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Datasheet for the decision of 26 June 2007

W 0001/07 - 3.3.03 Case Number:

Application Number: PCT/EP 2006/063535

Publication Number: WO 2007/003523

C08L 23/10 IPC:

Language of the proceedings: EN

Title of invention:

Propylene polymers having broad molecular weight distribution

Applicant:

Basell Poliolefine Italia S.r.l.

Opponent:

Headword:

Relevant legal provisions:

PCT Art. 17(3)a PCT R. 13.1, 40.1, 40.2(c)(e), 82bis.1(i) EPC Art. 150(2), 154(3) EPC R. 105(3)

Keyword:

"Lack of unity a posteriori (no)"

Decisions cited:

G 0001/89, W 0003/93, W 0026/06, J 0001/89

Catchword:



Europäisches Patentamt

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Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: W 0001/07 - 3.3.03

International Application No. PCT/EP2006/063535

DECISION of the Technical Board of Appeal 3.3.03 of 26 June 2007

Applicant: Basell Poliolefine Italia S.r.l.

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Decision under appeal: Protest according to Rule 40.2(c) of the Patent

Cooperation Treaty made by the applicants against the invitation (payment of additional

fees) of the European Patent Office

(International Searching Authority) dated

21 August 2006.

Composition of the Board:

Chairman: R. Young
Members: C. Idez
T. Bokor

Summary of Facts and Submissions

International application PCT/EP2006/063535 entitled "Propylene polymers having broad molecular weight distribution" comprising 15 claims was filed on 26 June 2006.

Independent Claims 1, 8, 10, 11, 13, 14 and 15 of the application as filed read as follows:

- "1. Propylene homopolymers or copolymers containing up to 5.0 wt% of alpha-olefin units having from 2 to 8 carbon atoms other than propylene, characterized in that said propylene homopolymers or copolymers have Polydispersity Index value higher than 15, Melt Strength higher than 1.50 cN at 230°C and Melt Flow Rate (ISO1133, 230°C/2.16 Kg) from 0.01 to 20 g/10 min.
- 8. A heterophasic polypropylene composition comprising (percentage based on the whole composition):
- (1) 65-95 wt% of propylene homopolymers or copolymers as described in any of claims 1 to 7; and
- (2) 5-35 wt% of a propylene copolymer containing 35-95 wt% (based on component (2)), of alpha-olefin units having 2 to 8 carbon atoms other than propylene.
- 10. A gas-phase polymerization process for preparing propylene homopolymers or copolymers according to any of claims 1 to 7 carried out in at least two interconnected polymerization zones, wherein means are provided which are capable of totally or partially preventing the gas and/or liquid mixture present in the first of said polymerization zones from entering the second of said polymerization zones and a gas and/or liquid mixture having a composition different from the

-2 - W 0001/07

gas mixture present in the first of said polymerization zones is introduced into the second of said polymerization zones.

- 11. An article comprising a propylene polymer selected from the propylene homopolymers or copolymers according to any of claims 1 to 7 and the heterophasic polypropylene compositions according to claim 8 or 9.
- 13. Thermoplastic polyolefin composition comprising up to 25 wt% of the propylene homopolymers or copolymers according to any of claims 1 to 7.
- 14. Process for producing injection molded articles comprising the use of the propylene homopolymers or copolymers according to any of claims 1 to 7 or of the thermoplastic polyolefin composition according to claim 13.
- 15. Injection molded article comprising up to 25 wt% of the propylene homopolymers or copolymers according to any of claims 1 to 7."

Claims 2 to 7, 9 and 12 were dependent claims.

II. On 21 August 2006 the European Patent Office (EPO), acting as International Searching Authority (ISA), in compliance with Article 17(3)(a) PCT and Rule 40.1 PCT issued an "Invitation to pay Additional Fees" (hereinafter "Invitation") stating that the application did not comply with the requirements of unity of invention according to Rule 13 PCT and inviting the Applicant to pay, within a time limit of 1 month, 2 additional search fees.

III. In the Invitation, the ISA defined the following three groups of inventions to which the application related:

Group 1: Claims: 1-7,10-12

A propylene polymer (homopolymer or copolymer), a gasphase polymerisation process for the preparation thereof and an (foamed) article thereof;

Group 2: Claims: 8,9,11,12

A heterophasic polypropylene composition and an (foamed) article made from the composition; and

Group 3: Claims: 13-15

A thermoplastic polyolefin composition comprising up to 25 wt% of the propylene polymer defined in the claims 1-7, a process for the preparation thereof or an injection molded article thereof.

