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**Datasheet for the decision
of 31 March 2008**

Case Number: T 0632/05 - 3.3.09

Application Number: 97927479.2

Publication Number: 0907504

IPC: B32B 5/12

Language of the proceedings: EN

Title of invention:
Antiballistic shaped part

Patentee:
DSM IP Assets B.V.

Opponent:
Honeywell International, Inc.

Headword:
-

Relevant legal provisions:
EPC Art. 54, 111(1)
EPC R. 84

Relevant legal provisions (EPC 1973):
-

Keyword:
"Novelty (yes - after amendment)"
"Remittal for further prosecution"

Decisions cited:
-

Catchword:
-



Case Number: T 0632/05 - 3.3.09

D E C I S I O N
of the Technical Board of Appeal 3.3.09
of 31 March 2008

Appellant: DSM IP Assets B.V.
(Patent Proprietor) Het Overloon 1
NL-6411 TE Heerlen (NL)

Representative: den Hartog, Jeroen H.J.
DSM Intellectual Property
Office Geleen
P.O. Box 9
NL-6160 MA Geleen (NL)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 15 March 2005
revoking European patent No. 0907504 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: P. Kitzmantel
Members: J. Jardón Álvarez
W. Sekretaruk

Summary of Facts and Submissions

I. The grant of European patent No. 0 907 504 in respect of European patent application No. 97927479.2 in the name of DSM N.V. (now DSM IP Assets B.V.) which had been filed on 23 June 1997 as International application PCT/NL97/00349 (WO - 97/49546), was announced on 4 December 2002 (Bulletin 2002/49) on the basis of 14 claims. Claim 1 read as follows:

"1. Antiballistic shaped part comprising a stack of composite layers which are not linked to one another, each composite layer comprising two or more monolayers of unidirectionally oriented fibres in a matrix, the fibres in each monolayer being at an angle to the fibres in an adjoining monolayer, the fibres are aramid fibres or poly(p-phenylenebenzobisoxazole) fibres, the composite layer contains at most 10% by weight of an elastomeric matrix material (calculated on the basis of the total weight of the composite layer), the fibre content in each monolayer is between 10 and 150 g/m², **characterized in that** the composite layer has a total weight of at most 500 g/m²."

II. A Notice of Opposition was filed against the patent by Honeywell International Inc. on 19 August 2003. The Opponent requested the revocation of the patent in its full scope based on Article 100(a) EPC, due to lack of novelty and inventive step.

During the opposition proceedings, the Opponent relied, *inter alia*, on:

D1: US - 5 198 280;

D3: WO - A - 89/01125; and

D10: English translation of JP - A -08-094294.

- III. By its decision announced orally on 23 February 2005 and issued in writing on 15 March 2005, the Opposition Division revoked the patent.

The Opposition Division acknowledged in its decision the novelty of the subject-matter of Claim 1 over the disclosures of D1 and D3 but denied the novelty of the subject-matter of Claim 1 of the granted patent over the disclosure of D10.

The Opposition Division held that during the manufacturing of the final product of example 4 of D10 a loose stack of composite layers was formed as an intermediate product. This intermediate product which is implicitly disclosed in example 4 of D10 was embraced by the wording of Claim 1 of the patent, which was therefore not novel.

- IV. On 13 May 2005 the Patent Proprietor (Appellant) lodged an appeal against the decision of the Opposition Division and paid the appeal fee on the same day.

In the Statement of Grounds of Appeal filed on 12 July 2005, the Appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or alternatively on the basis of amended claims as specified in the auxiliary requests 1 or 2 filed with the Statement of Grounds of Appeal.

- V. By letter dated 18 July 2005, the Opponent withdrew its opposition and therefore ceased to be a party to the appeal proceedings as far as the substantive issues were concerned.
- VI. On 17 January 2008 the Board dispatched a summons to attend oral proceedings on 4 April 2008.
- VII. In a communication of the Board in preparation for oral proceedings dated 15 February 2008, the Board expressed its preliminary opinion on the case. It indicated that the subject-matter of Claim 1 of the main request and also of auxiliary request 1 was not novel. The Board acknowledged the novelty of the subject-matter of Claim 1 of auxiliary request 2 and expressed its intention to remit the case to the department of first instance to deal with the issue of inventive step.
- VIII. By letter dated 3 March 2008, the Appellant withdrew its previous main and first auxiliary requests and filed a new main request comprising the claims of the previous auxiliary request 2 extended by an additional use claim. The Appellant also maintained its previous auxiliary request 2, now renumbered as "new first auxiliary request".
- IX. In a further Communication of the Board dated 10 March 2008, the Board expressed its doubts about the novelty of Claim 14 of the new main request.
- X. On 25 March 2008 the Appellant withdrew its previous main request filed on 3 March 2008 and maintained as

its sole request the set of claims called "new first auxiliary request" as filed on 3 March 2008.

