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**Datasheet for the decision
of 17 June 2015**

Case Number: T 0330/12 - 3.3.05

Application Number: 00204402.2

Publication Number: 1106590

IPC: C04B41/49, E04G23/02

Language of the proceedings: EN

Title of invention:

Composition and method for the treatment of concrete and masonry

Patent Proprietor:

Safeguard Chemicals Ltd.

Opponents:

HGF Limited
Remmers Baustofftechnik GmbH
Sovereign Chemicals Limited

Headword:

Thixotropic paste/Safeguard Chemicals

Relevant legal provisions:

EPC Art. 83, 123(2), 54(1), 54(2), 56

Keyword:

Amendments - added subject-matter (no)
Sufficiency of disclosure - (yes)
Novelty - (yes)
Inventive step (yes) - non obvious alternative

Decisions cited:

T 1248/11, T 1831/07, T 0162/98

Catchword:



**Beschwerdekammern
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Chambres de recours**

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Case Number: T 0330/12 - 3.3.05

**D E C I S I O N
of Technical Board of Appeal 3.3.05
of 17 June 2015**

Appellant 1: Remmers Baustofftechnik GmbH
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
16 December 2011 concerning maintenance of the
European Patent No. 1106590 in amended form.

Composition of the Board:

Chairman G. Raths
Members: A. Haderlein
M. Blasi

Summary of Facts and Submissions

I. The present appeals of opponent 2 (appellant 1) and opponent 3 (appellant 2) lie from the opposition division's interlocutory decision finding that European patent No. 1 106 590 in amended form and the invention to which it relates meet the requirements of the EPC. The patent concerns a composition and method for the treatment of concrete and masonry.

II. In the course of the proceedings before the opposition division, the following documents in particular were referred to:

- E2: Safety Data Sheet (91/155/EEC) for Wacker BS Creme C
- E5: US 5 962 585 A
- E19: WO 95/25706 A
- E25: Masonry Water Repellents - Wacker BS Creme C
- E32: Wacker BS - Building with Silicones
- E34: Wacker BS - Damp-Proofing with Silicones
- E35: Experimental Report by Dr Rirsch

III. With the statement setting out the grounds of appeal, appellant 1 filed further evidence:

- E39: Photographs for Silres BS Creme C
- E40: Photographs for Safeguard Dryzone

IV. With the statement setting out the grounds of appeal, appellant 2 filed in particular the following document:

- E41: Technical Report - LTR 071

V. In the course of the appeal proceedings, appellant 2 also filed the following documents:

E36: C45 - Damp proof course renewal/insertion

E37: British Standard Code of practice for
installation of chemical damp-proof courses

VI. After the parties had been summoned to oral proceedings, the respondent filed an auxiliary request dated 19 May 2015.

VII. The sole independent claim 1 of the main request (auxiliary request 2 on which the impugned decision was based) reads as follows:

"1. A method of treating the fabric of a building to prevent the ingress of water characterised in that a number of cavities are drilled into the relevant area of the building and thereafter the cavities are filled with a thixotropic paste comprising at least one silane compound, at least one siloxane compound and a thickening agent, all in a water base."

Dependent claims 2 to 8 are directed to particular embodiments of the method according to claim 1.

VIII. The wording of the dependent claims relevant for this decision is reproduced below:

"2. The method as claimed in claim 1, characterized [*sic*] in that the cavities are filled with the thixotropic paste without the use of a fluid compressor."

"6. The method as claimed in any of the preceding claims, characterised in that a second siloxane is

present in the form of a modified polymethyl siloxane."

"8. The method as claimed in any of the preceding claims, characterised in that the thickening agent is a modified bentonite."

IX. The arguments of appellant 1 may be summarised as follows:

Sufficiency of disclosure

As conceded by the patentee the skilled person would know which silanes and siloxanes were to be used. As a consequence silanes and siloxanes, which were not suitable, were also encompassed by claim 1.

Inventive step

Wacker BS Creme C was described as thixotropic in documents E2 and E25. Wacker BS Creme C did not contain a thickening agent. But this was obvious since the thickening agent was added according to the invention of the patent in order to re-establish thixotropy after dilution with water. The question that arose was whether it was inventive to use Wacker BS Creme C in a well-known method of treating the fabric of a building to prevent the ingress of water, that method being known from E32 and E34. E32 disclosed a method wherein a number of cavities were drilled into the relevant area of the building and taught that any Wacker BS product could be used in this method. This also included Wacker BS Creme C. Likewise, E34 taught that Wacker BS products were suitable for use in injection methods. In view of the "Applications" section of E25, it was also obvious for the skilled person to look for different possibilities to apply Wacker BS Creme C.