According to the Invitation, the common concept between Claim 1 and the rest of the independent claims was a propylene homopolymer or copolymer characterised by a melt strength higher than 1.5 cN (230°C), a melt index between 0.01-20 g/10 min (230°C) and a polydispersity higher than 15.

According to the Invitation, document Dl disclosed propylene homopolymer or copolymer characterised by its melt index, melt tension, and polydispersity.

Consequently, according to the Invitation, all the technical features of the common concept were known from document Dl, and the special technical features according to Rule 13(2) PCT which provided a contribution over the prior art were not so linked to form a unitary inventive concept. Therefore, the

application lacked unity of invention within the meaning of Rule 13(1) PCT.

- IV. On 14 September 2006, the Applicant paid the two additional search fees under protest according to Rule 40.2(c) PCT and simultaneously requested reimbursement of these fees.
 In its letter dated 14 September 2006 announcing the afore-mentioned payment the Applicant argued essentially as follows:
 - (i) Claims 1 to 7 were directed to a propylene polymer "X", said polymer being endowed with the technical features of (eventual) comonomer content,
 Polydispersity index (P.I), Melt Strength and MFR as defined in Claim 1.
 - (ii) It was evident that the propylene polymer "X" was the technical relationship linking all claims 1 to 15.
 - (iii) The objection of lack of unity of invention was raised by the ISA a posteriori, in view of the disclosure of D1.
 - (iv) According to the decision G 01/89 the ISA should exercise restraint in assessing novelty and inventive step and in border-line cases preferably refrain, from considering an application as not complying with the requirement of unity of invention on the ground of lack of novelty or inventive step (point 8.2 of the Reasons).
 - (v) In the case of the application in suit, the issue of lack of novelty was even less than a border-line case since no straightforward comparison between the

- 5 - W 0001/07

propylene polymer "X" and the propylene polymers of Dl was possible (cf. in particular molecular weight distribution expressed through the PI value for the propylene polymer "X" and through the Mw/Mn ratio in D1).

- V. On 13 October 2006, the ISA invited the Applicant to pay a protest fee within one month (Form PCT/ISA/228 (April 2005)). In the annex to this communication, the Applicant was told that after review of the protest the two additional search fees should not be reimbursed. The position of the Review Panel can be summarized as follows:
 - (i) According to the Applicant a straightforward comparison between the technical relationship (polymer X) of the present application and the polypropylene polymers disclosed in the document Dl should be not possible.
 - (ii) According to the Polymer Science Dictionary (M.S.M. Alger, Elsevier Applied Science) the Polydispersity Index (PI) was a measure of the molecular weight distribution defined as the ratio of the weight to the number average molecular weights (Mw/Mn).
 - (iii) The molecular weight distribution of the polypropylene polymer in D1 had been measured according to the gel permeation chromatography (GPC) method. The application in suit used the Rheometric method to determine the molecular weight distribution.
 - (iv) The Rheometric method had been developed to complete the determination of the molecular weight

- 6 - W 0001/07

distribution of polymers. The Rheometric method was an alternative to GPC.

- (v) Thus, the technical relationship polymer "X" was known from the prior art and was thus not a special technical feature. Consequently the application in suit lacked unity.
- VI. On 10 November 2006, the Applicant paid the protest fee requested in the communication dated 13 October 2006 of the ISA.

In its letter dated 10 November 2006 announcing the afore-mentioned payment, the Applicant submitted the following additional comments:

- (i) According to the review panel the propylene polymer "X" which was the technical relationship linking all Claims 1 to 15 was known from D1.
- (ii) This finding was based on the fact that Dl disclosed polymers having broad molecular weight distribution expressed by the ratio Mw/Mn determined via the GPC method.
- (iii) The GPC method and the rheological method measured the molecular weight distribution on the basis of different principles and thus their numerical values were not directly comparable.
- (iv) Tests carried out by the Applicant showed that a polymer according to Dl having a Mw/Mn of 20 determined via GPC had a rheological Polydispersity Index of about 14.

- 7 - W 0001/07

- (v) Consequently, D1 which referred to propylene polymers having a Mw/Mn of 20 (by GPC) as an upper limit did not disclose propylene polymers X of the invention characterized by a rheological PI of at least 15.
- VII. The Applicant requested the reimbursement of the two additional search fees and of the protest fee which had been paid.

