angle of zero degrees to a polymeric carrier film, said lacquer being capable of forming a releasable bond with the surface of the polymeric carrier film, to a smooth major surface of said polymeric carrier film, and stripping off the polymeric carrier film after the application of the metal structure, the adhesive layer and the non-metallic substrate.

2. A process of producing a metallised vapour coated composite structure according to Claim 1, wherein
- (a) a major surface of a smooth polymeric carrier film is coated with a lacquer which will give a weak releasable bond with the surface of the polymeric carrier film and a strong (not-releasable) bond with the surface of a stratum of metal which has been freshly vapour deposited
 - (b) a thin coherent stratum of metal is formed upon the surface of the lacquer film by vapour deposition
 - (c) a layer of standard laminating adhesive is applied to the exposed stratum of metal and bonding said stratum of metal to a non-metallic substrate by standard laminating

techniques whereby the following composite structure is prepared:

polymeric carrier film/lacquer coating/vapour deposited metal stratum/laminating adhesive layer/non-metallic substrate and

(d) the polymeric carrier film is stripped from said composite structure characterised in that the liquid lacquer applied has a contact angle of zero degrees after application to the carrier film surface."

- II. The Appellant (Opponent) filed a notice of opposition against the European patent, requesting revocation on the ground of lack of inventive step. The opposition was supported by a single document, namely US-A-3 235 395 (1).
- III. The Opposition Division rejected the opposition. In its decision, it stated in essence that although document (1) described some carrier films and lacquers (release coatings), this document was completely silent about the contact angle of the lacquer to be applied to the carrier film; nor had the Opponent given any evidence that the condition of a zero degree contact angle, as claimed in the patent in suit, was fulfilled for the specifically disclosed resinous solutions to be used for forming release coatings. In spite of the fact that this document related to the same problem as the patent in suit, it neither disclosed nor suggested that the choice of specific lacquers having a maximum of wetting and spreading on a given substrate would lead to a further improvement of the optical properties of the metallised vapour coated composite structure, in particular the mirror reflectivity rating. Under such circumstances the solution of the problem of the present invention could not be regarded as obvious in the light of document (1), even if this document was considered in combination with other

prior art documents, as it had been done during the examination procedure.

- IV. The Appellant lodged an appeal against this decision. In its Statement of Grounds of Appeal, the following arguments were put forward:

As already pointed out in the letter of opposition, neither Claim 1 directed to the (composite) structure nor Claim 2 directed to the process for producing such structure contained anything inventive with regard to document (1).

Moreover, an additional document, i.e. DE-C-2 747 241 (2), had now come to Opponent's notice. This document was concerned with a process which differed from the one claimed only in that it was not explicitly mentioned that the liquid lacquer applied had a contact angle of zero degrees after application to the carrier film surface. However, in view of the statement in this prior document that a separating layer could be omitted if the lacquer layer did not have a strong affinity to the carrier foil, the same conditions prevailed as in the patent in suit.

- V. In response thereto the Respondent (Proprietor of the patent) argued that after having carefully considered document (1), the Opposition Division had rejected the opposition in accordance with Article 102(2) EPC and that document (2) now cited by the Appellant was the priority document and equivalent of GB-A-2 006 109, the first document mentioned in the European Search Report of 17 June 1981, which contained also the statement pointed out by the Appellant. It therefore seemed superfluous to repeat all arguments previously used before the EPO, since neither the British patent application nor any of the other seven documents cited on the front page of the

patent in suit could be considered to be a bar to the patentability of the claimed subject-matter.

VI. The Appellant requests that the patent be revoked.

The Respondent requests that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.
2. As may be seen from point IV above, the only question to be answered in this appeal is whether or not the claims of the patent in suit involve an inventive step.
3. Before the Board, the Appellant has merely referred to his letter of opposition in which he had already denied before the first instance that Claims 1 and 2 involve an inventive step, without indicating however to what extent the Opposition Division might possibly have drawn wrong conclusions when interpreting the only document cited at that time, namely document (1). The Board itself has no reason to be in disagreement with the Opposition Division, since in the contested decision due consideration was given to this prior art document, whereby it was then correctly established that it was not obvious that by applying specific lacquers having a contact angle of zero degrees to a given substrate (polymeric carrier film) in accordance with the claims of the patent in suit, a further improvement of the optical properties, in particular the mirror reflectivity rating, could be achieved (see point III above). As already mentioned before, the Appellant did not even challenge these findings or present any additional argument or evidence in support of his case. The Board has thus no reason to

consider the contested decision to be erroneous as far as the relevance of document (1) is concerned.

4. Document (2) corresponds to British patent application No. 2 006 109, cited on the front page of the patent in suit, which shows that this state of the art had actually been considered at the examining stage. Although documents are not deemed not to have been submitted in due time simply because they have not been submitted during the opposition period, it was nevertheless the Appellant's task to set out the circumstances that had prevented him from taking up this document within the nine month's opposition period pursuant to Article 99(1) EPC (see T 156/84, OJ EPO 1988, 372, in particular point 3.11). However, no reason has been given by the Appellant for the late reference to document (2). The newly submitted document is therefore deemed not to have been filed in due time.

The statement in document (2) that a separating layer can be omitted if the lacquer does not have a strong affinity to the carrier foil, cannot detract from the fact that this document is not at all concerned with the contact angle of the lacquer to be used, but merely indicates a prerequisite for releasing (stripping) the lacquer layer from the carrier foil when an additional separating layer is omitted. However, as shown in the contested decision a contact angle of zero degrees improves a quite different property of the composite structure, namely the mirror reflectivity rating of the metal stratum (see point III above).

It clearly follows from the above that document (2) is no more relevant than document (1) cited in Appellant's letter of opposition. In accordance with Article 114(2) EPC the Board has chosen to disregard document (2).

5. The preceding paragraphs show that the arguments put forward by the Appellant fail to convince the Board that the subject-matter of the claims as granted lacks an inventive step. There are thus no grounds which prejudice the maintenance of the patent.

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar:



M. Beer

The Chairman:



P.A.M. Lançon

