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Datasheet for the decision of 7 June 2016

Case Number: T 0757/12 - 3.3.03

Application Number: 03758787.0

Publication Number: 1566412

IPC: C08L101/10, C09J201/10, C09K3/10

Language of the proceedings: EN

Title of invention:
CURABLE COMPOSITION AND METHOD FOR IMPROVING RECOVERY PROPERTIES AND CREEP PROPERTIES

Patent Proprietor:
KANEKA CORPORATION

Opponent:
Henkel AG & Co. KGaA

Headword:

Relevant legal provisions:
EPC Art. 84, 123(2)
RPBA Art. 13(1), 13(3)

Keyword:
Amendments - added subject-matter (yes) main request, first and second auxiliary requests
Claims - clarity (no) first auxiliary request

Decisions cited:

Catchword:

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Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0757/12 - 3.3.03

D E C I S I O N
of Technical Board of Appeal 3.3.03
of 7 June 2016

Appellant: (Opponent)	Henkel AG & Co. KGaA Henkelstrasse 67 40589 Düsseldorf (DE)
Representative:	Henkel AG & Co. KGaA CLI Patents Z01 40191 Düsseldorf (DE)
Respondent: (Patent Proprietor)	KANEKA CORPORATION 2-3-18, Nakanoshima, Kita-ku Osaka (JP)
Representative:	Hart-Davis, Jason Cabinet Beau de Loménie 158, rue de l'Université 75340 Paris Cedex 07 (FR)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 20 February 2012 concerning maintenance of the European Patent No. 1566412 in amended form.**

Composition of the Board:

Chairman	D. Marquis
Members:	M. C. Gordon
	R. Cramer

Summary of Facts and Submissions

I. The appeal lies from the interlocutory decision of the opposition division posted 20 February 2012 maintaining European patent number EP-B1-1 566 412 (granted on European patent application number 03758787.0, derived from international application number PCT/JP2003/13498, published under the number WO 2004/039892) on the basis of the second auxiliary request, filed during the oral proceedings before the opposition division.

In the following the wording "application as originally filed" refers to the English language translation as filed upon entry into the European phase.

II. The application as originally filed had 76 claims, whereby claims 1, 4, 5, 6, 10, 11, 15, 16, 17, 18, 20 and 21 were independent claims directed to various embodiments of a curable composition.
Claim 4 read as follows:
"A curable composition characterized by comprising:
an organic polymer (A1) having one or more silicon-containing functional groups capable of cross-linking by forming siloxane bonds in which the one or more silicon-containing functional groups capable of cross-linking by forming siloxane bonds are silicon-containing functional groups each having three or more hydrolyzable groups on the one or more silicon atoms thereof; and
a tin carboxylate (C1) in which the α-carbon of the carboxyl group is a quaternary carbon atom".

Claim 5 differed from claim 4 by specifying at the end:

"a tin carboxylate (C) and

an organotin catalyst (D).”

Claim 6 specified at the end
“a non-tin catalyst (E).”

Independent claim 27 was directed to a method for preparing an organic polymer.
Independent claims 28, 29, 34 and 38, were directed various embodiments of an adhesive for a panel.
Independent claims 44, 45, 50 and 54 were directed various embodiments of a sealant for a working joint in a building.

Independent claims 60, 61, 66, 70 and 76 were directed to methods for improving various properties of curable compositions.

III. The patent was granted with a set of 15 claims, whereby claim 1 read as follows:
“A curable composition comprising an organic polymer (A1) having, at a molecular chain terminus, a silicon-containing functional group capable of cross-linking by forming siloxane bonds and having three or more hydrolyzable groups on one or more silicon atoms thereof,
wherein the curable composition further comprises a catalyst selected from the group consisting of: a tin carboxylate (C); a carboxylic acid as non-tin catalyst (E); or an organotin catalyst (D) that is either a dialkyltin oxide, or a reaction product between a dialkyltin oxide or dialkyltin diacetate and a low molecular weight, hydrolyzable silicon group-containing silicon compound, or that is a compound represented by the general formula (22):
$QgSn(OZ)_{4-g}$ or $[Q2Sn(OZ)]_2O$
where Q represents a monovalent hydrocarbon group

having 1 to 20 carbon atoms, Z represents a monovalent hydrocarbon group having 1 to 20 carbon atoms or an organic group having therein one or more functional groups capable of forming coordination bonds with Sn, and g is any one of 0, 1, 2 and 3;
and wherein
- either 1) the main chain of the organic polymer (A1) is a polyoxyalkylene chain; or
- 2) the main chain of the organic polymer (A1) is a poly(meth)acrylate copolymer produced by living radical polymerization and in which the silicon-containing functional group capable of cross-linking by forming siloxane bonds is represented by the general formula (2):

$$-Si(OR^1)_3 \quad (2)$$

where the three R^1 groups are each independently a monovalent organic group having 2 to 20 carbon atoms."