The two independent problems to be solved were to provide an alternative paste that was thickened and to look for an alternative form of application of Wacker BS Creme C. The addition of a thickening agent was obvious and, since E34 already taught that Wacker BS products could be used in damp-proofing, it was also obvious for the skilled person to use Wacker BS Creme C in the method disclosed in E34. Thus, the subject-matter of claim 1 lacked an inventive step.

- X. The arguments of appellant 2 may be summarised as follows:

Amendments

Claim 2, which was not present in the application as filed, referred to a "compressor" in the singular whereas the passage of the description as filed, i.e. page 2, lines 18 to 22, forming the basis for this feature referred to "compressors" in the plural. The second paragraph on page 2 mentioned a "compressor" in the singular, but related to the prior art and not to the invention set out in the patent in suit. Moreover, that passage mentioned the compressor in the singular only in conjunction with other features inextricably linked to the compressor, i.e. pneumatic and electric power or the fact that the compressor was self-powered. The passages referred to mentioned that the treatment was on site, whereas this requirement was absent from claim 1. The single compressor mentioned in claim 1 was a twofold selection: firstly, a selection had to be made from a list comprising compressors and refrigerating equipment, and secondly, a choice had to be made between the singular form and the plural form. There were therefore serious doubts concerning the disclosure in the originally filed documents of the

subject-matter of claim 2, leading to an intermediate generalisation not in compliance with Article 123(2) EPC.

Sufficiency of disclosure

The patent in suit contained gaps in information or a lack of guidance as in the case underlying decision T 1248/11. In the present case, the term "thixotropic paste" was too vague; an accurate definition was missing, so that there was a lack of information or guidance. In paragraph 0013 of the patent in suit it was stated that a thixotropic paste was defined as a paste that did not flow out of the cavities. However, whether a certain product flowed out of the cavities depended on various factors such as the cavity diameter and the orientation of the cavity or the duration of observation. Also, the silane and siloxane components in claim 1 were not specified, nor was the water content or the shape and size of the cavities. Moreover, according to the patentee, Wacker BS Creme C was not suitable for use in the method according to claim 1. The experiments carried out in E35 showed that Wacker BS Creme C did not remain in the drilled cavities. Claim 1, however, also encompassed the use of Wacker BS Creme C, since it was a siloxane/silane emulsion which was a thixotropic paste as evidenced by E25. Thus, the skilled person was at a loss which paste to use in the method according to claim 1. Also, while the concept of thixotropy was well known to the skilled person, the skilled person would have been at a loss as to the degree of thixotropy required in order to fulfil the promise of the invention.

The term "fluid compressor" in claim 2 was not accurately defined. This lack of information amounted

to a lack of sufficient disclosure. Since claim 2 stated that the cavities were filled without the use of a fluid compressor, claim 1 encompassed methods involving the use of a fluid compressor, but the skilled person would not know how to devise a compressor suitable for compressing a paste.

It was not clear what the expressions "modified polymethyl siloxane" in claim 6 and "modified bentonite" in claim 8 referred to. The description of the patent in suit gave only one example of a suitable composition, and that example referred to a trade mark. As a product referred to by a trade mark could change, there was no guarantee that the product initially referred to would be available to the skilled person over the whole life of the granted patent. For those reasons, the requirements of sufficiency of disclosure were not met.

Novelty

E5 could be considered novelty-destroying for the subject-matter of claim 1 although no mention was made of drilled cavities.

E36 disclosed all the features in claim 1 in common. In particular, E36 disclosed a microemulsion. Since the term "thickening agent" in claim 1 was undefined, any material that thickened the water base qualified as a thickening agent. The microemulsion was such a material and thus qualified as a thickening agent.

Inventive step

The method according to claim 1 was obvious in view of E36 and E37 as the closest prior art. But also E5 could

serve as the closest prior art.

The difference over E36/E37 was the thixotropic paste and the thickening agent. The skilled person would have used bentonite in order to arrive at a thixotropic behaviour of the microemulsion. Starting from E36/E37 the skilled person would also have considered E25, since that document taught that Wacker BS Creme C was thixotropic. As the skilled person knew that providing the emulsion in the form of a thixotropic paste could be achieved by using a thickening agent, he would have arrived at the subject-matter of claim 1 in an obvious way.

