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**Datasheet for the decision
of 26 June 2012**

Case Number: T 0291/11 - 3.2.07
Application Number: 02724204.9
Publication Number: 1385682
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E04C 5/01, B65D 65/46,
C04B 40/00, C04B 20/00

Language of the proceedings: EN

Title of invention:

Closed reinforcement fibre package, as well as chain packing
consisting of such closed packages

Patentee:

N.V. BEKAERT S.A.

Opponent:

ArcelorMittal Bissen & Bettembourg S.A.

Headword:

-

Relevant legal provisions:

EPC Art. 56, 123(2)
RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Closest prior art - modified package of document D7 (yes
concerning claim 1 of second and third auxiliary request)"
"Inventive step - no, claims 1 of first to third auxiliary
request"
"Fourth auxiliary request filed during oral proceedings - not
admitted"

Decisions cited:

-

Catchword:

-



Case Number: T 0291/11 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 26 June 2012

Appellant I:
(Patent Proprietor)

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Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted
6 December 2010 concerning maintenance of
European patent No. 1385682 in amended form.

Composition of the Board:

Chairman: I. Beckedorf
Members: H.-P. Felgenhauer
K. Poalas

Summary of Facts and Submissions

- I. The patent proprietor (appellant I) and the opponent (appellant II) have filed an appeal against the decision of the opposition division maintaining European patent No. 1 385 682 as amended.

The appellant I requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of one of the sets of claims filed as first to third auxiliary requests with letter dated 22 May 2012 and as fourth auxiliary request during the oral proceedings. The appellant I further requested that the appeal of appellant II be dismissed.

The appellant II requested that the decision under appeal be set aside and the patent be revoked. The appellant II further requested that the appeal of the appellant I be dismissed.

- II. Claim 1 of the first auxiliary request reads as follows:

"Closed reinforcement fibre package (2) consisting of a material disintegratable in fibre concrete, whereby the reinforcing fibres (3) are non straight fibres present in a loose form in this package (2) and whereby the reinforcing fibres (3) are applied in a substantially mutually parallel position in this package (2), characterised in that the length of the reinforcing fibres (3) substantially corresponds to the length of the package (2), that the fibres (3) are situated lengthwise the package (2) and that the filling degree of the reinforcing fibres (3) in the closed package (2) is at least 75%".

Claim 1 of the second auxiliary request reads as follows:

"Chain packing consisting of a number of closed reinforcement fibre packages (2), said closed reinforcement packages (2) consisting of a material disintegratable in fibre concrete, whereby the reinforcing fibres (3) are non straight fibres present in a loose form in this package (2) and whereby the reinforcing fibres (3) are applied in a substantially mutually parallel position in this package (2), characterised in that the length of the reinforcing fibres (3) substantially corresponds to the length of the package (2), that the fibres (3) are situated lengthwise the package (2) and that the filling degree of the reinforcing fibres (3) in the closed package (2) is at least 75%".

Claim 1 of the third auxiliary request reads as follows:

"Chain packing consisting of a number of closed reinforcement fibre packages (2), said closed reinforcement packages (2) consisting of a material disintegratable in fibre concrete, whereby the reinforcing fibres (3) are present in a loose form in this package (2) and whereby the reinforcing fibres (3) are applied in a substantially mutually parallel position in this package (2), characterised in that the length of the reinforcing fibres (3) substantially corresponds to the width of the package (2), that the fibres (3) are situated widthwise the package (2) and that the filling degree of the reinforcing fibres (3) in the closed package (2) is at least 75%".

Claim 1 of the fourth auxiliary request reads as follows:

"Chain packing consisting of a number of closed reinforcement fibre packages (2), said packages being joined to each other, said closed reinforcement packages (2) consisting of a material disintegratable in fibre concrete, whereby the reinforcing fibres (3) are present in a loose form in this package (2) and whereby the reinforcing fibres (3) are applied in a substantially mutually parallel position in this package (2), characterised in that the length of the reinforcing fibres (3) substantially corresponds to the width of the package (2), that the fibres (3) are situated widthwise the package (2) and that the filling degree of the reinforcing fibres (3) in the closed package (2) is at least 75%".