IV. A notice of opposition against the patent was filed in which revocation of the patent on the grounds of Art. 100(a) EPC (lack of novelty, lack of inventive step) was requested. Among the documents cited during the opposition proceedings was:
D11: Hutchinson, A.R. et al, "Building Joint Movement Monitoring and Development of Laboratory Simulation Rigs" in "Durability of Building Sealants", Proceedings of the International RILEM Symposium on Durability of Building Sealants, Building Research Establishment Ltd, Graston, UK, 6-7 November 1997, Wolf, A. T. (Ed) (pages 99-116).

V. The decision of the opposition division was based on a main request and two auxiliary requests all as submitted at the oral proceedings before the opposition division.
Claim 1 of the "further revised second auxiliary

request", on the basis of which it was decided that the patent could be maintained, read as follows:
"Use of a curable composition comprising an organic polymer (A1) having, at a molecular chain terminus, a silicon-containing functional group capable of cross-linking by forming siloxane bonds and having three of more hydrolyzable groups on one or more silicon atoms thereof,
wherein the curable composition further comprises a catalyst selected from the group consisting of: a tin carboxylate (C); a carboxylic acid as non-tin catalyst (E); or an organotin catalyst (D) that is either a dialkyltin oxide, or a reaction product between a dialkyltin oxide or dialkyltin diacetate and a low-molecular-weight, hydrolyzable silicon group-containing silicon compound, or that is a compound represented by the general formula (22):
$Q_gSn(OZ)_{4-g}$ or $[Q_2Sn(OZ)]_2O$
where Q represents a monovalent hydrocarbon group having 1 to 20 carbon atoms, Z represents a monovalent hydrocarbon group having 1 to 20 carbon atoms or an organic group having therein one or more functional groups capable of forming coordination bonds with Sn, and g is any one of 0, 1, 2 and 3;
and wherein the amount of amide segments (-NH-CO-) occupying the main chain skeleton of the organic polymer is 3 wt% or less, and
- either 1) the main chain of the organic polymer (A1) is a polyoxyalkylene chain; or
- 2) the main chain of the organic polymer (A1) is a poly(meth)acrylate copolymer produced by living radical polymerization and in which the silicon-containing functional group capable of cross-linking by forming siloxane bonds is represented by the general formula (2):

$$-Si(OR^1)_3 \quad (2)$$

where the three R^1 groups are each independently a monovalent organic group having 2 to 20 carbon atoms, wherein the use is at least one of the following:
1) use of the said curable composition as an automotive panel adhesive;
2) use of the said curable composition in a seam where the ratio of the displacement width to the average width is 15% or greater."

According to the decision the ground of opposition under Art. 100(b) EPC, sought to be introduced by the opponent, was not admitted to the proceedings.
The claims of the second auxiliary request were held to meet the requirements of Art. 123(2) EPC. A number of passages of the original disclosure (description and claims) were cited in support of this conclusion.
Consequently, the ground of opposition pursuant to Art. 100(c) EPC was considered to be "no more relevant" for the proceedings.
Novelty and inventive step of the second auxiliary request were acknowledged. The details of this aspect of the decision of the opposition division are not relevant for the present decision.

VI. The opponent filed an appeal against the decision, invoking in particular objections under Art. 123(2) and 84 EPC.

VII. The patent proprietor responded, maintaining as the main request the set of claims as upheld by the opposition division and submitting five sets of claims as first to fifth auxiliary requests.

VIII. The appellant made a further written submission, maintaining objections also in respect of the newly

filed auxiliary requests.

IX. The Board issued a summons to oral proceedings and a communication in which *inter alia* matters relating to the allowability of the amendments and the clarity of the claims were addressed.

X. The respondent filed sets of claims (letter of 26 May 2016) constituting fourth-ninth auxiliary requests, whereby the previously filed fourth and fifth auxiliary request were replaced. A further written submission was made (27 May 2016).

XI. At the oral proceedings before the Board, following discussion in particular of the context in which the presence of amide segments was disclosed the respondent filed an amended main request, claim 1 of which differed from claim 1 of the former main request, i.e. the second auxiliary request as upheld by the opposition division in that the feature relating to amide segments read as follows:

"and wherein the amount of amide segments (-NH-CO-) occupying the main chain skeleton of the organic polymer, the amide segments being generated as urethane-bond containing components, is 3 wt% or less". Furthermore during the course of the oral proceedings all sets of claims with the exception of the sixth and seventh auxiliary requests were withdrawn.