Claim 1 of the request read as follows:

"1. Antiballistic shaped part comprising a stack of composite layers which are not linked to one another, each composite layer comprising two or more monolayers of unidirectionally oriented fibres in a matrix, the fibres in each monolayer being at an angle to the fibres in an adjoining monolayer, wherein the fibres are aramid fibres or poly(p-phenylenebenzobisoxazole) fibres, the fibre content in each monolayer is between 10 and 150 g/m², the composite layer contains at most 10% by weight of an elastomeric matrix material (calculated on the basis of the total weight of the composite layer), the composite layer has a total weight of at most 500 g/m², and wherein a separating layer is disposed on one or both sides of each composite layer."

XI. On 25 March 2008 the Board cancelled the oral proceedings appointed for 4 April 2008.

XII. The arguments presented by the Appellant in its written submissions insofar as they are relevant for the present decision may be summarized as follows:

- The subject-matter of amended Claim 1 of the sole request was novel over the disclosure of D10 because in D10 no reference was made to an antiballistic shaped part wherein a separating layer was disposed on one or both sides of each composite layer. The Appellant further pointed out that novelty over the

other cited documents had already being acknowledged for the claim without the separating layer as a further feature.

XIII. The **Appellant** requested:

- that the decision under appeal be set aside,
- that the Board acknowledges novelty of the first auxiliary request filed with letter dated 3 March 2008, and
- that the case be remitted to the Opposition Division for further prosecution regarding inventive step.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments (Article 123(EPC))*
 - 2.1 The subject-matter of the claims meets the requirements of Articles 123(2) and (3) EPC.
 - 2.2 Amended Claim 1 is based on granted Claim 1 and further includes the feature that "a separate layer is disposed on one or both sides of each composite layer". A basis for this amendment is found on page 5, lines 13 - 14 of the application as originally filed.

Claims 9 to 14 were renumbered as Claims 8 to 13 and in Claim 8 the redundant features already present in Claim 1 were deleted.

Therefore the amendments do not introduce subject-matter which goes beyond the content of the application as originally filed (Article 123(2) EPC).

2.3 Amended Claim 1 is a combination of granted Claims 1 and 8 and therefore clearly limited over the granted claims (Article 123(3) EPC). The same applies to independent Claims 8, 10 and 12, whose definitions are directly or indirectly specified by reference to Claim 1.

3. *Novelty (Article 54 EPC)*

3.1 Claim 1 is now limited to an antiballistic shaped part comprising a stack of composite layers which are not linked to one another and further including a separating layer which is placed between the composite layers (Claim 1, last two lines). Such separating layer, which ensures that the composite layers in the shaped part remain separate from one another, is not disclosed in D10. Consequently document D10 is not novelty destroying for the subject-matter of amended Claim 1.

3.2 The Opposition Division revoked the patent because of lack of novelty of the subject-matter of the then pending Claim 1 having regard to the disclosure of example 4 of D10. The objections of the Opposition Division no longer apply to the amended claims because no separating layer is used in example 4 of D10.

3.3 The Opposition Division acknowledged the novelty of the subject-matter of granted Claim 1 over the disclosure of D1 and D3 (see points III.1 and III.2 of the

decision). The reasons given by the Opposition Division also apply to the subject-matter of amended Claim 1.

3.4 In view of the above findings, the Board concludes that the subject-matter of Claim 1 is novel over the cited prior art. The same conclusion applies to the subject-matter of the further independent Claims 8, 10 and 12.

4. *Remittal (Article 111 EPC)*

4.1 The Opposition Division decided that the subject-matter of Claim 1 of the then pending request was not patentable on the grounds of lack of novelty. The decision under appeal does not deal with the issue of inventive step (Article 56 EPC). The issue of inventive step was a ground for opposition from the beginning of the proceedings.

4.2 Although the opposition has been withdrawn at the appeal stage, it is considered necessary to continue the opposition proceedings in order to assess the relevance of the evidence with regard to the issue of inventive step (Rule 84(2) EPC). Since this issue has not yet been examined by the Opposition Division, the case will be remitted for this purpose (Article 111(1) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the Opposition Division for further prosecution on the basis of the set of Claims 1 to 13 filed on 3 March 2008 as "new first auxiliary request".

The Registrar:

The Chairman:

D. Sauter

P. Kitzmantel