

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

D E C I S I O N
of 21 February 2005

Case Number: T 0607/00 - 3.3.9

Application Number: 89113990.9

Publication Number: 0353655

IPC: B32B 27/32

Language of the proceedings: EN

Title of invention:
Resin laminates

Patentee:
IDEMITSU PETROCHEMICAL CO., LTD.

Opponent:
W.R. Grace & Co.-Comm

Headword:
-

Relevant legal provisions:
EPC R. 60(1), 66(1)

Keyword:
"Non-payment of the renewal fees - lapse of the patent -
termination of the appeal proceedings"

Decisions cited:
-

Catchword:
-



Case Number: T 0607/00 - 3.3.9

D E C I S I O N
of the Technical Board of Appeal 3.3.9
of 21 February 2005

Appellant: W.R. Grace & Co.-Conn.
(Opponent) Grace Plaza, 1114 Avenue of the Americas
New York, N.Y. 10036 (US)

Representative: UEXKÜLL & STOLBERG
Patentanwälte
Beselerstrasse 4
D-22607 Hamburg (DE)

Respondent: IDEMITSU PETROCHEMICAL CO., LTD.
(Proprietor of the patent) 6-1, Shiba 5-chome
Minato-ku, Tokyo (JP)

Representative: TER MEER STEINMEISTER & PARTNER GbR
Patentanwälte
Mauerkircherstrasse 45
D-81679 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office orally announced on
18 February 2000 and posted 6 April 2000
rejecting the opposition filed against European
patent No. 0353655 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: P. Kitzmantel
Members: W. P. Ehrenreich
M. B. Günzel

Summary of Facts and Submissions

- I. The Appellant (Opponent) lodged an appeal against the decision of the Opposition Division to reject the opposition against the European Patent 0 353 655.
- II. Oral proceedings were scheduled for 7 March 2005 and provisional comments of the Board were transmitted to the Parties with a communication dated 22 November 2004.
- III. In a letter dated 29 November 2004 the Appellant informed the Board that he had obtained information from all those Patent Offices from which such information was readily available, that the national patents derived from the European patent had lapsed because the renewal fees had not been paid, and that from the Italian Patent Office, however, information about the payment of renewal fees was not readily available.

The Appellant requested that the Patent Proprietor be asked to inform the European Patent Office whether or not the patent in suit had lapsed for all the designated states. Furthermore, the Appellant expressed his intention not to file a request under Rule 60 EPC and agreed to the termination of the present proceedings if it was confirmed that the European Patent had lapsed for all designated states.

- IV. According to the European Patent Register the European Patent has lapsed for BE, CH, LI, DE, FR, GB, NL and SE, i.e. for all Designated Contracting States except for Italy. The Respondent (Patent Proprietor) was asked to

inform the Board whether the renewal fee for Italy had been validly paid.

- V. In response, the Respondent notified the Board that the renewal fee for Italy had not been validly effected and that therefore the European Patent 0 353 655 had lapsed for all Designated Contracting States.

In a further letter dated 7 January 2005 the Appellant confirmed that he did not request the continuation of the proceedings.

- VI. The oral proceedings arranged for 7 March 2005 were cancelled.

Reasons for the Decision

1. According to Rule 60(1) EPC in combination with Rule 66(1) EPC the proceedings have to be closed after lapse of the European Patent for all the Designated Contracting States in the absence of a request for continuation of the proceedings by the Opponent ("special case" of closure of the opposition proceedings, see G 1/90, OJ EPO, 1991, 275, point 7 of the reasons).

2. The lapse of the European Patent for the Designated Contracting States except for Italy is evident from the European Patent Register. Moreover, the Respondent has declared that the renewal fees for Italy had also not validly been effected and that the European Patent has therefore lapsed for all Designated Contracting States.

This statement is not called into question by the Appellant.

Since the Board has no reason to doubt this, there is no legal basis for a continuation of the appeal proceedings.

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairman

G. Röhn

P. Kitzmantel