XI. The arguments of the respondent may be summarised as follows:

Amendments

The third paragraph on page 2 of the application as filed constituted a valid basis for claim 2.

Sufficiency of disclosure

The term "fluid compressor" was readily understood in the art, as was the term "thixotropic paste". In particular, the skilled person would expect that a paste that was not thixotropic would flow out of the cavities within the first few minutes. E34 mentioned silanes and siloxanes, showing that the skilled person would have been well aware of suitable siloxanes and silanes. The "promise" referred to by appellant 2 was a matter of inventive step and not of sufficiency of disclosure. The term "modified siloxane" was commonly used in the damp-proofing art to indicate a siloxane compound modified with additional non-siloxane groups.

E19 evidenced that the term "modified bentonite" was known in the art and signified a bentonite material modified with additional organic groups. The reference to a trade mark in the description was intended to exemplify a material suitable for use in the invention and did not define a primary feature of claim 1.

The requirements of sufficiency of disclosure were therefore met.

Novelty

E5 was not novelty-destroying for the process of claim 1, since it did not disclose that the cream was filled into cavities drilled into the building. E36 disclosed neither a thickener nor a thixotropic paste.

Inventive step

E25 did not suggest that Wacker BS Creme C should be introduced through cavities drilled in the fabric of the building. Such a suggestion was also not derivable from either E32 or E34. In particular, E34 taught that chemical damp-proofing injection agents should be low-viscosity liquids which were applied under pressure.

The prior art taught away from adding a thickening agent, as the skilled person would expect that this would be likely to hinder the spreading of the damp-proofing agent throughout the building fabric. For instance, E5 taught in column 1, lines 44 to 46, that thickeners would inhibit penetration of the silanes and siloxanes. Therefore, the method according to claim 1 involved an inventive step.

XII. Requests

Appellants 1 and 2 requested that the impugned decision be set aside and that the patent be revoked.

The respondent requested that the appeals be dismissed and that, in the alternative, the patent be maintained on the basis of the claims of the auxiliary request dated 19 May 2015.

Reasons for the Decision

1. Main request - amendments (Article 123(2) EPC)
 - 1.1 According to appellant 2, claim 2 extended to subject-matter which was not disclosed in the application as filed.
 - 1.2 The board does not agree with appellant 2 for the following reasons:
 - 1.2.1 It is true that claim 2, which was not present in the application as filed, refers to "compressor" in the singular whereas the passage of the description as filed, i.e. page 2, lines 18 to 22, forming the basis for this feature refers to "compressors" in the plural.
 - 1.2.2 This passage however needs to be read in the context of the overall disclosure of the application documents as filed. In particular, the second paragraph on page 2 mentions "compressor" in the singular. Although this passage refers to the prior art, it cannot be ignored when reading the passage on page 2, lines 18 to 22, in particular, because it addresses the problem occurring in the prior art, namely the need to carry a compressor onto the site, this problem then being addressed in the

passage on page 2, lines 18 to 22. Moreover, the overall teaching of the application as filed is that, instead of injecting the composition at relatively high pressures such that the composition reaches the location at which the barrier is to be created, a thixotropic paste is applied, resulting in diffusion of the composition to the location at which the barrier is to be created (see in particular page 4, lines 12 to 15). It is therefore immediately clear to the skilled person that the application aims not only at avoiding the use of a plurality of compressors but also at avoiding the use of a single compressor. For these reasons, appellant 2's argument that the expression "compressor" in the singular was disclosed only in conjunction with other features inextricably linked to the compressor is not persuasive. Nor is its argument that the single compressor was a twofold selection from two lists.

1.3 The board is therefore of the opinion that the subject-matter of claim 2 is directly and unambiguously derivable from the application documents as originally filed.

1.4 No other objections under Article 123(2) EPC were raised by the appellants. The board is therefore satisfied that the conditions of this provision are met.

2. Main request - sufficiency of disclosure

2.1 According to the appellants, there was a lack of information or lack of guidance in the patent in suit leading to a lack of sufficiency of disclosure as in the case underlying T 1248/11.