Reasons for the Decision

- 1. Procedural issues
- 1.1 The application in suit was filed on 26 June 2006.

 Therefore, the protest is subject to the provisions of the PCT as in force from 1 April 2005.
- 1.2 In that respect, concerning non-unity findings in the international search, the applicable version of Rule 40.1 PCT requires that "the Invitation to pay additional fees provided for in Article 17(3)(a) shall:
 - (i) specify the reasons for which the international application is not considered as complying with the requirement of unity of invention;
 - (ii) invite the applicant to pay the additional fees within one month from the date of the invitation and indicate the amount of those fees to be paid; and

- 8 - W 0001/07

Rule 40.2(e) within one month from the date of the invitation, and indicate the amount to be paid".

- 1.3 Pursuant to the applicable version of Rule 40.2(c) PCT,

 "Any applicant may pay the additional fees under

 protest, (...). Such protest shall be examined by a

 review body constituted in the framework of the

 International Search Authority, which to the extent

 that it finds the protest justified, shall order the

 total or partial reimbursement to the applicant of the

 additional fees."
- 1.4 Compared to Rule 40 PCT as in force before 1 April 2005, new Rule 40.1 now requires that the applicant is simultaneously invited to pay the additional search fee and the protest fee within a time limit of one month from the date of the Invitation, and new Rule 40.2(c) PCT has the effect inter alia that the former requirement to carry out a review of the justification for the invitation to pay additional search fees under Article 17(3)(a) PCT prior to requiring payment of a protest fee (Rule 40.2(e) PCT) has been removed.
- 1.5 It is the understanding of the Board that these amendments of the PCT, which aim to make the protest procedure before the respective ISA more concise and simple, were made in view of the amendment of Article 154(3) and Rule 105(3) EPC by the EPC 2000 revision. These amendments of the EPC are, however, not yet in force.
- 1.6 Consequently, the question arises whether or not there may be a conflict between these amended Regulations

under the PCT and Article 154(3) and Rule 105(3) EPC still in force. Should there be a conflict, then Article 150(2), third sentence, EPC would apply, which states: "In the case of conflict, the provisions of the Cooperation Treaty shall prevail". Therefore, the Board will examine whether the amended Rule 40.1 and 40.2(c) PCT provide for requirements which could be in conflict with Article 154(3) EPC and Rule 105(3) EPC as still in force.

- 1.6.1 Rule 40.2(c) PCT as in force before 1 April 2005 provided for a "three-member board or other special instance of the International Searching Authority or any competent higher authority" to examine the protest, whereas under the PCT as in force from 1 April 2005, Rule 40.2(c) provides that a "review body constituted in the framework or the International Searching Authority" shall judge on the protest.
- 1.6.2 The Board does not see any differences in these former and actual requirements which could in any respect result in a conflict with Article 154(3) EPC still in force because each Board of Appeal, being an organisational part of the European Patent Office (EPO), constitutes a review body within the framework of the EPO as ISA in compliance with Rule 40.2(c), second sentence, PCT, having the competence to decide fully on the protest, i.e. not only on a possible refund of additional fees paid after invitation but also on the final refusal of the requested refund.
- 1.6.3 The competence for a final refusal was not given to the unspecified body performing the "prior review", which was referred to in the formerly valid Rule 40.2(e),

- 10 - W 0001/07

first sentence, PCT. The Decision of the President of the EPO dated 25 August 1992 (OJ EPO 1992, 547), implementing Rule 105(3) EPC (previously Rule 104a(3) EPC) specified this body as a "review panel", and thereby also made it clear that this body is not to be considered a "three-member board" in the sense of the formerly valid Rule 40.2 PCT. The detailed procedure of the review panel is described in the Notice from the EPO dated 26 August 1992 (OJ EPO 1992, 547). Points 2 (b) and 2(c) of this latter Notice make it clear that the review panel is not competent to finally reject the protest. The "prior review" is thus akin to an interlocutory revision, similar to that foreseen by Article 109(1) EPC. Thus, despite the use of the seemingly identical terms "review" in Rule 105(3) EPC and the now valid Rule 40.2(c), second sentence, PCT, according to Article 154(3) EPC, only the Boards of Appeal are given the powers required for the review body in the presently valid Rule 40.2(c), second sentence, PCT. Thus, no conflict in that respect between valid Rule 40.2(c) and the EPC can be discerned by the Board.

