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D E C I S I O N
of 17 January 1994

Case Number: T 0114/93 - 3.3.3

Application Number: 87104668.6

Publication Number: 0247326

IPC: C08L 23/08

Language of the proceedings: EN

Title of invention:

Resin compositions, laminates and block copolymers as components thereof

Applicant/Patentee:
Kuraray Co. Ltd.

Opponent:
-

Headword:
-

Relevant legal norms:
EPC R. 51(6), 67, 86(3), 88

Keyword:
"Initial main and first auxiliary requests withdrawn - factual basis for rejection removed"

Decisions cited:
-

Headnote/Catchword:
-



Case Number: T 0114/93 - 3.3.3

D E C I S I O N
of the Technical Board of Appeal 3.3.3
of 17 January 1994

Appellant: Kuraray Co. Ltd.
1621 Sakazu
Kurashiki-shi
Okayama 710 (JP)

Representative: Vossius & Partner
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Decision under appeal: Decision of the Examining Division of the
European Patent Office dated 12 November 1992
refusing European patent application
No. 87 104 668.6 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. Antony
Members: R. Young
M.K.S. Aúz Castro

Summary of Facts and Submissions

I. European application No. 87 104 668.6 was refused by a decision of the Examining Division dated 12 November 1992.

According to the decision, the applicant had been notified by a communication dated 24 July 1992 that the requests, received on 5 May 1992 and 11 May 1992, to amend the application documents could no longer be taken into account because the applicant had already given his binding approval to the text intended to serve as the basis for grant (cf. letter filed on 6 February 1992 and communication pursuant to Rule 51(6) EPC dated 27 February 1992).

Since the request had not been dropped, there was no text to serve as a basis for the grant of a European patent (Article 113(2) EPC), and the application did not therefore meet the requirements of the EPC.

II. On 14 January 1993 a Notice of Appeal against the above decision was filed, together with payment of the prescribed fee.

In the concurrently filed Grounds of Appeal, the Appellant argued that the approved text contained some obvious errors the correction of which was allowable according to Rule 88 EPC.

At this stage the Appellant sought the grant of a patent on the basis of the approved text incorporating the corrections requested with the petitions filed on 5 May 1992 and/or 11 May 1992 (main and first auxiliary

requests) or on the basis of the text without these corrections (second auxiliary request). Reimbursement of the appeal fee was also requested.

III. In a communication dated 22 June 1993 the Board expressed the provisional view that at least certain of the petitions were not requests for correction but for amendment. As to the corrections, however, there were doubts as to their allowability under Rule 88 EPC in that it was neither evident that any error had occurred nor that nothing else could have been intended than what had been offered as the correction. As to the amendments, these appeared to arise solely as a result of an earlier, incomplete amendment, which itself had only been requested once the Rule 51(4) EPC communication had issued.

Consequently, even if the allowance of the amendments were not precluded on the ground of lateness, the degree of legitimate interest of the Appellant had to be balanced against that of the administrative interest of the EPO and the Board was not minded to allow them (Rule 86(3) EPC), considering that the deficiencies of the approved text did not materially affect the patentability. If the Appellant were of a different view with regard to that latter point, the possibility of opposing his own patent was open to him.

IV. With a letter filed on 31 August 1993 the Appellant requested the grant of a European patent on the basis of the application documents to which the Examining Division had given its consent on 27 February 1992 (corresponding to the previous second auxiliary request).

Reasons for the Decision

1. The appeal is admissible.
2. With the withdrawal of all previous requests except that to which the Examining Division gave its consent (in the communication pursuant to Rule 51(6) EPC) on 27 February 1992, the factual basis for the rejection has been removed. Consequently, the appeal must succeed on the basis of the remaining sole request.
3. It is not entirely clear whether the latter request was meant to include withdrawal of the previous request for reimbursement of the appeal fee. If it was not, the request for reimbursement must fail because, neither can the Board recognize a procedural violation on the part of the Examining Division, nor would reimbursement appear equitable considering that, for all practical purposes, the appeal in its original scope has failed (Rule 67 EPC).

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 patent on the basis of the application documents in respect of which the communication pursuant to Rule 51(6) EPC dated 27 February 1992 was issued.

The Registrar:



E. Görgmaier

The Chairman:



F. Antony