Datasheet for the decision of 25 April 2012

Case Number: T 0939/11 - 3.2.05
Application Number: 05724938.5
Publication Number: 1729947
IPC: B29C 47/00
Language of the proceedings: EN
Title of invention: Thermoplastic molding process and apparatus
Applicant: LRM Industries International, Inc.
Opponent: -
Headword: -
Relevant legal provisions: EPC Art. 123(2)
Keyword: "Extension beyond the application as filed - yes"
Decisions cited: -
Catchword: -
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DECISION
of the Technical Board of Appeal 3.2.05
of 25 April 2012

Appellant: LRM Industries International, Inc.
(Applicant)
135 Gus Hipp Boulevard
Rockledge, FL 32955 (US)

Representative: FDST Patentanwälte
Nordostpark 16
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Decision under appeal: Decision of the Examining Division of the European Patent Office posted 2 December 2010 refusing European patent application No. 05724938.5 pursuant to Article 97(2) EPC.

Composition of the Board:
Chairman: M. Poock
Members: H. Schram
M. J. Vogel
Summary of Facts and Submissions

I. The appeal is against the decision of the Examining Division dated 2 December 2010, by which European patent application No. 05 724 938.5 was refused on the grounds that the subject-matter of claims 1 and 18 of the sole request of the appellant (applicant) was not new (Article 54 EPC).

II. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 34 filed on 7 April 2011.

III. In a communication dated 10 February 2012 annexed to the summons to attend oral proceedings the Board expressed its provisional opinion (see point 5.1) that it appeared that the subject-matter of claim 1 of the sole request did not meet the requirements of Article 123(2) EPC.

IV. In reply to the summons the appellant informed the Board on 2 April 2012 that it had decided neither to attend nor to be represented at the oral proceedings.

V. Oral proceedings were held before the Board on 25 April 2012. For the appellant, who had been duly summoned, there was, as announced, no one present.

VI. Claim 1 according to the sole request reads as follows:

"1. A process for preparing a molded thermoplastic article comprising a fibrous material embedded in a thermoplastic resin matrix, controlling the steps of:
a) melt compounding a mixture of a thermoplastic resin, the fibrous material, and any optional additives using a single screw extruder, wherein the lengths of the fibers of the fibrous material before molding are about 0.5-3 inches long, and the fibrous material comprises 5-55% of the total weight of the compounded mixture; the single screw having thread spacing that is larger than the length of the fibers;

b) transferring the resin/fibrous material mixture through a transfer pipe prior to extrusion;

c) extruding the mixture through a sheet extrusion die at a temperature in the range of 300°F-700°F, wherein the extrusion is conducted through a multigated, horizontally mounted sheet extrusion die with independently controlled gates capable of varying the thickness of the mixture extruded through each gate;

d) gravity depositing the extruded mixture into a first half of a horizontally-movable matched mold so as to form a molten net near shaped laydown of the molded thermoplastic article; and

e) compression molding the molten net near shaped laydown with the second half of the matched mold, at pressures in the range of 100-1,000 psi; and wherein

f) the article is prepared with a length in at least the x- and y-planes greater than the lengths of the fibers, to obtain a molded article, wherein the lengths of the fibers of the fibrous material in the molded article are greater than about 60% of their pre-molded lengths, and wherein the mechanical properties of the molded article in the x-, y-, and z-planes are within 20% of each other."
Reasons for the Decision

1. Allowability of the amendments, Article 123(2) EPC

The wording "low shear" in claim 1 as filed (cf step a)) is no longer present in claim 1 of the sole request.

In the communication cited in point III above, the Board stated that a feature can only be omitted from an independent claim, when the skilled person can derive the subject-matter of the amended claim directly and unambiguously, using common general knowledge, from the totality of the application documents as filed.

In the present case step a) of claim 1 of the sole request, viz "melt compounding a mixture of a thermoplastic resin, the fibrous material, and any optional additives ...", is only disclosed for the case that a low shear single screw (extruder) is being used.

Claim 1 of the sole request therefore does not meet the requirements of Article 123(2) EPC.

The appellant has neither disputed this, nor filed amendments but instead informed the Board on 2 April 2012 that a decision based on the current file status was requested.
Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:      The Chairman:

R. Schumacher      M. Poock