Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [X] To Chairmen
(D) [ ] No distribution

Datasheet for the decision of 23 October 2009

Case Number: T 0288/06 - 3.3.05

Application Number: 98911011.9

Publication Number: 1022261

IPC: C03C 27/12

Language of the proceedings: EN

Title of invention:
Interlayer for laminated glass and laminated glass

Patentee:
SEKISUI CHEMICAL CO., LTD.

Opponent:
Kuraray Europe GmbH

Headword:
Interlayer film/SEKISUI CHEMICAL CO LTD

Relevant legal provisions (EPC 1973):
EPC Art. 83, 100b

Keyword:
"Sufficiency of disclosure - no: Unusual measurement method for essential claim parameter not sufficiently disclosed "

Decisions cited:
T 0960/98

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0288/06 - 3.3.05

D E C I S I O N
of the Technical Board of Appeal 3.3.05
of 23 October 2009

Appellant: (Opponent)
Kuraray Europe GmbH
Mülheimer Strasse 26
D-53840 Troisdorf (DE)

Representative:
Kisters, Michael Marcus
Kuraray Europe GmbH
Patents and Trademarks
Mülheimer Strasse 26
D-53840 Troisdorf (DE)

Respondent: (Patent Proprietor)
SEKISUI CHEMICAL CO., LTD.
4-4, Nishitenma 2-chome
Kita-ku
Osaka-shi
Osaka 530-8565 (JP)

Representative:
Lederer, Franz
Lederer & Keller
Patentanwälte
Prinzregentenstrasse 16
D-80538 München (DE)

Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 27 December 2005 rejecting the opposition filed against European patent No. 1022261 pursuant to Article 102(2) EPC 1973.

Composition of the Board:

Chairman: G. Raths
Members: H. Engl
S. Hoffmann

Summary of Facts and Submissions

I. The appeal lies against the decision of the opposition division to reject the opposition against European patent EP-B-1 022 261.

The opposition division held that the reasoning submitted by the opponent on the grounds of insufficiency of disclosure, lack of novelty and lack of inventive step, did not prejudice the maintenance of the patent as granted, having regard in particular to the documents

E2: EP-A-0 373 139
E3: DE-A-28 38 025
E6: US-A-5 349 014
E8: JP-A-04 055 404 and
E8a: German translation thereof.

II. The appeal of the opponent (henceforth: the appellant) was filed with letter dated 1 March 2006; the grounds of appeal were submitted with letter dated 2 May 2006 and were accompanied by

Enclosure I: Information regarding internet domain www.tokyodenshoku.com
Enclosure II: ASTM D1003
Enclosure III: Time-dependent haze measurements on five commercial PVB films
Enclosure IV: Time-dependent haze measurements on four PVB films prepared according to example 51 of E3

A further submission of the appellant was received with a letter dated 4 June 2007.

III. The patentee's (respondent's) reply was received with letter dated 17 January 2007. It was accompanied by three sets of amended claims as a first, second and third auxiliary request, respectively, and *inter alia* by the documents

P1 - P3: Documents concerning an internet search carried out on "Tokyo Denshoku"
P4: Declaration by Mr Y. Tasaki

The respondent's main request was directed at the claims as granted, or in other words, to reject the appeal.

Further submissions of the respondent filed with a letter dated 11 April 2008 included new experimental data concerning example 51 of E3 and the documents:

P9: US-A-5 425 977;
P10: Document concerning the compound 3GH; and
P11: Document concerning DHA plasticizer.

Still further submissions of the respondent were dated 17 September 2009 and 19 October 2009, the latter including

P12: Declaration by S. Shirama, President of Tokyo Denshoku Co. Ltd., dated 19 Sept 2009

IV. The independent claims 1 and 24 of the patent **as granted** read:

"1. An interlayer film for laminated glass consisting essentially of plasticized poly(vinylacetal) resin and having the haze of not more than 50%, as measured by using an integrating turbidimeter manufactured by Tokyo Denshoku, when said interlayer film with a thickness of 0.3 to 0.8 mm is cut to 4 x 4 cm and immersed in deionized water at 23°C for 24 hours."

"24. A laminated glass comprising at least one pair of glass sheets and, as interposed therebetween, the interlayer film according to any one of claims 1 to 23."