III. The following prior art documents are considered

A7 WO-A-96/02715

A11 DE-U-77 027 30.

IV. According to the impugned decision claim 1 according to the then first auxiliary request, from which claim 1 according to the present second auxiliary request differs in that the fibres concerned are non straight fibres involves an inventive step over A7 (cf. reasons no. 4.1.1.4 and 4.1.2.1 to 4.1.2.5).

- V. In an annex to the summons to oral proceedings dated 21 February 2012 the Board i.a. referred to the disclosures of documents A7 and A11.
- VI. The submissions of the appellant I can be summarised as follows:
- (a) The amendments of claims 1 of the first and second auxiliary requests are based on the qualification of the fibres as non straight limit the respective claims to one type of fibres which, together with the other type of fibres, namely straight fibres, is at least implicitly directly and unambiguously disclosed in the description of the application as filed originally.
 - (b) The package of A7 requires that a bundle of fibres is held by wrapping material wrapped around the bundle. The bundle of fibres is enveloped by the wrapping material with the end faces (front and rear end) of the package remaining uncovered by the wrapping material. The package is thus open at these end faces.
 - (c) While this package may be suitable for packaging straight fibres it would not work if non straight fibres, as referred to in claims 1 of the first and second auxiliary request, are to be packed. The reason being that, unlike straight fibres which can be considered as being almost rigid in directions perpendicular to their longitudinal axis, non straight fibres are flexible in this direction owing to their non straight shape. This flexibility would prevent a bundle of non straight

fibres to be securely held only by wrapping material covering the lateral surface of the bundle. Thus fibres not sufficiently held by the wrapping material could easily leave the package through the open faces.

- (d) Consequently considering that it is evident that the package according to A7 is not suitable to be used in case of non straight fibres having to be packed, this document cannot be considered in the examination of inventive step concerning packages for non straight reinforcement fibres either.
- (e) Even if A7 is taken into account in the examination of inventive step it cannot be considered as leading to the subject-matters of claims 1 of the first and second auxiliary request. The reason being that the aspect that non straight fibres packed in the known manner can get lost is not addressed at all and that likewise no indication is given on how such drawback can be avoided.
- (f) In this connection it also needs to be taken into account that other, obvious possibilities exist to hold non straight fibres in a package with open faces. One possibility is e.g. lying in the well known connection of the fibres as referred to in the patent in suit.
- (g) Concerning the chain packing of claim 1 of the second auxiliary request it, furthermore, needs to be taken into account that the packages of A7 are, since they are open at both face ends, not suited

to be combined in a chainlike manner as known from A11.

- (h) Considering A7 and A11 in the examination of inventive step furthermore the disclosures of these documents need to be relied upon. Thus, concerning the package of A7 no modification of this package, e.g. in the sense that the open faces are closed, can be taken into consideration.
- (i) The chain packing according to claim 1 of the third auxiliary request clearly defines that the fibres having a length substantially corresponding to the width of the package and being situated widthwise in the package extend in a direction in which their longitudinal axis' are perpendicular to the longitudinal direction of the chain packing. This arrangement leads to the advantageous effect that the stiffness of the fibres along their longitudinal axis does not affect the fibre packages in the longitudinal direction of the chain packing. Consequently, disadvantages like e.g. piercing of the package by the ends of the fibres, arising in case the longitudinal direction of fibres within the packages corresponds with the longitudinal direction of the packages arranged in a chainlike manner, are avoided.
- (j) Since none of the available documents, including A11, refers to the avoidance of such disadvantages and to the arrangement of fibres by which such disadvantages are avoided, the chain packing according to claim 1 of the third auxiliary request involves inventive step.

- (k) Claim 1 according to the fourth auxiliary request defines the arrangement of packages having fibres with a length corresponding to the width of the package and which are situated widthwise in the package even more clearly. For that reason it should be admitted into the proceedings. The subject-matter of this claim involves inventive step for the reasons outlined with respect to claim 1 of the third auxiliary request.