Claim 1 of the set designated "sixth auxiliary request" - now *de facto* the first auxiliary request - read as follows:
"Use of a curable composition comprising an organic polymer (A1) having, at a molecular chain terminus, a silicon-containing functional group capable of cross-

linking by forming siloxane bonds and having three or more hydrolyzable groups on one or more silicon atoms thereof,
wherein the curable composition further comprises a catalysts which is a tin carboxylate (C)
and wherein the amount of amide segments (-NH-CO-) occupying the main chain skeleton of the organic polymer is 3 wt% or less, and
- either 1) the main chain of the organic polymer (A1) is a polyoxyalkylene chain; or
- 2) the main chain of the organic polymer (A1) is a poly(meth)acrylate copolymer produced by living radical polymerization and in which the silicon-containing functional group capable of cross-linking by forming siloxane bonds is represented by the general formula (2):

$$-Si(OR^1)_3 \quad (2)$$

wherein the three R^1 groups are each independently a monovalent organic group having 2 to 20 carbon atoms,
wherein the use of the said curable composition is as a sealant for working joint in a building in a seam where the ratio of the displacement width to the average with is 15% or greater."

Claims 2-8 were dependent claims.

Claim 1 of the set designated "seventh auxiliary request" - now the second auxiliary request - differed from claim 1 of the first auxiliary request (designated "sixth auxiliary request") by specifying that the use was as follows:
"wherein the use of the said curable composition is as an automotive panel adhesive".

Claims 2-8 were dependent claims.

XII. The arguments of the appellant can be summarised as follows:

(a) Main Request

The features of the claims were taken from various parts of the description and claims. Although all features were disclosed individually, the combination of the defined use(s) with the specific constitution of the curable composition was not disclosed explicitly. Nor was such a disclosure of the defined uses of the defined curable compositions derivable (implicitly) from the application. In order to arrive at the claimed subject-matter it was necessary to make a number of selections i.e. the two different types of polymer; (polyoxyalkylene, poly(meth)acrylate); the location of the Si containing groups (terminal); the number of hydrolysable groups thereon; the nature of the hydrolysable groups, as denoted by formula (2) of the claim in the case of poly(meth)acrylate. The use in a seam was not disclosed in the generality as now claimed.

(b) First auxiliary request (corresponding to the set of claims filed as the sixth auxiliary request with letter of 26 May 2016):

The amendment to "sealant for working joint in a building in a seam" overcame one of the objections pursuant to Art. 123(2) EPC.

All other objections relating to a non-disclosed combination of features in respect of the curable composition were maintained.

Furthermore the definition of the expansion ratio of the seam was unclear since it was not explained in the patent under what conditions this was to be measured or how the average was to be calculated. As shown by D11 many factors influenced this parameter including the location in a building, the

ambient conditions and the time period over which the measurement was to be taken.

(c) Second auxiliary request (corresponding to the set of claims filed as the seventh auxiliary request with letter of 26 May 2016):
The objections pursuant to Art. 123(2) EPC in respect of the constitution of the curable composition, i.e. a non-disclosed combination of features applied.

XIII. The arguments of the respondent can be summarised as follows:

(a) Main request, first and second auxiliary requests
The application as granted was drafted in a way to indicate the two uses now defined. Hence there could be no doubt that these two uses were disclosed in association with all the compositions. Regarding the compositions, the features thereof were disclosed throughout the description, both in the general disclosure and in the more detailed parts as well as in the examples and claims. The disclosure of the compositions in the application took several forms, and was presented in various permutations corresponding to the various different "aspects" defined. This was reflected by the structure of the claims of the application as filed. The constitution of the (meth)acrylate polymers with the defined reactive Si groups at the terminus was disclosed explicitly in the application. All possible permutations of catalyst and polymer, including those now claimed were derivable from the original application.
The terms "seam" and "working joint for building" were synonymous. Hence this feature was originally disclosed.

Regarding Art. 84 EPC D11 demonstrated what a seam in a building was and how the displacement thereof was to be understood and measured.

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

The respondent requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request filed during the oral proceedings, or on the basis of the sixth or seventh auxiliary request filed with the letter of 26 May 2016 (renumbered as first and second auxiliary requests).