The independent claims 1 and 23 in accordance with the **first auxiliary request** read:

"1. An interlayer film for laminated glass consisting essentially of plasticized poly(vinylacetal) resin and **a bond strength control agent being selected from the group consisting of alkali metal salts and alkaline earth metal salts of organic acids, said film** having the haze of not more than 50%, as measured by using an integrating turbidimeter manufactured by Tokyo Denshoku, when said interlayer film with a thickness of 0.3 to 0.8 mm is cut to 4 x 4 cm and immersed in deionized water at 23°C for 24 hours."

"23. A laminated glass comprising at least one pair of glass sheets and, as interposed therebetween, the interlayer film according to any one of claims 1 to **22**."

The independent claims 1 and 24 in accordance with the **second auxiliary request** read:

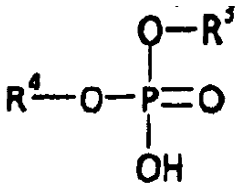
"1. An interlayer film for laminated glass consisting essentially of plasticized poly(vinylacetal) resin and having the haze of not more than 50%, as measured by using an integrating turbidimeter manufactured by Tokyo Denshoku, when said interlayer film with a thickness of 0.3 to 0.8 mm is cut to 4 x 4 cm and immersed in deionized water at 23°C for 24 hours, **wherein the particle diameter of a sodium salt in the interlayer film is not more than 5 µm and the particle diameter of a potassium salt in the interlayer film is not more than 5 µm.**"

"24. A laminated glass comprising at least one pair of glass sheets and, as interposed therebetween, the interlayer film according to any one of claims 1 to 23."

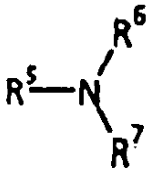
Independent claims 1 and 23 in accordance with the **third auxiliary request** read:

"1. An interlayer film for laminated glass consisting essentially of plasticized poly(vinylacetal) resin and having the haze of not more than 50%, as measured by using an integrating turbidimeter manufactured by Tokyo Denshoku, when said interlayer film with a thickness of 0.3 to 0.8 mm is cut to 4 x 4 cm and immersed in deionized water at 23°C for 24 hours, **said film further comprising at least one member selected from the group consisting of a sulfonic acid containing 2 to 21 carbon atoms, a carboxylic acid containing 2 to 20 carbon**

atoms, a phosphoric acid of the general formula (II) below, and an amine of the general formula (III) below:



(II)



(III)

wherein R^3 represents an aliphatic hydrocarbon group containing 1 to 18 carbon atoms or an aromatic hydrocarbon group containing 1 to 18 carbon atoms, R^4 represents a hydrogen atom, an aliphatic hydrocarbon group containing 1 to 18 carbon atoms or an aromatic hydrocarbon group containing 1 to 18 carbon atoms; and R^5, R^6 and R^7 may [sic] the same or different and each represents a hydrogen atom, an aliphatic hydrocarbon group containing 1 to 20 carbon atoms or an aromatic hydrocarbon group containing 1 to 20 carbon atoms."

"23. A laminated glass comprising at least one pair of glass sheets and, as interposed therebetween, the interlayer film according to any one of claims 1 to **22**."

Changes with respect to the claims as granted appear in **bold**.

V. Oral proceedings were held on 23 October 2009.

VI. The arguments of the appellant, insofar as they are relevant for the present decision, may be summarized as follows:

i *Sufficiency of disclosure (Article 100(b) EPC)*

The haze value of the interlayer film constituted a decisive feature of the claimed subject matter. For determining said haze value, the patent disclosed only the manufacturer of the instrument, namely Tokyo Denshoku. This was insufficient information, for it proved impossible or at least an undue burden to find and contact this company.

The patent also did not state the measurement conditions for measuring the haze value. American standard ASTM D1003 was not applicable for measuring haze on humid films. Even when applying said standard, the scope of protection of the claims could not be determined with any accuracy. The measured haze value of the interlayer films varied strongly with time, as demonstrated in Enclosures III and IV, to the effect that a particular sample could fall either within the scope of the claim or outside, only depending on the moment of time the haze measurement was carried out. The patent was also silent on sample preparation. A wet sample could not be mounted in a photometric instrument such as a haze meter.