The board is unable to identify such a lack of information or lack of guidance for the following reasons:

- 2.2 One argument of the appellants was that the term "thixotropic paste" was too vague, and this lack of accuracy amounted to a lack of information or guidance.

There was a general consensus that the concept of thixotropy was well known to the skilled person. The person skilled in the art was well aware of the meaning of the expression "thixotropic". Therefore, the statement in paragraph 0013 of the patent, according to which the paste did not flow out of the cavities, does not constitute a definition of the concept of thixotropy, but rather is a consequence of the thixotropic paste used in the specific example of the patent in suit. Therefore, the question whether the thixotropic paste according to claim 1 flows out of a particular cavity or not relates to a particular effect which may play a role for the assessment of inventive step, but is irrelevant for assessing whether or not the method according to claim 1 is sufficiently disclosed.

Likewise, the experiments carried out in E35 fail to show a lack of sufficiency of disclosure. All that is required in claim 1 is to drill cavities into an area of a building and to fill them with the thixotropic paste as set out in that claim.

Claim 1 does not require the cream to stay entirely within the cavities, i.e. not to flow out of them at all. A similar reasoning applies to the argument submitted at the oral proceedings that the silane and siloxane components in claim 1 were not specified, nor

was the water content or the shape and size of the cavities. In fact, there is abundant evidence such as E36 showing that silane/siloxane compounds were commonly used for the purpose of preventing the ingress of water. The skilled person, having at his disposal these silane/siloxane compounds and knowing the concept of thixotropy, was therefore in a position to prepare a thixotropic paste as required in claim 1 and to carry out the method set out in that claim.

Whether such thixotropic pastes are suitable for achieving a particular effect or improvement over the prior art is not a matter of sufficiency of disclosure, but of inventive step.

- 2.3 According to another argument of the appellants the term "fluid compressor" in claim 2 was too vague, and this lack of accuracy amounted to a lack of sufficient disclosure.

For the board this argument too is not persuasive. This term designates nothing more than the means necessary to inject the silane/siloxane emulsions known in the prior art at relatively high pressure into the fabric of the building. In view of the evidence such as E36 (see section 2.2) and E37 (see in particular sections 6.1.1 and 6.2), there can be no reasonable doubt that such means were part of the general knowledge of the skilled person. While it is reasonable to assume that claim 1, as contended by appellant 2, also covers embodiments in which a compressor in the above sense is used, this does not imply that the thixotropic paste according to claim 1 is actually compressed.

Since the appellants have not shown that it is generally impossible to use the compressors used in the

prior art when filling the cavities with the thixotropic paste called for in claim 1, the board concludes that such use is in principle conceivable. Thus, the board cannot see why claim 1 should encompass methods which are not sufficiently disclosed.

- 2.4 A further argument of the appellants was that the expressions "modified polymethyl siloxane" in claim 6 and "modified bentonite" in claim 8 were not sufficiently clear.

In the board's opinion, these expressions may be considered somewhat non-specific, but this cannot form a bar to sufficiency of disclosure. The skilled person is well aware that polymethyl siloxanes and bentonite can undergo chemical modification (see for instance E19, page 7, lines 18 *et seqq.*) and thus is in a position to carry out the invention also according to dependent claims 6 and 8.

- 2.5 Further according to the appellants, the description of the patent in suit gave only one example of a suitable composition, and it referred to a trade mark. As a product referred to by a trade mark could change, there was no guarantee that the product initially referred to would be available to the skilled person over the whole life of the granted patent.

This argument must also fail, in particular because nowhere in the patent is it stated that the composition referred to as a trade mark was the only one with which it was possible to carry out the invention. As set out *supra* at 2.4, the skilled person could readily construe the terms "modified polymethyl siloxanes" and "modified bentonite" without the need to draw on the products mentioned in the description and referred to by way of

a trade mark.

2.6 For the above reasons, the board concludes that the patent discloses the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Articles 83 and 100(b) EPC).

3. Main request - Novelty

3.1 According to appellant 2, the subject-matter of claim 1 lacked novelty over the disclosure of E5.

The board does not see why E5 would be novelty-destroying for the subject-matter of claim 1. As conceded by appellant 2, E5 does not disclose the step of drilling cavities into the relevant area of the building. In fact, E5 is concerned with aqueous creams which can be applied by "brush, roller or knife coater" (see column 2, lines 18 to 20), and indeed does not disclose the step of drilling cavities into the relevant area of the building. This step is however required according to claim 1.