Reasons for the Decision

1. The appeal is admissible.

2. Main request

2.1 Admissibility

The main request was amended during the oral proceedings to take account of an observation made with respect to a feature concerning the specification of the content of –NH-CO- groups which had been introduced in the proceedings before the opposition division. In particular the Board raised the question whether this feature had been originally disclosed in general or was limited to the case where urethane groups were present. The matter in question was raised for the first time at the oral proceedings in the light of the exchange of arguments between the parties in respect of the feature of the -NH-CO- content. There would accordingly have been no opportunity or even reason to furnish such an

amendment at an earlier stage of the procedure. The amendment was not complex and did not introduce issues to the proceedings going beyond those already under consideration. The appellant did not object to the admissibility of the amended request.
Accordingly the amended main request could be admitted to the proceedings.

2.2 Art. 123(2) EPC
Granted claim 1 was directed to a curable composition. None of the granted claims were directed to either of the uses now defined or to compositions "for" such uses.
Originally filed claims 28, 29, 30, and 42 referred to by the respondent, were directed to "adhesive for panel" but did not – even by reference – define directly and unambiguously either of the types of polymer specified in claim 1. Furthermore it was not specified in these claims that the silyl groups were located at the termini of the polymer, nor was the use directed specifically to "automotive panel adhesives".
According to the third and fourth paragraphs in the section "Background Art" on pages 1 and 2 of the application as filed resins for use in adhesives for interior or exterior panels, vehicle panels and the like were discussed as well as sealants for working joints in buildings.
The formulation of the problem, commencing in the first paragraph of the section "Disclosure of the Invention" on page 3 of the application is then defined generally as an improvement over these known compositions, with reference to the various properties required.
The types of polymers specified in the claim are disclosed in the description on page 9 for the polyoxyalkylene main chain polymer as the "tenth aspect" of the invention and on page 10 for

poly(meth)acrylate main chain polymer as the "twelfth" aspect of the invention. A further reference to the poly(meth)acrylate main chain polymer is to be found in the second complete paragraph on page 12 of the application as filed, as an "adhesive for panel" but without the definition of the location or nature of the hydrolysable silyl groups.

Thus in broad, general terms, the use of the curable compositions having the indicated polymer chains is disclosed in the application as filed.

However this disclosure is not in association with the specified uses or with the specific configuration and location of the hydrolysable groups as now defined in claim 1.

The catalysts are disclosed in the application as originally filed in the second paragraph of page 5 for components (C) and (D) and in the subsequent paragraph for catalyst (E), however without any restriction to particular uses or indeed to any type of main chain polymers.

Regarding the poly(oxyalkylene) main chain polymers, which is the tenth aspect of the invention, discussed on page 9 of the application as filed a polyoxyalkylene polymer having one or more silicon-containing functional groups is disclosed. The silicon functional groups are defined as being $Si(OR^1)_3$, wherein R^1 is defined "as above" which according to the third paragraph on page 7 is a monovalent group having 2-20 carbon atoms. However it is not stated in this part of the disclosure that the functional groups are located at the chain termini, nor is there any reference to catalysts or the uses.

The general discussion of the polymers on page 26 and continuing in the first complete paragraph of page 27 of the application as originally filed relates to the types of base polymers that can be employed, including

but not limited to poly(oxyalkylene) and (meth)acrylate polymers and has no reference either to the nature or location of the silyl functional groups or to the specific uses. In the further - still general - discussion in the second complete paragraph of page 31 of the application as originally filed it is stated that the polymer has a trialkoxysilyl group having 2 to 20 carbon atoms. However this disclosure is not linked to a specific type of polymer and does not specify where on the polymer chain the trialkoxysilyl group is situated. Nor is there any indication in this passage of the specific use.

Commencing with the second complete paragraph of page 32 of the application it is further disclosed that a polyoxyalkylene polymer can serve as the organic polymer in the curable composition and that the above mentioned Si functional groups of formula (2) can be present. In the following paragraph it is stated that these groups can be located either at the termini or in the inner portion of the molecule. However this location is not associated with any use or indeed any catalyst.

In the final paragraph on page 41 of the application as filed, at the conclusion of a section which discusses the nature of the reactive silyl group it is stated that this may be located at the termini of the polymer or in the inner portion or at both, whereby location at the termini is preferable. However this disclosure, presenting terminal location of the reactive silyl groups as an option, is not linked to any particular type of polymer nor to any use.

In the more detailed discussion of the polyoxyalkylene polymer, commencing in the first paragraph on page 42 there is likewise no indication of the location of the reactive silicon groups or the use.