The patent also did not disclose a concrete technical teaching as to how a film having the desired functional feature (*i.e.* the desired haze value) could be obtained. The main claims thus were mere *desideratum* claims.

ii *Novelty*

As shown in the experimental report Enclosure IV, two films prepared in accordance with example 51 of document E3 and plasticized with N.N-dihexyl-adipate (DHA) exhibited an initial haze value of less than 50%. Samples containing a different plasticizer (FLEXOL) exhibited a time - dependent haze value which after 5 or 6 minutes also fell within the claimed range. Therefore, E3 was novelty destroying for the claimed subject matter.

VII. The arguments of the respondent, insofar as they are relevant for the present decision, may be summarized as follows:

i *Article 100(b) EPC*

The opposed patent contained 99 examples demonstrating and explaining the options for preparing the claimed interlayer film. Therefore, there could be no doubt that the disclosure was enabling.

The question of measuring the haze value - as raised by the appellant - was at best a matter of clarity. The manufacturer of the turbidimeters, Tokyo Denshoku, was a company well known in its business field. The appellant had not been able to show that the measurement apparatuses made by Tokyo Denshoku were not suitable for haze measurements. The reliability of the apparatus was testified by the manufacturer (P4).

Regarding the time dependence of the haze values, the respondent argued during oral proceedings that it was

evident for a skilled person to measure the sample film immediately after taking it out of the water and quickly blotting it dry. There was no reason for delay. The actual measurement was a matter of a few seconds. The respondent itself had never observed a time dependency of the haze values. Samples measured within 30 to 60 seconds exhibited no decrease of the measured haze value.

ii *Novelty*

The experiments carried out by the appellant on example 51 of E3 were not suitable to prove a lack of novelty, because the opponent applied assumptions which had no basis in E3. The respondent had in turn repeated example 51 of E3 using 3GH and DHA as plasticizers and consistently obtained haze values as high as 92.5%, far outside the claimed range. Since E3 did not disclose all essential features of the preparation of the films, a different product may be obtained. Therefore, E3 was not novelty destroying for the claimed interlayer film.

VIII. ***Requests***

The appellant requests that the decision under appeal be set aside and that the patent be revoked.

The respondent requests that the appeal be dismissed or in the alternative, that the decision under appeal be set aside and the patent be maintained on the basis of one of the sets of claims filed as a first to third auxiliary request with letter dated 17 January 2007.

Reasons for the Decision

1. Amendments

1.1 Claim 1 in accordance with the first auxiliary request is based on original claim 1 and the description, page 22, line 29 to page 23, line 4 as originally filed.

Claim 1 in accordance with the second auxiliary request is based on claims 1, 2 and 3 as filed.

Claim 1 in accordance with the third auxiliary request is based on claim 1 and the description (page 17, lines 15 to 27 and page 20, lines 16 to 26) as filed.

All other amendments to the claims are merely editorial in nature.

1.2 The scope of protection afforded by the new claims has not been extended beyond the one afforded by the claims as granted.

1.3 The requirements of Article 123(2) and (3) EPC are therefore met.

2. Sufficiency of disclosure (all requests)

2.1 According to Article 83 EPC (in combination with Article 100(b) EPC), the European patent application and the European patent must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

2.2 The opposed patent aims at overcoming the problem of blushing of the peripheral region of an interlayer film for laminated glass when placed in a high-humidity atmosphere, while maintaining transparency, weather resistance, adhesion and penetration resistance properties (*cf*. paragraph [0028] of the opposed patent). The means provided to achieve this aim are indicated in claim 1 which is directed to an interlayer film whereby the essential feature of the claim consists in the PVB film exhibiting **a haze of not more than 50%, as measured by using an integrating turbidimeter manufactured by Tokyo Denshoku**, when said interlayer film with a thickness of 0.3 to 0.8 mm is cut to 4 x 4 cm and immersed in de-ionized water at 23°C for 24 hours.

2.3 *Ambit of claim 1*

According to the opposed patent, the measurement of the haze of the interlayer film is to be carried out on an integrating turbidimeter manufactured by Tokyo Denshoku (see description, paragraph [0031], and claim 1).

Haze measurements of transparent materials may be carried out according to Japanese standard JIS-K 6714 or American standard ASTM D1003 (Enclosure II). ASTM standard D1003-61 (re-approved 1977) and a HunterLab haze meter are for instance employed for the haze measurements in document E2 (page 7, lines 3 and 4). The measuring principle of ASTM D1003 appears to be very similar to the JIS standard (*cf*. the figures in document A and in Enclosure II, page 3). It is noted that documents A and B, relating to a Tokyo Denshoku

instrument of the type TC-HIIIDPK and working according to JIS, also cite ASTM D1003.