3.2 According to a further argument of appellant 2, E36 disclosed all the features in claim 1 in common. In particular, E36 disclosed a microemulsion. Since the term "thickening agent" in claim 1 was undefined, any material that thickened the water base would qualify as a thickening agent. The microemulsion was such a material and thus qualified as a thickening agent.

The board does not find this argument persuasive. Firstly, claim 1 requires a thickening agent which is different from the silane and siloxane compounds which are present in a water base. As the microemulsion of E36 (see section 2.2, "Water based silicone (silanes/

siloxanes) microemulsions") corresponds to the silane and siloxane compounds present in a water base as required in claim 1, they cannot at the same time also constitute the thickening agent. Moreover, the skilled person would not, in the context of water-based silane/siloxane microemulsions, consider such microemulsions as a thickening agent. The board also notes that E36 does not disclose the use of a thixotropic paste.

3.3 It follows that neither E5 nor E36 discloses all the features of claim 1 in common. Therefore, the requirements of novelty set forth in Article 54(1), (2) EPC are met.

4. Main request - inventive step

4.1 Invention

The invention concerns a method of treating the fabric of a building to prevent the ingress of water.

4.2 Closest prior art

4.2.1 Concerning the closest prior art, appellant 1 started from E2 and E25, whereas appellant 2 started from E36 and E37 but also submitted that E5 could be considered as the closest prior art.

4.2.2 According to established case law, the closest prior art for assessing inventive step is normally a prior-art document disclosing subject-matter conceived for the same purpose or aiming at the same objective as the claimed invention and having the most relevant technical features in common, i.e. requiring the minimum of structural modifications.

4.2.3 E36 and E37, which represent common general knowledge, relate to a method for treating the fabric of a building to prevent the ingress of water in which a number of cavities are drilled into the relevant area of the building and thereafter the cavities are filled with a composition comprising a silane compound and a siloxane compound, all in a water base (see in particular E36, section 2.2, "Water based silicone (silanes/siloxanes) microemulsions" and E37, section 6.1.2). Neither E36 nor E37 discloses the use of a thixotropic paste including a thickening agent.

E36 and E37 relate to the same purpose as the claimed invention of the patent in suit, i.e. a method for creating a barrier to the passage of moisture within the fabric of a building (cf. paragraph 0001 and 0013). Moreover, the subject-matter of claim 1 differs therefrom only by the use of a thixotropic paste including a thickening agent.

4.2.4 E2 and E25 concern Wacker BS Creme C. While it is undisputed that this cream has thixotropic properties, neither E2 nor E25 discloses a method including drilling cavities in the fabric of a building and filling them with the water-repellent composition. They also do not disclose that the composition contains a thickening agent. Rather, E25 teaches to apply this cream on the surface of the fabric (see penultimate paragraph, third sentence).

These documents therefore concern a purpose which is more remote from the purpose of the patent than the purpose of E36 and E37. Moreover, the method disclosed in particular in E25 would require more structural modifications than the one disclosed in E36 and E37.

4.2.5 As to document E5, which was discussed under novelty, this document - as conceded by the appellants - does not disclose the step of drilling cavities into a building's fabric (see for instance column 10, lines 45 *et seqq.*). Moreover, E5 teaches that thickeners need to be removed subsequently and limit the penetration depth of the water-repellent composition (see column 1, lines 40 to 46).

4.2.6 For the above reasons, the board concludes that E36 and E37 which is referred to in E36 represent the closest prior art.

4.3 Problem

The problem addressed in the patent (see paragraphs 0006 and 0013) was to avoid the need for fluid compressors and to ensure that the waterproofing composition remains in the cavities after injection.

4.4 Solution

As a solution to this problem the patent proposes a method for treating the fabric of a building to prevent the ingress of water in which a number of cavities are drilled into the relevant area of the building and thereafter the cavities are filled with a water-repellent composition characterised in that a thixotropic paste comprising a thickening agent is used.

4.5 Success of the solution

Independently of the conclusion on the success of the proposed solution to the above-mentioned problem, the technical problem underlying the patent in suit at

least can be seen as the provision of an alternative method of treating the fabric of a building to prevent the ingress of water.

The board is satisfied that this problem is solved.