VII. The submissions of the appellant II can be summarised as follows:

- (a) The amendment of claims 1 of the first and second auxiliary requests according to which the fibres referred to as non straight ones extends beyond the content of the application as filed. These amendments thus violate Article 123(2) EPC and are for that reason not allowable.
- (b) Although within the package of A7 a bundle of fibres is held by wrapping material wrapped around the lateral surface of the bundle it is evident that, depending e.g. on the particular shape of non straight fibres, fibres of this type can likewise be packed in the known manner.
- (c) The question of whether straight fibres or non straight fibres are to be used is to be decided solely based on considerations with respect to the intended use of the fibres.

- (d) There is no reason to exclude A7 from the prior art to be considered in case of non straight fibres having to be packed. Quite on the contrary the package of A7 will be taken into account by the skilled person since it is, like the packages defined by the claims 1 of all requests, made of a material disintegratable in fibre concrete.

- (e) Considering the fibre package of A7 it is evident that if fibres are lost from the bundle of fibres enveloped by the wrapping material this is due to the open face ends (front and rear end). In case such a loss is considered as being of importance and disadvantageous with respect to the further handling of the packages, i.e. during transport and/or dosing, the means to avoid such a loss are immediately apparent. It pertains to regular design practice to close the two face openings of the known package in case fibres can be lost via these openings. In this respect it also needs to be taken into account that neither claims 1 according to all requests nor the remainder of the patent in suit give any indication on how the closed package is manufactured.

- (f) Consequently taking the package of A7 into consideration it is evident that, in case of non straight fibres having to be packed, the known package will be modified by closing the end faces if such a measure proves to be necessary in case of losing fibres. Claim 1 according to the first auxiliary request thus does not involve an inventive step in view of A7, taking furthermore customary general design practice into account.

- (g) Based on the chain packing of A7, which has been modified in that the open end faces have been closed, it is apparent that these packages can be arranged in a chainlike manner as known from A11. The chain packing according to claim 1 of the second auxiliary request thus does not involve an inventive step in view of A7, considered in combination with general design practice, taking furthermore the chainlike arrangement of packages as known from A11 into consideration.

- (h) Claim 1 of the third auxiliary request does not define that the fibres are arranged in packages such that they extend in a direction perpendicular to the longitudinal direction of the chain packing. Consequently advantageous effects associated with this arrangement, like the avoidance of piercing of the package by the ends of the fibres, cannot be taken into consideration in the assessment of inventive step.

- (i) Even if such an effect is taken into account it is immediately apparent that e.g. piercing is due to the fibres being arranged with their longitudinal axis' corresponding to the longitudinal axis of the chain packing. Recognising such a problem immediately entices a remedy, namely an arrangement of the fibres such that their longitudinal axis' are perpendicular of the longitudinal axis of the chain packing. The chain packing as defined by claim 1 according to the third auxiliary request thus does not involve an inventive step for the reasons applying with

respect to claim 1 of the second auxiliary request taking furthermore general design practice into account.

- (j) The same applies concerning claim 1 according to the fourth auxiliary request, which despite its amendment does not clearly define the arrangement of fibres with their longitudinal axis' perpendicular to the longitudinal direction of the chain packing. For that reason the fourth auxiliary request should not be admitted.

VIII. Oral proceedings before the Board were held on 26 June 2012. During the oral proceedings the appellant I withdrew its request for remitting the case as filed with its letter dated 22 May 2012.

Reasons for the Decision

1. *Formal requirements of claims 1 of the first and second auxiliary requests (Article 123(2) EPC)*

Claims 1 of the first and second auxiliary requests have been objected to in view of the amendment according to which the fibres are qualified as non straight fibres.

According to appellant II this qualification is the result of a generalisation which, since only two examples for non straight fibres, namely corrugated fibres and ones having a varying cross-section-surface over the length, are disclosed in the application as originally filed (cf. page 5, lines 19 - 24), leads to

an inadmissible extension violating the requirement of Article 123(2) EPC.