The appellant argued that Tokyo Denshoku at present sell as many as seven different haze meters working according to different JIS and ASTM standards. However, declaration P12 asserts that all of said instruments will give the same value. Therefore, the board does not accept the appellant's argument concerning the multitude of haze meters sold by Tokyo Denshoku.

However, the respondent conceded during oral proceedings that haze data obtained on instruments working in accordance with an accepted technical standard, such as ASTM D1003, yield results comparable to the Tokyo Denshoku instruments. The appellant used a HunterLab Colorquest XE instrument in the experiments submitted as Enclosures III and IV. The board therefore concludes that for the purpose of claim construction and for a comparison with the prior art, the claims are not limited to the use of Tokyo Denshoku haze meters.

2.4 *Information gaps*

2.4.1 Measurement method

The skilled person, trying to rework the patent in suit and to benefit from its promises and to evaluate whether he achieved success or failure, can only rely on the information regarding the haze measurement provided in the patent in suit. Hence, this measuring method is an indispensable requirement for ascertaining whether or not a poly (vinylacetal) film exhibits the desired low level of blushing. Whether the haze

measurement method disclosed in the opposed patent was reliable or not was under dispute.

The appellant drew attention to point 1.1 of ASTM D1003 stating that a *"material having a haze value greater than 30% is considered diffuse and should be tested in accordance with practice E 167."* Said practice E 167 relates to "Goniophotometry of Objects and Materials" (see footnote page 1), hence to a different measurement protocol. It follows that the claimed haze values of up to 50% cannot be determined in accordance with said ASTM standard, or at least not with the accuracy afforded by measurements within this standard. Insofar as JIS-K 6714 is similar, the same limitation applies. Although the respondent contested this, it did not submit convincing arguments or evidence showing the applicability of ASTM D1003 beyond 30% haze.

The board cannot therefore accept that there exists a generally accepted technical standard, such as ASTM D1003, for measuring films having a haze value of up to 50% which the skilled person could resort to in order to fill any gaps of information in the opposed patent.

2.4.2 Haze value affected by the point of time of measuring

As will be shown below, the measurement method of the patent in suit is not sufficiently disclosed in all details which critically influence the measured haze value.

(i) Tests presented in Enclosure III

The appellant's main objection concerns the fact that

the haze value measured on the water-soaked interlayer film is strongly time-dependent, an effect presumably due to the drying up of the wet film. As shown in Enclosure III for samples of commercial PVB films, the haze values of the immersed films (measured on a HunterLab Colorquest XE turbidimeter) decreased rapidly in particular within the first minutes after the sample was removed from the water (from approx. 93% to approx. 74% haze; from approx. 76% to approx. 44% haze; all measurements within 10 minutes; see Enclosure III).

The appellant also submitted tests repeating the preparation of PVB films prepared in accordance with document E3 (Enclosure IV).

(ii) Prior art document E3

Document E3 discloses a process for the production of poly(vinylbutyral) (PVB), a resin used for the interlayer films in laminated windshields for automotive purposes aiming at achieving a good balance of resin properties including creep and flow under compression, impact resistance, adherence to the glass surface, transparency and haze, and humidity resistance (see page 5, first paragraph). The preparation process involves hydrochloric acid - catalysed reaction of an emulsion of poly (vinyl alcohol) with butyraldehyd, precipitation and neutralisation of the reaction product with NaOH, repeated washing with water, filtering and drying (examples 1 and 51). According to page 9, third paragraph, at least two washings of the precipitate are necessary for a product with acceptable turbidity. No further improvement was observed, however, after more than three washings.

In accordance with example 51 (pages 23 and 24), the white PVB resin powder so obtained is plasticized with either triethylene glycol-di(2-ethyl butyrate) (3GH) (a plasticizer also used in the opposed patent) or with N,N-dihexyl adipate (DHA) and processed into the desired PVB films. These films passed a humidity resistance test after boiling the film samples laminated between glass sheets for 2 hours in water and optically inspecting the border areas for whitening and bubbles (page 12, last two paragraphs).

