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D E C I S I O N
of 22 April 2002

Case Number: T 0106/00 - 3.3.3

Application Number: 94916174.9

Publication Number: 0698056

IPC: C08K 7/14

Language of the proceedings: EN

Title of invention:

Articles from a polyester resin reinforced with glass fibre

Applicant:

SINCO RECERCHE S.p.A.

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 113(2)

EPC R. 51(5)

Keyword:

-

Decisions cited:

-

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0106/00 - 3.3.3

D E C I S I O N
of the Technical Board of Appeal 3.3.3
of 22 April 2002

Appellant: SINCO RECERCHE S.p.A.
Viale Azari 110
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Representative: Gerbino, Angelo
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 20 July 1999
refusing European patent application
No. 94 916 174.9 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: R. Young
Members: C. Idez
J. De Preter

Summary of Facts and Submissions

- I. European patent application No. 94 916 174.9, based on International patent application No. PCT/EP94/01368, filed on 29 April 1994, claiming the priority of the earlier IT patent application No. MI93A000916 of 7 May 1993, was published under No. WO 94/26814 (EP-A-0 698 056) on 24 November 1994.
- II. At the oral proceedings held on 13 November 1998, the Examining Division decided that the main request submitted by the Applicant during the hearing was not allowable due to lack of novelty of independent Claim 4 (product claim). It stated, however, that the auxiliary request, also submitted during the hearing, related to patentable subject-matter. Consequently, the Applicant was told that a communication under Rule 51(4) EPC would be issued on that basis.

Claim 1 of the auxiliary request read as follows:

"Process for the preparation of glass fibre reinforced articles from a polyester resin, by melt mixing and extruding the resin with a polyfunctional compound capable of increasing the intrinsic viscosity of the polymer by addition reaction with the resin end groups and selected from the group consisting of the dianhydrides of the aromatic tetracarboxylic acids and 2, 3, 4, 5-tetracarboxytetrahydrofuran, using residence times lower than 200 s and temperatures of the molten phase lower than 300°C, said process being characterised in that the extrudate of the resin and the polyfunctional compound is melt-mixed with the

glass fibres and the resulting blend is melt-shaped with residence times lower than 120 s and temperatures of the molten phase lower than 300°C, obtaining final articles having intrinsic viscosity higher than 0.6 dl/g."

Dependent Claims 2 to 3 referred to preferred features of the process according to Claim 1.

- III. In its communication under Rule 51(4) EPC of 8 February 1999 the Examining Division informed the Applicant of its intention to grant a patent on the basis of a set of Claims 1 to 3, corresponding, apart from minor editorial amendments, to Claims 1 to 3 of the auxiliary request submitted during the oral proceedings of 13 November 1998.
- IV. In response to the communication under Rule 51(4) EPC the Applicant indicated by its letter of 19 May 1999 that it did not approve the text on which the Examining Division had proposed the grant of the patent.
- V. On 20 July 1999 the Examining Division refused the application in accordance with Article 97(1) and Rule 51(5) EPC on the ground that there was no text to serve as basis for the grant of an European patent (Article 113(2) EPC).
- VI. On 3 September 1999 a Notice of Appeal was lodged by the Appellant (Applicant) against this decision with simultaneous payment of the prescribed fee.
- VII. The Statement of Grounds of Appeal was filed on 8 November 1999. A set of 4 Claims forming a main request and a set of 3 Claims forming an auxiliary

request were annexed to the statement. Claims 1 to 4 of the main request corresponded to those of the main request, which the Examining Division had considered as not allowable at the oral proceedings of 13 November 1998. Claims 1 to 3 of the auxiliary request were the same as those of the auxiliary request submitted at the oral proceedings of 13 November 1998.

VIII. In a communication issued on 15 October 2001, the Board expressed the view that the subject-matter of Claim 4 (ie the product claim) of the main request would appear to lack novelty, and informed the Appellant that the grant of a patent could be envisaged on the basis of Claims 1 to 3 of the auxiliary request.

With letter dated 8 February 2002, the Appellant withdrew its previous main request.

The Appellant requested that the decision under appeal be set aside and a patent be granted on the basis of Claims 1 to 3 of the auxiliary request submitted with the Statement of Grounds of Appeal.

Reasons for the Decision

1. The appeal is admissible.
2. The set of Claims 1 to 3, to which the Appellant has now directed its only request, is the same as that of the auxiliary request submitted at the oral proceedings of 13 November 1998 before the Examining Division.
3. At the oral proceedings of 13 November 1998, the Examining Division has considered that these claims met

the requirements set out for patentability in the EPC and the Board sees no reason to depart from that view.

4. It follows that the request of the Appellant is allowable.

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 Claims 1 to 3 of the auxiliary request submitted with the Statement of Grounds of Appeal, after any necessary consequential amendment of the description.

The Registrar:

The Chairman:

E. Görgmaier

R. Young