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**Datasheet for the decision  
of 21 June 2011**

**Case Number:** T 1823/09 - 3.3.06

**Application Number:** 04757792.9

**Publication Number:** 1604004

**IPC:** C11D 17/04

**Language of the proceedings:** EN

**Title of invention:**

Polyvinyl alcohol copolymer film for packaging liquid products  
and having an improved shelf-life

**Applicant:**

Monosol, LLC

**Opponent:**

-

**Headword:**

Packaging liquid products/MONOSOL

**Relevant legal provisions:**

EPC Art. 123(2)

**Relevant legal provisions (EPC 1973):**

-

**Keyword:**

"Decision on the state of the file"

"Extension beyond application as filed (all requests) - yes"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 1823/09 - 3.3.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.06  
of 21 June 2011

**Appellant:** Monosol, LLC  
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IN 46410 (US)

**Representative:** Johnson, Yvonne Catherine  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 17 March 2009  
refusing European application No. 04757792.9  
pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** P.-P. Bracke  
**Members:** G. Dischinger-Höppler  
U. Tronser

## Summary of Facts and Submissions

- I. This appeal is from the decision of the Examining Division refusing European patent application No. 04 757 792.9 (European publication No. 1 604 004) on the ground that the subject-matter of Claim 1 of the then pending main and first auxiliary requests extended beyond the content of the application originally filed as international application having the publication No. WO-A-2004/085600 contrary to the requirements of Article 123(2) EPC. The second and third auxiliary requests were rejected on the ground of lack of inventive step.
- II. The application as originally filed contained Claims 1, 19 and 26 to 28 which read:

1. A water-soluble packet, comprising:

a copolymer film comprising a hydrolyzed copolymer of vinyl acetate and a second monomer, the resultant polyvinyl alcohol copolymer having a degree of hydrolysis, expressed as a percentage of vinyl acetate units converted to vinyl alcohol units, in the range of from about 90% to about 100%, wherein the second monomer is selected from the group consisting of monocarboxylic acid vinyl monomers, their esters and anhydrides, dicarboxylic monomers having a polymerizable double bond, their esters and anhydrides, vinyl sulfonic acid monomers, and alkali metal salts of vinyl sulfonic acid monomers, and combinations of the foregoing; and

a quantity of liquid material contained within the packet in direct contact with said copolymer film.

19. A water-soluble copolymer film packet comprising:

a hydrolyzed copolymer of vinyl acetate and a second monomer, the resultant polyvinyl alcohol copolymer having a degree of hydrolysis, expressed as a percentage of vinyl acetate units converted to vinyl alcohol units, of from about 90% to 100%;

an initial disintegration time at 10 °C of less than 60 seconds; and

a disintegration time increase after contacting a liquid component contained therein of no more than 50%.

26. The water-soluble copolymer film packet of any one of claims 19 to 25, wherein the degree of polymerization of the copolymer is such that the viscosity of a 4% aqueous solution at 20 °C is within a range of from about 5 to about 45 MPa.s (cps).

27. The water-soluble copolymer film packet of claim 26, wherein the degree of polymerization of the copolymer is such that the viscosity of a 4% aqueous solution at 20 °C is within a range of from about 11 to about 30 MPa.s.

28. The water-soluble copolymer film packet of claim 27, wherein the degree of polymerization of the copolymer is such that the viscosity of a 4% aqueous solution at 20 °C is within a range of from about 15 to about 25 MPa.s.

III. With its statement of grounds of appeal filed under cover of a letter dated 24 July 2009, the Applicant (hereinafter Appellant) filed amended sets of claims in a new main request and eleven auxiliary requests.

The new main request contains Claims 1, 10 to 12 and 15 which read:

1. A water-soluble cleaning concentrate packet, comprising:  
a copolymer film comprising a hydrolyzed copolymer of vinyl acetate and a second monomer, the resultant polyvinyl alcohol copolymer having a degree of hydrolysis, expressed as a percentage of vinyl acetate units converted to vinyl alcohol units, in the range of from about 90% to about 100%, wherein the second monomer is selected from the group consisting of vinyl acetic acid, dicarboxylic monomers having a polymerizable double bond, their esters and anhydrides, and combinations of the foregoing; and

a quantity of liquid cleaning concentrate material contained within the packet in direct contact with said copolymer film, said liquid cleaning concentrate characterized by amine-fatty acid equilibria and/or amine-anionic surfactant acid equilibria.

10. The water-soluble copolymer film packet of any one of claims 6 to 9, wherein the degree of polymerization of the copolymer is such that the viscosity of a 4% aqueous solution at 20°C is in a range of from about 5 to about 45 MPa.s (cps).