(iii) Evidence prepared according to example 51 of E3 (Enclosure IV)

Samples designated as K3749 and K3750 (plasticized with N,N-dihexyl adipate (DHA)) prepared by the appellant in accordance with example 51 of E3 exhibited a haze value of less than 50% when measured one minute after the end of the immersion in water. PVB films plasticized with triethylene glycol-di(2-ethyl butyrate) (FLEXOL) (3GH) (designated as samples K3751 and K3752) initially (after 1 minute) exhibited a haze value of more than 50%, namely approximately 54% and 62%, respectively, but also fell below the claim threshold of 50% haze when measured after 3 and 7 minutes, respectively (haze values of 49% and 48%, respectively). All measured haze values continued decreasing, albeit at a slower rate, even after the initial fast decrease.

(iv) Missing instructions in the opposed patent

The conclusion is as follows: A particular PVB film (such as sample K3751 or K3752) falls outside the scope

of the claims when measured after for instance up to 3 or 7 minutes, respectively, but may exhibit a haze value of less than 50% and thus fall within the scope of the claims of the opposed patent when measured after said 3 or 7 minutes. Clear instructions in the opposed patent in this regard are missing.

The board is aware of the fact that the appellant's results were obtained using a HunterLab Colorquest XE haze meter whereas the opposed patent prescribes an instrument made by Tokyo Denshoku. However, for the reasons given under 2.4.1 above, this circumstance cannot explain the observed time - dependence which must be attributed to the sample itself.

(v) The respondent's practice

The respondent did not in principle dispute the correctness of the appellant's measurements submitted as Enclosures III and IV. It argued, however, that such a time - dependent decrease of the measured haze values had never been observed by the inventors. It was pointed out during oral proceedings that haze data obtained at 30 to 60 seconds exhibited no noticeable variation or decrease.

This argument is in the board's view not pertinent, as the respondent had admittedly never carried out haze measurements at a point of time more than about one minute after the end of the sample's immersion in water. The respondent's observation is therefore not suitable to invalidate the results obtained by the appellant over a longer period of time, because the patent does not state at which moment the measurement

should be performed, and in particular not within 30 to 60 seconds.

2.4.3 Relevance of the film type on which the haze was measured

The board is also aware that the appellant's haze measurements were carried out on prior art PVB films, not on films prepared in accordance with one of the examples of the opposed patent. This is not decisive as regards the question of sufficiency of disclosure, however, for the following reasons. Firstly, the appellant's objection concerns insufficient disclosure of the **method of measuring** the haze value, as disclosed in the patent, not of **preparing** the interlayer films itself. Secondly, the only claim feature potentially distinguishing the poly (vinylacetal) films of claim 1 of the opposed patent from those disclosed in E3 resides in the claimed haze value.

It is also worth noting that the respondent and the appellant submitted haze measurements carried out on samples allegedly both prepared in accordance with example 51 of E3. The results differ by a factor of approximately 2. Two samples prepared by the appellant had an initial haze of less than 50%, another two samples a haze of less than 50% after 3 and 7 minutes, respectively; see Enclosure IV. In contrast, all four samples prepared by the respondent initially exhibited 92.5% haze; see letter dated 11 April 2008, pages 6 and 7. The only discernable difference between these tests is that the appellant's samples were measured on a HunterLab Colorquest XE haze meter whereas the respondent used a Tokyo Denshoku instrument. As said

before, this circumstance cannot explain the observed discrepancies which, therefore, must again be largely attributed to the ill-defined haze measurement method.

However, in view of these diverging results falling inside and outside the scope of the claims, the skilled person is unable to decide whether or not he followed the measurement method according to the patent in suit correctly. As a consequence, he is unable to decide whether or not a film exhibits the desired blushing resistance. It follows that the skilled person is not able to find, without undue burden, the interlayer films according to claim 1 over the whole area claimed.

2.4.4 Haze measurement affected by sample preparation

(i) Use conditions vs. test conditions

According to yet another argument of the respondent the aim of the opposed patent was to find films showing no blushing in the wet state and that, therefore, it was obvious to measure the film's haze immediately after immersion when the sample was still moisturized. This argument is not persuasive, either, because the PVB film is not laminated with the glass in a fully moisturized state. There is no reason to determine the film's haze value in a condition different from the one in which it will be used.

(ii) Non - standard procedure

The respondent argued that a person skilled in the art would carry out the measurements immediately after it has been taken out of the water and rinsed. It did not

generally take more than a couple of minutes to prepare the sample for measurement (as demonstrated in Enclosures III and IV filed by the appellant). In the respondent's view, it was unrealistic to assume that someone skilled in the art would deliberately defer the haze measurement of the wet sample until it has partially dried up. The measurement itself was a matter of seconds.

