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D E C I S I O N
of 4 April 2006

Case Number: T 0138/05 - 3.2.05

Application Number: 00961574.1

Publication Number: WO 01/19588 A1

IPC: B29C 45/00

Language of the proceedings: EN

Title of invention:
Resin pellets for injection molding

Applicant:
GENERAL ELECTRIC COMPANY

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 84

Keyword:

"Lack of clarity and lack of support by the description (yes)"

Decisions cited:

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Catchword:

-



Case Number: T 0138/05 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 4 April 2006

Appellant:
(Applicant)

GENERAL ELECTRIC COMPANY
1 River Road
Schenectady, NY 12345 (US)

Representative:

Szary, Anne Catherine
London Patent Operation
General Electric International, Inc.
15 John Adam Street
London WC2N 6LU (GB)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 3 September 2004
refusing European application No. 00961574.1
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. Moser
Members: W. Widmeier
W. Zellhuber

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal against the decision of the Examining Division refusing European patent application 00961574.1.

The Examining Division held in its decision that the application did not meet the requirements of Articles 83 EPC and 54 EPC.

II. Oral proceedings before the Board of Appeal were held on 4 April 2006.

III. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the following documents filed on 13 January 2005:

- (a) claims 1 to 6 as main request; or
- (b) claims 1 to 6 as auxiliary request.

IV. Claim 1 according to the main request reads as follows:

"1. A method for reducing plasticizing time and reducing the variability of said plasticizing time in an injection molding machine which comprises feeding pellets into said molding machine wherein said pellets have an average height to width ratio of greater than 0.82 and less than 1;

wherein the term "height" refers to the smallest diameter of a roughly cylindrical shaped pellet, and the term "width" refers to the widest diameter of a roughly cylindrical shaped pellet; and

wherein said pellets have been formed using an extrusion die pelletizing machine having a die and a

rotating cutting wheel and, optionally, a water bath for receiving the formed cut pellets by adjusting the shape of the die aperture, adjusting the speed of the cutting wheel and, optionally, adjusting the temperature of the water bath."

Claim 1 according to the auxiliary request reads as follows:

"1. The use of pellets to reduce cycle time in an injection molding machine by reducing the plasticizing time and reducing the variability of said plasticizing time, comprising feeding the pellets into said molding machine, wherein said pellets have an average height to width ratio of greater than 0.82 and less than 1."

V. The appellant argued essentially as follows:

The term "average" in claim 1 according to the main and claim 1 according to the auxiliary request is to be understood in its normal mathematical sense and is therefore clear. Support for the definition "wherein said pellets have an average height to width ratio of greater than 0.82 and less 1" is given in the description on page 2, lines 15 to 17, page 5, lines 16 to 20, and on page 8, Table I. Thus, the subject-matter of claim 1 of both the main and auxiliary request meets the requirements of Article 84 EPC.

Reasons for the Decision

1. Claim 1 of the main request and claim 1 of the auxiliary request comprise the feature "said pellets

have an average height to width ratio of greater than 0.82 and less than 1". The use of the term "average" in combination with a range is confusing. If the pellets of a plurality of pellets differ in their height to width ratio, then there exists a single average height to width ratio which is the sum of all height to width ratios of the plurality of pellets divided by the number of pellets comprised in this plurality. Although, the average of this ratio of the pellets may be within this range, there may be pellets with a height to width ratio smaller than 0.82 which, according to the description, are to be avoided. Indeed, the description teaches the use of pellets having a height to width ratio between 0.82 and 1, rather than of an average ratio within these limits (cf. page 3, lines 1 to 4, page 5, lines 1 to 4, and page 6, lines 12 to 14, of the PCT publication WO 01/19588).

The passage on page 2, lines 15 to 17, of the description, where "an average height to width ratio of 0.81 or less" is mentioned, cannot be considered to be a support for claim 1 within the meaning of Article 84 EPC because, firstly, it refers to prior art rather than to the subject-matter claimed in claim 1 and, secondly, the indicated ratio is different from the claimed ratio.

The passage on page 5, lines 16 to 20, of the description does not comprise the term "average". It states that the height to width ratio of a pellet is adjusted to a value greater than 0.82.

Table I on page 8 of the description lists the lengths, heights and widths and the corresponding height to

width ratio of three different pellets, two of which (OQ1, OQ2) not being pellets according to the invention (cf. page 8, lines 4 and 5). Table I does not refer to average values.

Thus, in the absence of a clear definition of the pellets to be used in the methods of claim 1 of the main and of the auxiliary request and in the absence of a support by the description within the meaning of Article 84 EPC for the feature "said pellets have an average height to width ratio greater than 0.82 and less than 1", these claims may not be considered to meet the requirements of Article 84 EPC.

2. This lack of clarity was already mentioned in the communication of the Board accompanying the summons for oral proceedings. In this communication, the appellant was given a time limit of one month before said oral proceedings for filing further submissions. The appellant did not file any comments or requests within this time limit. A further auxiliary request relating to this clarity issue, as proposed by the appellant only during oral proceedings, had therefore to be rejected as late filed under Rule 71a EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Dainese

W. Moser