The matter of whether or not an improved technical effect was achieved over that prior art, as alleged by the respondent, representing a more ambitious problem, would be an issue only if the solution to this less ambitious problem were found to be obvious vis-à-vis the closest prior art (cf. T 1831/07, Reasons 6.4, second paragraph; T 162/98, Reasons 4.2, second paragraph). It is only in the latter case, i.e. if an improvement is to be taken into consideration, that the evidence submitted by the appellants relating to an alleged effect occurring over the whole scope claimed, i.e. documents E35 and E39 to E41, would need to be considered by the board.

4.6 Obviousness

It remains to be decided whether the proposed solution was obvious in view of the prior art.

- 4.6.1 The board observes that prior to the earliest priority date of the patent it was common to inject water-based microemulsions of silanes and siloxanes under relatively high pressure or under gravity in order to convey the emulsion to the location where the damp-repellent zone was to be formed (see E36/E37 and also E32, page 9; E34, page 12, the paragraph bridging the left-hand and right-hand columns). The skilled person therefore must have expected that it was essential for the microemulsion to have a sufficiently low viscosity in order to carry out injection under pressure or under

gravity. He must have assumed that any substantial increase in viscosity would be detrimental to the flow characteristics of the water-repellent composition. In other words, a microemulsion having a substantially increased viscosity would make it more difficult for the microemulsion to reach the location where the damp-repellent zone is to be formed. The board therefore concludes that the skilled person would not have used silane/siloxane microemulsions having a substantially increased viscosity, let alone a silane/siloxane composition in the form of a thixotropic paste additionally comprising a thickening agent.

4.6.2 While it is uncontested that Wacker BS Creme is thixotropic (see E25, penultimate paragraph) and thus can be considered a thixotropic paste in the sense of claim 1, there is no hint in the cited prior art to use this product directly, i.e. without dilution, in the method according to E36 and E37. The skilled person would also have refrained from using that cream as such or even in combination with a thickening agent for the reasons set out *supra* at 4.6.1. Rather, the person skilled in the art, when faced with the problem of providing an alternative method, would at most have used this cream in the method according to E36 and E37 after dilution, since such a dilution step is taught in E34, which deals with Wacker BS products (see in particular page 11, left-hand column, last paragraph, and the table on page 13, "Recommended dilution"). By doing so, he would not have arrived at a method wherein cavities are filled with a thixotropic paste, let alone with a thixotropic paste comprising a thickening agent.

4.6.3 The board also does not agree with appellant 2 that it was obvious to use bentonite in the aqueous microemulsions used in E36/E37 in order to render them

thixotropic. The problem to be solved was not to render the microemulsions used in E36/E37 thixotropic. Such a formulation of the problem to be solved would include a feature of the proposed solution. Rather, the problem to be solved is the provision of an alternative method for preventing ingress of water (see *supra* at 4.5). There is however no hint in the prior art to include bentonite in the microemulsions used in E36/E37 in order to provide an alternative method for preventing ingress of water. What is more, the skilled person would have refrained from adding a thickening agent to the microemulsions used in E36/E37 for the reasons set out *supra* at 4.6.1.

4.6.4 For the above reasons, it was also not obvious to arrive at the subject-matter of claim 1 by combining the teachings of E2/E25 and E32/E34 as submitted by appellant 1. While E32 teaches to use Wacker BS products such as the one disclosed in E2/E25 in injection methods, E34 clearly teaches to use those products only in diluted form (see in particular page 10, right-hand column, paragraph at the top, page 11, left-hand column, last paragraph, and table on page 13, "Recommended dilution"). Thus, even if the person skilled in the art had looked for different applications of Wacker BS Creme C as contended by appellant 1 with reference to the "Applications" section of E25, he would have diluted it before using it in a method according to E32/E34. The board also notes that none of documents E2/E25 and E32/E34 teaches to use a thickening agent.

4.6.5 Likewise, it was also not obvious to arrive at the method of claim 1 starting from E5, since the person skilled in the art would have used the cream disclosed in E5 at most in a diluted state in the methods known

from E36/E37 or E32/E34.

4.6.6 For the above reasons, the board concludes that it was not obvious to arrive at the method according to claim 1. The requirements of Article 56 EPC are complied with.

5. As the respondent's main request is allowable, the respondent's auxiliary request does not need to be considered by the board.

Order

For these reasons it is decided that:

The appeals are dismissed.

The Registrar:

The Chairman:



C. Vodz

G. Rath

Decision electronically authenticated