- 1.6.4 Consequently, in the present case, where an internal "prior review" has already been carried out by a review panel within the EPO, the Board comes to the conclusion that it, the Board, is nevertheless competent as a "review body" according to Rule 40.2(c) PCT to deal with the present protest (deviating from decision W 26/06 of 28 February 2007).
- 1.6.5 Concerning new Rule 40.1 PCT, this requires that the applicant is invited to pay the protest fee referred to

- 11 - W 0001/07

in Rule 40.2(e) within one month from the date of the invitation according to Article 17(3)(a) PCT.

- 1.6.6 However, according to Rule 105 (3) EPC, the applicant should be invited to pay a protest fee after a prior review had considered that the invitation under Article 17(3)(a) PCT to pay additional fee was justified.
- 1.6.7 It thus follows, in the Board's view, that there is a conflict between new Rule 40.1 PCT and Rule 105 (3) EPC, concerning the time at which the applicant should be invited to pay the protest fee and the time at which the protest fee should be paid. It is a consequence of such a conflict, that Article 150(2) EPC, third sentence applies, and hence that new Rule 40.1 PCT prevails. This implies that the protest fee should be paid within one month from the date of the invitation according to Article 17(3)(a) PCT.
- 1.6.8 Nevertheless, the legal effect foreseen in Rule 40.2(e) PCT, according to which the protest shall be considered not to have been made if the protest fee has not been paid within the time limit under Rule 40.1(iii), cannot occur without a preceding and explicit invitation for payment of the protest fee by the ISA.
- 1.6.9 In the present case the Applicant was invited with the communication of 13 October 2006 ("Form PCT/ISA/228 (April 2005")) to pay the protest fee within one month, but this only after a prior review, which had come to the conclusion that the invitation to pay additional fee issued on 21 August 2006 was justified, had been carried out. Consequently, in its letter dated

- 12 - W 0001/07

- 10 November 2006, the Applicant requested the debiting of the protest fee from his Deposit Account.
- 1.6.10 In this connection, the Board observes that in a Notice from the European Patent Office of 1 March 2005 concerning the protest procedure under the PCT (cf. OJ EPO 2005, 226; hereafter the "Notice"), applicants were informed that "Pending entry into force of the revised version of the EPC, where additional fees for international search or international preliminary examination are paid under protest according to Rule 40.2(c) or Rule 68.3(c) PCT, the EPO will continue to subject any invitation to pay such additional fees to an internal review, prior to submission of the protest to the board of appeal". According to the Notice, "This review is in the nature of a service from the EPO and the previous procedure described in Rule 105(3) EPC is no longer applicable. In order to allow the applicant to consider the result of the review the EPO will, by way of concession, not require payment of the protest until one month after the date of notification of the review to the applicant" (cf. point 3 of the Notice).
- 1.6.11 While in view of new Rule 40.1(iii) PCT, the invitation to pay the protest fee in the present case should have been made with the invitation according Article 17(3)(a) PCT, and the protest fee should hence have been paid within one month starting from 21 August 2006, so that the payment of the protest fee by the Appellant on 10 November 2006 should have resulted in the consideration according to the new Rule 40.2(e) that the protest had never been made, the Board however observes, firstly, that no invitation to pay the

- 13 - W 0001/07

protest fee had been made by the EPO with the invitation according to Article 17(3)(a) PCT, and secondly that the Applicant had indeed paid the protest fee following the procedure set out in the "Notice".

- 1.6.12 While, in the Board's view, there is nothing in the new PCT regulations, preventing the EPO from carrying out, as a service to the Applicant, an internal review being akin to an interlocutory revision, similar to that foreseen by Article 109(1) EPC, the fact still remains, that, according to the new PCT regulations, the invitation to pay the protest fee must be issued with the invitation according to Article 17(3)(a) PCT and that the protest fee must be paid within one month from the date of this invitation.
- 1.6.13 However, in the present case, the facts prove without question that, on grounds for which the ISA must bear the entire responsibility, the Applicant has not observed the time limit of 1 month starting from 21 August 2006, but has only paid the protest fee on 10 November 2006 as a response to the invitation issued by the ISA on 13 October 2006.
- 1.6.14 According to the jurisprudence of the boards of appeal, the procedure between the EPO and applicants is governed by the principle of the protection of legitimate expectations so that if an action of a party was based on a misleading communication, it is to be treated as if the party had satisfied the legal requirements (J 1/89, OJ EPO 1992, 17).
- 1.6.15 Taking further into account that, as stated in decision W 3/93 (OJ EPO 1994, 931), the Board as a review body

- 14 - W 0001/07

of the ISA is competent to excuse the delay in meeting a time limit set under the PCT (cf. Rule 82 bis.1 (i)), the protest is considered to have been made (Rule 40.2(e) PCT, second sentence).