The Board, in this respect, considers the opinion of appellant I to be correct, according to which it can, at least implicitly, be derived from the application as filed originally (cf. page 5, line 19 - page 6, line 2) that the reinforcing fibres can be straight ones as well as non straight ones. Based on this understanding, the qualification of fibres as non straight does not violate the requirement of Article 123(2) EPC. In this respect it also needs to be taken into account that, as indicated by appellant II, into claims 1 of the first and the second auxiliary request beyond the feature qualifying the fibres as non straight no further feature associated with this type of fibres has been added.

The issue concerning admissibility of the amendment concerned needs no further attention in view of the subsequent finding that the subject-matters of claims 1 according to the first and second auxiliary requests do not involve an inventive step.

2. *Subject-matter of claim 1 according to the first auxiliary request*

Claim 1 according to the first auxiliary request is directed to a reinforcement fibre package.

The package is defined as being closed and as consisting of a material disintegratable in fibre concrete.

The reinforcing fibres are defined as non straight ones.

It is common ground that the use of non straight fibres leads to the effect stated in the patent in suit (cf. paragraph [0028]), that it is rather difficult to pull them out of cured concrete material using a tensile strain.

Concerning the arrangement of the fibres in the package it is defined that they are present in a loose form in the package and applied in a substantially mutually parallel position in the package.

In this respect it is further defined that the length of the reinforcing fibres corresponds substantially to the length of the package, that the fibres are situated lengthwise the package and that the filling degree of the reinforcing fibres in the closed package is at least 75%.

Concerning the understanding of the feature according to which the fibres are present in a loose form in the package the Board considers the opinion of appellant II as being correct according to which, as referred to in the annex to the summons to oral proceedings (point 6.2), this feature concerns the relationship amongst the reinforcing fibres and delimitates these fibres from the ones referred to in the acknowledgement of prior art in the patent in suit (cf. paragraph [0010]), which are connected to each other.

3. *Disclosure of A7*

Before the examination of inventive step it is necessary and in line with the discussion during the oral proceedings to deal with the disclosure of A7.

It is undisputed that this document discloses, with respect to the fibre package according to claim 1 of the first auxiliary request, a reinforcement fibre package consisting of a material disintegratable in fibre concrete (cf. claims 1, 2; page 4, first paragraph), whereby the reinforcing fibres are present in a loose form in this package (cf. point 2. above and A7, page 4, first paragraph, according to which the fibres disconnect without difficulty after disintegration of the wrapping material).

The reinforcing fibres are applied in a substantially mutually parallel position in this package (cf. page 4, first paragraph).

The length of the reinforcing fibres substantially corresponds to the length of the package and the fibres are situated lengthwise the package (cf. the paragraph bridging pages 4 and 5).

The filling degree of the reinforcing fibres in the package is at least 75%. This can, undisputedly, be derived from the fact that, according to A7, a bundle of fibres is held together by a wrapping material (cf. page 2, paragraph 4). Thus, without the value of 75% being mentioned as argued by appellant I, it is implicit that the filling degree needs to be one above the minimal value of 75%.

4. *Claim 1 of the first auxiliary request - inventive step*

4.1 *Features distinguishing the fibre package according to claim 1 of the first auxiliary request from the fibre package of A7*

It is undisputed that the fibre package of claim 1 is distinguished from the one according to A7 by the following features

- i) the fibre package is a closed package
- ii) the fibres are non straight fibres.

4.2 *Consideration of A7 as closest prior art*

In the decision under appeal A7 has been considered as closest prior art.

According to appellant I document A7 concerns the packaging of straight fibres arranged in a bundle which is held together at its lateral side by a wrapping material, while the front faces of the package remain open. Due to the increased resilience of non straight fibres it is apparent that the packaging approach of A7 does not work in case the fibres to be packed are non straight ones. Consequently, the person skilled in the art would have had no reason to consider the package of A7 in case of non straight fibres having to be packed. For this reason, A7 is not to be considered as most promising starting point, i.e. closest prior art in the examination of inventive step concerning packages for non straight fibres.