The argument is not convincing either, because the wet film evidently cannot be brought into the haze meter without previous proper sample preparation. It is thus not decisive how fast the measurement is, but how long sample preparation takes. This includes at least the removal of water droplets on the film surfaces which may according to the respondent be done by blotting the sample film dry with filter paper. Again, these details are not disclosed in the patent itself and other ways of sample preparation can at least be envisaged.

The appellant referred during oral proceedings to a "high - humidity test" practice for determining *"edge blushing" ("Randaufweissen"*) of laminated glass for automotive and architectural applications. According to a European directive ECE 340 governing the quality requirements of automotive windscreens, said test involved exposing the laminated glass sample for 2 weeks at 50°C and 95% RH and required a 2 hours equilibrating time before evaluating edge blushing. Having this practice in mind, the skilled person would in the appellant's view consider applying a similar equilibrating period before the haze measurements. The appellant furthermore referred to ASTM D1003 (page 2, point 6.1) (Enclosure II) stipulating that test

specimens should be conditioned for not less than 40 hours prior to measurement, unless otherwise required in the appropriate material specification or agreed between customer / supplier. To the board, these practices indicate that there might be good reason for deliberately postponing the haze measurement. The respondent did not submit convincing counter arguments.

The immersion of the poly (vinylacetal) film itself (as opposed to a laminated structure consisting of glass / film / glass, as used in the prior art tests for blushing) in water for 24 hours is a test procedure unusual in the art. In the board's opinion, the above arguments clearly indicate that no universally accepted procedure of sample preparation for this test procedure exists, let alone a procedure requiring the skilled person to perform the haze measurements within 30 to 60 seconds after the end of the immersion period.

Under these circumstances, it is entirely dependent on the skill, individual working method and laboratory practice of the person(s) performing the measurements when and in which condition the interlayer film sample is inserted into the haze meter and the actual haze measurement performed. The resulting haze value will inevitably vary accordingly and substantially so, as shown in Enclosures III and IV.

The board's conclusion is as follows: *A priori,* for the skilled person the measurement was not incorrect or deficient. As the skilled person cannot distinguish between "incorrect" and "correct" measurements, he cannot recognize whether the measured haze value is

relevant for films having the required blushing resistance.

2.5 *Concerning Article 84 EPC*

The respondent argued that the objections raised were essentially objections under Article 84 EPC, not sufficiency of disclosure. It relied in this respect on decision T 0960/98.

In T 0960/98 (of 9 April 2003; Reasons points 3.9 and 3.4.4), when measuring the viscosity or the clarity of liquid detergent compositions, the skilled person could rely on general technical knowledge in respect of suitable measuring methods, apparatus and temperatures suitable to meet his or her needs. Consequently, the claimed invention was found to be sufficiently disclosed within the meaning of Article 100(b) EPC. It was also observed that Article 84 was not a ground of opposition and that the board had no power to decide on this issue in view of the fact that the claims as granted remained unamended.

The present case differs however precisely in that no such general technical knowledge of suitable and reproducible measuring methods is available.

2.6 *Methodology regarding the haze measurement is incomplete*

2.6.1 It follows from the reasoning set out above under points 2.4.1 to 2.4.4 that the opposed patent is lacking instructions regarding the haze measurement. The patent's failure to indicate at which point of time

the haze value should be measured and to disclose how the sample should be prepared prior to haze measurement is severe, as it concerns the **core feature** of the patent (*i.e.* the feature supposed to distinguish the claimed invention over the prior art of E3).

2.6.2 The skilled person confronted with a measured haze value lying inside the claimed range has no means to know that the interlayer film may in fact be unsuitable as regards its blushing resistance. Of course, the same holds true *vice versa* for films having a measured haze outside the claimed range which could nevertheless be resistant to blushing. Lacking information in the patent in suit especially regarding the correct point in time for measuring the haze value, the skilled person cannot evaluate a (supposed or real) failure and will grope in the dark when trying to find out the reasons for it.

2.7 For these reasons, in the board's judgment, the invention as defined in independent claim 1 cannot be performed without undue burden by a person skilled in the art. The requirements of Article 83 EPC are thus not met.

2.8 This deficiency affects all pending requests because all independent claims of these requests contain the same feature relating to the measurement of the haze value.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar | The Chairman

C. Vodz | G. Raths