- 1.7 Since the Applicant has provided in its letter dated 14 September 2006 (cf. Section IV above) reasons why, in its view, the payment of the additional fees was not justified, the protest therefore also complies with the requirements of Rule 40.2(c) PCT.
- 1.8 Consequently, the protest is admissible.
- 2. Examination of the protest
- 2.1 As can be deduced from the description of the application in suit (cf. page 1, lines 4 to 18; 25 to 33), its aim is to provide readily processable propylene polymers which have good flow properties in the molten state and high melt strength while retaining good mechanical properties and which can be used in the manufacture of articles such as injection molded articles or foams. This problem is solved, according to the application, by using a propylene homopolymer or copolymer containing up to 5,0 wt% of alpha olefin units from 2 to 8 carbon atoms other than propylene, characterised by a melt strength higher than 1.5 cN (230 °C), a melt flow rate (ISO 1133, 230°C/2,16 Kg) between 0.01-20 g/10 min and a polydispersity index higher than 15 (cf. page 2, lines 1 to 6).
- 2.2 Although, as indicated above in Section I, the application in suit comprises 7 independent claims, the Board concurs with the ISA (cf. Section III above) in

- 15 - W 0001/07

considering that the claims of the application in suit should be grouped in the following manner:

Group 1: Claims: 1 to 7, and 10 to 12

A propylene polymer (homopolymer or copolymer), a gas—
phase polymerisation process for the preparation
thereof and an (foamed) article thereof;

Group 2: Claims: 8,9, 11 and 12

A heterophasic polypropylene composition comprising
65 to 95 wt% of propylene homopolymers or copolymers
according to Claims 1 to 7, and an (foamed)
article made from the composition; and

Group 3: Claims: 13 to 15

A thermoplastic polyolefin composition comprising up to 25 wt% of the propylene polymers or copolymers defined in the claims 1 to 7, a process for the preparation thereof or an injection molded article thereof.

- 2.3 In the "Invitation" (cf. Section III above), the ISA has considered that the common concept between these three groups would be represented by the propylene homopolymers or copolymers specified in Claim 1. It has, however, been considered in the "Invitation" that the application in suit lacked unity of invention a posteriori within the meaning of Rule 13(1) PCT because this common concept was known from a document referenced as "D1" which disclosed propylene polymers according to Claim 1 of the application in suit.
- 2.4 In this connection, it is firstly noted by the Board that the document D1 has not been explicitly identified in the "Invitation", so that it could have been fairly

presumed that the document D1 would correspond to the first document referred to in the partial search report annexed to this Invitation (i.e. EP-A-0 942 013).

- 2.5 It would however appear that in the Written Opinion of the International Searching Authority (WOISA) issued on 16 October 2006 by the ISA, reference had been made to the document D1 (EP-A-0 573 862) in support of the objection of lack of unity (cf. Item IV of the WOISA)) made in that written opinion.
- In this connection, the Board observes that document EP-A-0 573862 relates to propylene polymers having a Mw/Mn ratio greater than 20 (cf. Claim 1), while document EP-A-0 942 013, unambiguously refers to propylene polymers with a Mw/Mn in the range of 6 to 20 (cf. Claim 1). Consequently, it can be deduced, in the Board's view, from the submissions made by the Applicant in its letter dated 10 November 2006 (cf. page 2, lines 6 to 11) concerning the upper limit of the Mw/Mn ratio of the propylene polymers disclosed in "D1" (i.e. 20), that the Appellant has from the beginning (i.e. in its letter dated 14 September 2006) considered that "D1" indeed corresponded to the document EP-A-0 942 013.
- 2.7 Independently of the ambiguity concerning the true identity of the document "D1" on which the objection of lack of unity a posteriori raised by the ISA was based, the Board further observes that the propylene polymers according to Claim 1 of the patent in suit are characterized by:

- 17 - W 0001/07

- (a) a Polydispersity Index higher than 15,
- (b) a melt strength higher than 1.50cN at 230°C; and
- (c) a melt flow rate (ISO 1133, 230°C/2.16 Kg) from 0.01 to 20 g/10 min.
- 2.8 Consequently, the question as to whether the common concept defined by the ISA between the three groups of inventions was known from document "D1" boils down to the question as to whether such document "D1" discloses clearly and unambiguously a propylene homopolymer or copolymer exhibiting the combination of the features (a) to (c) mentioned above in paragraph 2.7.
- 2.8.1 In this connection the Board observes that the Polydispersity Index, which is referred to in the application in suit and which is used to characterize the molecular weight distribution of the claimed propylene polymers, is determined by a rheological method as disclosed in the passage from line 27 on page 12 to line 2 on page 13 of the application in suit, while in the document EP-A-0 942 013 (cf. Claim 1) and in the document EP-A-0 573 862 (cf. page 3, lines 1 to 2), the molecular weight distribution is determined by gel permeation chromatography (GPC), so that it is at least questionable whether the values indicated for the polydispersity index in the application in suit can be directly compared with the values of molecular weight distribution Mw/Mn determined by GPC disclosed in the documents EP-A-0 942 013 and EP-A-0 573 862.
- 2.9 It is further observed by the Board that the method for determining the melt strength in the application in suit (cf. page 13, lines 3 to 12) does not correspond either to the method for determining the melt tension

- 18 - W 0001/07

of the propylene polymers in EP-A-0 942 013 (cf. [0023], different diameter of the orifice, different extrusion velocity), or to the method disclosed in EP-A-0 573 862 for determining the melt tension (cf. page 7, lines 39 to 48; different extrusion temperature, different acceleration, specific stretching ratio). Consequently, it is also more than questionable whether it could be clearly and unambiguously derived from the values indicated for the melt tension in Claim 4 of EP-A-0 942 013 and in the Examples 1, 2, 3 and 4 of the document EP-A-0 573 862, that the corresponding propylene polymers would inevitably also exhibit the required melt strength according to Claim 1 of the application in suit and determined according to the specific method defined in the application in suit.

2.10 As stated in the decision G 1/89 (OJ EPO 1991, 155) "the consideration by an ISA of the requirement of unity of invention should, of course, always be made with a view to giving the applicant fair treatment and that the charging of additional fees under Article 17(3)(a) PCT should be made only in clear cases (emphasis by the Board). In particular, in view of the fact that such consideration under the PCT is being made without the applicant having had an opportunity to comment, the ISA should exercise restraint in the assessment of novelty and inventive step and in borderline cases preferably refrain from considering an application as not complying with the requirement of unity of invention on the ground of lack of novelty or inventive step."

- 19 - W 0001/07

- 2.11 In the present case, the Board can only state
 (i) firstly that it is ambiguous in respect of which
 document (i.e. "D1") the objection of lack of unity a
 posteriori has been based,
 - (ii) secondly that the objection of lack of unity a posteriori has been made under the questionable allegation that the propylene polymers disclosed in the considered document "D1" would also fulfil the requirements in terms of the parameters set out in Claim 1 of the application in suit, and
 - (iii) thirdly that the Applicant has had evidently no opportunity to show e.g. by comparative tests, that a distinction did exist with the propylene polymers disclosed in this document "D1" in respect of the parameters used for their definition.
- 2.12 Under these circumstances, it is evident that the "Invitation" of the ISA in respect of the objection of lack of unity a posteriori must be considered as contravening the principles laid down by the Enlarged Board of Appeal in decision G 1/89, namely that the Applicant should be given a fair treatment when considering the requirement of unity of invention and that additional fees should be charged under Article 17(3)(a) PCT only in clear cases.
- 2.13 Since the purpose of the protest procedure under Rule 40.2(c) PCT is to enable the justification for the invitation to pay to be submitted to substantive review, the only issue to be examined therefore is whether, considering the reasons stated by the ISA and the submissions made in support of the protest, the

- 20 - W 0001/07

retention of the additional search fees was justified, and the Board cannot therefore investigate ex officio whether an objection of lack of unity would have been justified for reasons other than those given.

- 2.14 Thus, in view of the above, the Board can only come to the conclusion that the Applicant's protest was entirely justified.
- 2.15 Therefore, pursuant to Rule 40.2(c) and (e) PCT, the two additional search fees and the protest fee must be refunded.

Order

For these reasons it is decided that:

The refund of the two additional search fees and the protest fee is ordered.

The Registrar: The Chairman:

P. Cremona R. Young