According to appellant II it depends on the particular type of non straight fibres to be packed whether or not a package as disclosed in A7 is feasible without any modification, namely closure of the open end faces, being required. The person skilled in the art has therefore no reason for not taking A7 into consideration at all in case of non straight fibres having to be packed.

The Board follows the reasoning of the decision under appeal and takes A7 as closest prior art and accordingly as starting point in the examination of inventive step since, as it is presently the case, the packaging material of the fibre packages is disintegratable in fibre concrete.

The Board furthermore considers the opinion of appellant II as being convincing according to which features i) and ii) are the only distinguishing features (cf. point 4.1 above) and that claim 1 does, besides referring to non straight fibres, not comprise any feature relating to the non straight nature of the fibres.

4.3 *Effect of the distinguishing features / problem to be solved in view of the package according to A7*

4.3.1 It is common ground that feature i) distinguishing the package of claim 1 according to the main request over the package according to A7 has the effect of making the package suitable for packaging of non straight fibres as defined by the further distinguishing feature

ii). Due to the package being closed it is avoided that fibres can slip out from the package.

4.3.2 Concerning the use of fibres it is common ground that, according to circumstances, utilisation of non straight fibres will be advantageous as compared to the use of straight fibres (cf. patent in suit, paragraph [0028]).

4.3.3 If, under circumstances requiring the use of non straight fibres, the person skilled in the art starts from the fibre package according to A7 it may encounter fibres getting lost via the open end faces of the known package.

The problem to be solved starting from the package of A7 can thus be seen in devising a package such that it is (better) suited for the packaging of non straight fibres.

4.3.4 It is uncontested that this problem is solved by the package according to claim 1 of the first auxiliary request.

4.4 *Obviousness*

4.4.1 According to appellant I the package of A7, comprising a wrapping material holding a bundle of straight fibres together, is not suitable for the packaging of non straight fibres. The reason being that such fibres have a higher flexibility in a direction transverse to the longitudinal axis of the fibres than straight fibres which leads to the fact that a bundle of non straight fibres can hardly be held together by merely wrapping a wrapping material around them.

4.4.2 According to appellant II it is a question of the flexibility of the non straight fibres, which depends on their particular shape, whether or not they can be held together and thus packaged by wrapping a material around them.

However, more importantly, in case that problems of keeping non straight fibres together would be encountered in an attempt to use the package of A7 it would become immediately apparent to the skilled person, that such an improper packaging may be improved by modifying it such that the recognised main reason for a fibre loss, namely the end faces being open, is avoided.

Considering common general technical practice it is obvious that the package known from A7 can be adapted to be suitable for the use of non straight fibres merely by closing the two open ends of this package.

4.4.3 The Board considers the arguments of appellant II as more convincing. First of all, there is no reason for the skilled person to not consider document A7 in case the circumstances require non straight fibres to be packaged. On the contrary, the Board is of the opinion that the package according to A7 is an appropriate starting point if, depending on circumstances related to the further use of fibres, instead of straight ones non straight fibres have to be packaged. In the event that the use of the known package for non straight fibres leads to a loss of fibres via the open end faces as referred to by appellant I, this drawback will immediately be recognized. Likewise a solution avoiding this drawback, namely to close the end faces of the

package, which consequently solves the stated problem (cf. point 4.3.3 above), is immediately apparent.

4.4.4 Thus, starting from A7 and applying general technical practice a loss of fibres will be prevented by a modified package derivable from A7 in an obvious manner, which adds to the package derivable from A7 directly and unambiguously that the end faces are closed, such that openings allowing fibres to leave the package are disposed of. This modified package thus comprises all features of the package of claim 1 of the first auxiliary request since in addition to the features known from A7 (cf. point 3 above) it comprises also the distinguishing features i) and ii) (cf. points 4.1, 4.3.2 and 4.3.3 above). Feature i) resulting from the above considerations whereas feature ii) finds its basis in circumstances requiring the use and consequently also the packing of non straight fibres.