11. The water-soluble copolymer film packet of claim 10, wherein the degree of polymerization of the copolymer is such that the viscosity of a 4% aqueous solution at 20°C is in a range of from about 11 to about 30 MPa.s (cps).

12. The water-soluble copolymer film packet of claim 11, wherein the degree of polymerization of the copolymer is such that the viscosity of a 4% aqueous solution at 20°C is in a range of from about 15 to about 25 MPa.s (cps).

15. A water-soluble copolymer film packet according to any one of the preceding claims, wherein said copolymer film has an initial disintegration at 10°C of less than 60 seconds, and a disintegration time increase after contacting the liquid cleaning concentrate contained therein for five weeks of no more than 50%.

Claim 1 of anyone of the auxiliary requests is primarily based on Claim 1 as originally filed.

Claims 9 to 11 and 14 of the new first and sixth auxiliary requests and Claims 8 to 10 and 13 of the seventh auxiliary request have the same wording as Claims 10 to 12 and 15 of the main request.

Claims 10 to 12 and 15 of the second and fourth auxiliary requests differ from those of the main request in that they are drafted as use claims.

The same applies to Claims 9 to 11 and 14 of the third, fifth, eighth and tenth auxiliary requests and to Claims 8 to 10 and 13 of the ninth and eleventh auxiliary requests.

IV. The Appellant provided arguments in support of its opinion that the contested decision was incorrect and requested that the decision under appeal is set aside and that a patent be granted on the basis of the claims according to the main request, alternatively on the basis of the claims of anyone of the eleven auxiliary request, all filed under cover of a letter dated 24 July 2009.

Further, the Appellant requested oral proceedings if the Board should not be minded to allow the appeal or grant a patent on the basis of the main request. In the event that the Board should consider that the main request contravenes Article 123(2) EPC in contradiction to the case law according to decision T 1008/98, referral of the present case to the Enlarged Board of Appeal was requested.

V. In a communication dated 28 March 2011 annexed to the summons to attend oral proceedings on 21 June 2011, the Board drew attention to the following objections under Article 123(2) EPC:

"4. Article 123(2) EPC

4.1 The subject-matter of Claims 10 to 12 and 15 of the main request seems derived from original Claims 26 to 28 and 19. However, original Claim 19 is a second independent product claim which does not comprise all the features of original Claims 1 to 18. The same applies to original Claims 26 to 28 which are dependent on original Claim 19, but not on Claims 1 to 18. In contrast, Claims 1 to 9 of the main request appear to be derived from original product Claims 1 to 10.

Hence, due to the new dependencies introduced in Claims 10 to 12 and 15, their combination of features seems not originally disclosed.

The same appears to apply to Claims 9 to 11 and 14 of the first, third, fifth and sixth auxiliary requests, to Claims 10 to 12 and 15 of the second

and fourth auxiliary requests, as well as to Claims 8 to 10 and 13 of the seventh to eleventh auxiliary requests.

Further, the combination present in Claim 1 of the fourth, fifth, tenth and eleventh auxiliary requests of the disintegration times disclosed solely in original Claim 19 and the co-monomers disclosed in original Claim 5 appears not originally disclosed.

Therefore, none of the Appellant's requests appears to be allowable under Article 123(2) EPC."

The Appellant was finally advised that any reply of the Appellant to the Board's communication should be filed within two months of its deemed date of receipt.

VI. In reply, the Appellant informed the Board by letter dated 14 April 2011 that it would not attend the oral proceedings.

At the end of the oral proceedings held in the absence of the Appellant, the Board gave its decision.

### **Reasons for the Decision**

1. The Board interprets the Appellant's reply of 14 April 2011 as a request for a decision "according to the state of the file".

2. In the communication dated 28 March 2011, the Board raised doubts as to whether the claims on file met the requirements of Articles 123(2) EPC.
3. The Appellant did not reply in substance to these objections or attend the requested oral proceedings which were scheduled for and held on 21 June 2011. Since there was no attempt by the Appellant to refute or overcome the objections raised in the above communication, the Board has no reasons to depart from its preliminary opinion expressed in said communication.
4. Having regard to the above, the Board concludes that - for the reasons set out in the communication (point V above) - the amendments made to the claims of any of the Appellant's requests do not comply with the requirements of Article 123(2) EPC.
5. In the present case, the non-compliance with the requirements of Article 123(2) EPC of the amendments made to the claims is due to a combination of features derived from two independent claims which differ in scope (point V above). As decision T 1008/98 does not deal with this situation, the present decision is not in contradiction there. As a consequence, the request for a referral of the case to the Enlarged Board of Appeal is rejected as unfounded.



**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

D. Magliano

P.-P. Bracke