4.4.5 The general technical practice relied upon is one of a very general nature requiring no more than the basic consideration, that in a package having open faces these need to be closed in case fibres can get lost via these open faces, and in particular no specific considerations. The Board is thus of the opinion that, contrary to the opinion of appellant I, this general technical practice can be taken into account.

4.4.6 The closed reinforcement fibre package of claim 1 according to the first auxiliary request thus cannot be considered as involving an inventive step (Article 56 EPC) in view of the package according to A7, taking additionally customarily applicable general technical practice into account.

4.4.7 The above result holds true considering the following arguments of the appellant I.

According to one argument no indication is given in A7 or any other prior art document with respect to the problem underlying the fibre package according to the claim 1 concerned.

The Board in this respect finds the reasoning of appellant II correct that, in case that the circumstances are such that fibres can fall out of the package of A7, this is something to be immediately recognised and dealt with, once the cause for the loss of fibres, namely the open faces, has been identified.

According to a further argument other, obvious, solutions based e.g. on a connection of the fibres to each other would have been available.

In this respect the Board indicated already during the oral proceedings that examining inventive step concerns the question of whether or not the subject-matter of the claim 1 at hand is obvious or not and that this question at present is independent of whether the problem to be considered can be solved by other means in an obvious manner.

5. *Disclosure of A11*

5.1 A11 discloses a closed reinforcement fibre package of the kind concerned. The package defined by claim 1 of the first auxiliary request and the one defined in claim 1 of the second auxiliary request differ from

this known package by the feature according to which the package material is disintegratable in fibre concrete. Although A11 mentions paper and cardboard as material for the package (cf. the paragraph bridging pages 2 and 3), the Board considers the opinion of appellant I as being correct that alone from such material being mentioned no direct and unambiguous disclosure can be derived that the known package consists of a material disintegratable in fibre concrete.

The allegation of appellant II that such a material is at least implicitly disclosed need not be further dealt with in view of the finding that the chain packing of claim 1 of the second auxiliary request does not, following a line of argumentation of the appellant II, involve an inventive step starting from the package of A7 modified such that it is suited for packaging non straight fibres as indicated above with respect to the package of claim 1 according to the main request and considering A11 and the advantages of chain packing referred to therein.

- 5.2 In view of the argumentation of both appellants that the disclosure of A11 being essential for the outcome of the examination of inventive step is the one according to which closed fibre packages are arranged in a chainlike manner (cf. the paragraph bridging pages 4 and 5; figure 2). Concerning such an arrangement in A11 it is expressly stated that a chainlike arrangement has the advantage that packaging and transport is facilitated (cf. the paragraph bridging pages 4 and 5). Furthermore it is indicated that the correct amount of

fibres to be supplied can easily be determined (cf. page 5, first full paragraph).

6. *Claim 1 according to the second auxiliary request - inventive step*

6.1 *Subject-matter of claim 1 according to the second auxiliary request*

Claim 1 according to the second auxiliary request is directed to a chain packing consisting of a number of closed reinforcement fibre packages. The packages concerned are of the type as defined by claim 1 according to the first auxiliary request. This applies likewise concerning the type of fibres to be packed, which are defined as non straight ones.

6.2 According to appellant II starting from the package according to A7 modified in an obvious manner to allow secure packaging of non straight fibres (cf. point 4.4.3 above concerning inventive step with regard to the package according to claim 1 of the first auxiliary request) it is obvious, considering the chain packing known from A11, to arrange this modified package in a chainlike manner. The chain packing of claim 1 according to the second auxiliary request is thus obvious considering A7 modified by general technical practice as closest prior art in combination with A11 as further prior art.

6.3 According to appellant I the package known from A7 cannot be arranged in a chainlike manner due to both end faces being open. Thus, even combined consideration of the packages of A7 and A11 cannot render the chain

packing of claim 1 according to the second auxiliary request obvious.

According to appellant I consideration of A7 and A11 in the examination of inventive step requires that the disclosure derivable from each of these documents needs to be taken into consideration. Thus there is no room for considering a modified package alleged as being derivable from A7 as starting point since no evidence is given in this respect. Such evidence would however be required in case such prior art resulting from a modification of the package of A7 is taken as the starting point in the examination of inventive step.

Furthermore, a clear distinction has to be made between in this connection what the person could have done and that what it actually would have done taking the disclosures of A7 and A11 into account. It then becomes immediately clear that the mere possibility, namely that a modified version of the package of A7 could have been used, is not suited to form the starting point in the examination of inventive step.

It also needs to be taken into account that none of the available prior art documents gives an indication leading to non straight fibres being packaged and the resulting packages being arranged in a chainlike manner as defined by the claim 1 at issue.

Furthermore it needs to be taken into consideration that the chain packing referred to in claim 1 is not only advantageous concerning the transport of fibre packages since it is equally advantageous concerning the supply of such packages and consequently the

reinforcement to be packaged therein to a mixing silo or concrete mixer as indicated in the patent in suit (cf. paragraph [0022]).

- 6.4 The Board finds the arguments of appellant II as being more convincing.

Starting from the package of A7 it needs to be taken into account that, depending on circumstances relating to the later use of the fibres, i.a. non straight fibres will have to be packed. It is evident (cf. point 4.4.4 above) that the package of A7 may then need to be modified in such a manner that a possible loss of fibres via the open end faces is prevented. As indicated above closing the open end faces under these conditions is obvious.

Under these conditions the Board considers the modified package derivable from the package of A7 as referred to above as being an appropriate starting point.

For the sake of completeness it shall be indicated that the same result can, as indicated by appellant II, be arrived at if, starting from the package as disclosed in A7 and prior to consideration of A11 the reasoning leading to the subject-matter of claim 1 according to the first auxiliary request being obvious in view of the package of A7 is applied.

Furthermore the approach to start with the modified package derivable from A7 and then to consider A11 as further prior art is, contrary to the view expressed by appellant I, justified in the present case. The reason being that as argued by appellant II the modification

of the package of A7 on the one hand and the arrangement of such packages in a chainlike manner on the other hand serve, as can be derived from the following, different, independent problems and that in the examination of inventive step in the present situation each solution to one of the two unrelated problems needs to be considered independently of the solution of the other problem.

- 6.5 Starting from the modified package derivable from A7 it is apparent that the approach taken according to A11, namely to arrange the packages in a chainlike manner can advantageously facilitate the transport of the packages concerned as clearly indicated in A11 (cf. the paragraph bridging pages 4 and 5).

Thus, irrespective of whether chain packing leads also to - further - advantages with respect to the supply of reinforcement fibres to a mixing silo or a concrete mixer as argued by appellant I, for which the claim 1 concerned does not comprise any feature and A11 gives an indication (cf. the complete paragraph of page 5), it needs to be concluded that the chain packing of the claim 1 at issue does not involve an inventive step (Article 56 EPC), starting from the modified package derivable from A7 and taking the chain packing according to A11 into account to facilitate the transport of the packages as explicitly stated in A11.

7. *Claim 1 according to the third auxiliary request - inventive step*

- 7.1 Claim 1 according to the third auxiliary request differs from claim 1 according to the second auxiliary

request in that the fibres and their relationship to the packages are defined in the following manner:

- i) the length of the reinforcing fibres substantially corresponds to the width of the package and
- ii) the fibres are situated widthwise in the package.

7.1.1 According to the appellant I this arrangement needs to be understood in the context of the features of claim 1 as leading to fibres arranged perpendicular to the longitudinal direction of the chain packing.

Such an arrangement has the consequence that the stiffness's of the fibres cannot negatively affect the package. On the contrary, in case the fibres are arranged with their longitudinal axes parallel to the longitudinal direction of the chain packing, the stiffness's of the fibres can lead to the package being damaged, e.g. be piercing caused by longitudinal ends of fibres arranged adjacent the package material. Such a damage can eventually lead to a loss of fibres contained in the packages as well as to problems concerning the further handling of such damaged packages.

Such a positive effect resulting from the defined arrangement of the fibres within a package thus needs to be taken into account in the examination of inventive step irrespective of the fact, that such an effect has not been described in the application as filed (cf. point V. above).

7.1.2 According to appellant II claim 1 does not define that the fibres are actually arranged perpendicular to the longitudinal direction of the chain packing. Moreover the positive effect of such an arrangement, namely that piercing of the package by the ends of fibres arranged in parallel to the longitudinal direction of the chain packing is avoided, will be reached only under certain conditions, namely then if such damages in fact occur.

7.1.3 More importantly it is apparent that in case such damages arise and lead to a disadvantage concerning the handling of a chain packing, the damage will immediately be recognized. The same applies concerning the cause of such damages, namely an arrangement of the fibres parallel to the longitudinal direction of the chain packing. It is then evident that the cause for the damages can be removed by simply turning the packages constituting the chain packing such that the individual fibres are positioned such that their longitudinal axis's are perpendicular to the longitudinal direction of the chain packing.

The chain packing of claim 1 according to the third auxiliary request thus does not involve an inventive step for the reasons given with respect to the chain packing according to claim 1 of the second auxiliary request taking further customary design practice into account.

7.1.4 Even if the effect referred to by the appellant I is taken into account as resulting from the arrangement of the fibres in the chain packing defined by the claim 1 concerned the Board concludes that this arrangement does not lead to subject-matter involving inventive

step as argued by the appellant II. Considering that the damage resulting from fibres arranged with their longitudinal axes parallel to the longitudinal direction of the chain packing is immediately apparent and that the cause is likewise immediately apparent, namely interference of the fibres with the package material due to their stiffness in the direction of their longitudinal axes, it comes within regular design practice to change the position of the fibres to avoid such interference. The consideration that such a positional change is obvious holds, as discussed during the oral proceedings, true irrespective of whether the fibres are positioned as defined by claim 1 under consideration or whether the position of the fibres is changed by rearrangement of the packages.

Considering that the chain packing of claim 1 according to the second auxiliary request does not involve an inventive step (cf. point 6.5 above) and that the additional features likewise do not lead to subject-matter involving an inventive step the chain packing of claim 1 according to the third auxiliary request does not involve an inventive step (Article 56 EPC) starting from the modified package derivable from A7 and taking the arrangement of packages in a chainlike manner as known from A11 into account, the latter under the condition resulting from regular technical practice that interference of fibres with the package material which can damage the latter are to be avoided by merely changing the position of the fibres.

8. *Claim 1 according to the fourth auxiliary request*

8.1.1 Claim 1 according to the fourth auxiliary request differs from the chain packing claimed in claim 1 according to the third auxiliary request, in that the feature defining that the packages are joined to each other has been added.

8.1.2 This claim 1 has been filed near the end of the oral proceedings after an extensive discussion concerning the examination of claim 1 according to the third auxiliary request with respect to inventive step.

It is true that appellant II objected to the claim 1 according to the third auxiliary request indicating that the feature now added is missing.

In response to that the Board indicated during the oral proceedings that it considers that the chain packages of claims 1 according to the second and the third auxiliary request that consist of a number of packages which are not provided separately of each other but which are joined to each other as now explicitly defined by the feature added to claim 1 and that it considers it appropriate to examine inventive step prior to the discussion of any further objections.

8.1.3 From the above it follows that the added feature does not, as indicated by the Board in the oral proceedings, alter the subject-matter of the claim 1 already discussed.

8.1.4 Since it is not apparent how the objections concerning lack of inventive step discussed in connection with

claim 1 according to the third auxiliary request could be overcome with such an amended claim, the Board considered said claim as not being allowable.

For that reason the Board exercised its discretion under Article 13(1) RPBA to not admit this request into the proceedings as the subject-matter of its claim 1 is not clearly allowable.

Order

For these reasons it is decided that:

1. The appeal of appellant I is dismissed.
2. The decision under appeal is set aside.
3. The patent is revoked.

The Registrar:

The Chairman:

G. Nachtigall

I. Beckedorf