According to the twelfth aspect of the invention -

disclosed in the first complete paragraph on page 10 of the application - a (meth)acrylate copolymer having silicon functional groups as defined above is disclosed. It is not stated that the silicon groups are located at the termini.
In the further discussion of the (meth)acrylate polymer embodiment the second complete paragraph of page 12 of the application as filed discloses as a preferred embodiment an adhesive for panel in which the polymer is a (meth)acrylate polymer as defined. However it is only generally stated here that reactive silicon groups are present, without giving any information as to their location or molecular configuration. In the more detailed discussion of the (meth)acrylate polymers commencing at the second complete paragraph on page 46 it is stated in the second complete paragraph of page 51 that the silyl groups may have the formula discussed above. In the following paragraph it is stated that these groups may be located at the termini or in the inner portion of the chain or both. However in this part of the description there is no reference to the specific uses as defined in the operative claims. Living radical polymerisation is discussed in the second complete paragraph on page 52.

The limitation on the content of –NHCO- groups is disclosed in the final partial paragraph of page 27 of the application as filed, again with no connection to either of the types of polymers specified or the uses defined.

The catalysts as defined in the claims are discussed commencing at the first complete paragraph of page 58, in particular from the first complete paragraph of page 68. However there is no link to specific polymers, configurations of the polymers (location of the

hydrolysable groups) or to the uses thereof as now claimed.

The second complete paragraph on page 109 of the application refers to various uses including automotive panel adhesive and use in working joints of buildings, in which context the term "seam" is employed. In the final part of the paragraph use of the composition in a seam where the ratio of average width to displacement width of 15% or greater is disclosed as a "more preferable" embodiment.

The examples show various polymer compositions but do not serve to establish any link between the type of polymer, location of the hydrolysable groups, catalysts used and the uses.
Thus insofar as relevant to the compositions defined in the operative claims the examples disclose:
examples 5-11: polyoxypropylene with either trimethoxy- or triethoxysilyl terminal reactive groups with catalyst C or D.
Examples 12-14: polyoxypropylene with terminal methyldimethoxysilyl groups and combinations of catalyst components C and E.
Examples 15-18: polyoxypropylene with either methyldimethoxysilyl or triethoxysilyl end groups together with catalyst D.
Example 19: polyoxypropylene with terminal triethoxysilyl end groups with catalyst D.
Example 20: polyoxypropylene with terminal triethoxysilyl end groups with catalyst E.

2.3 From the foregoing analysis of the disclosure of the description, claims and examples of the application as originally filed it is apparent that although all elements of present claim 1 are present and can be

identified therein, these are disclosed individually and in various different contexts and combinations. There is no explicit disclosure of the combination of the uses with the defined curable compositions with the various configurations of terminal groups in the original application. The wording of the application or the structure of the claims do not provide any link between these aspects. Nor is there any statement or even indication in the description which would create – directly and implicitly - a link between the combination of features (composition and uses) now claimed. Although it could be considered that the use of the (meth)acrylate variant as an adhesive for panel is disclosed (second complete paragraph on page 12) this part of the application does not disclose specifically an automotive panel, the configuration or location of the reactive groups, or the catalysts defined.
Consequently there is no basis in the application as filed for the amendments made compared to the granted patent in defining either of the specific use of either of the defined (groups of) compositions.

2.4 The conclusion is therefore that the requirements of Art. 123(2) EPC are not satisfied by the main request.

3. First auxiliary request- set of claims filed as sixth auxiliary request with letter of 26 May 2016.
Claim 1 is limited to the use as a sealant for a working joint in a building or a seam, with the indicated ratio of displacement width to average width. The claim is further limited, in terms of the composition to compositions containing only catalyst (C).

3.1 Admissibility

The request was filed as a reaction to the communication of the Board. According to submissions of the respondent at the oral proceedings, the restrictions to a single use and a single catalyst made were directed to addressing issues raised in the communication relating to clarity aspects of the embodiment "automotive panels" and the question of evidence for a technical affect associated with the subject-matter of the claims in the light of the broad scope of the range of compositions defined.
The Board is satisfied that it is immediately apparent from the request what amendments have been made and, in association with the communication, what the purpose of these was.
It has not been shown that there would have been any reason arising from the arguments and submissions made in the opposition or appeal proceedings, prior to issue of the communication to effect the amendments now advanced.

Consequently the request can be admitted to the proceedings (Art. 13(1) and (3) RPBA).

3.2 Art. 123(2) EPC

The restriction to a single catalyst does not serve to overcome the objection that the claim defines a non-disclosed combination of features. As explained for the main request, the remaining features of the claim, i.e. the combination of the specific use as a sealant for working joint in building with one of the two polymers having a polyoxyalkylene chain or a poly(meth)acrylate chain, a silicon-containing group at the molecular chain terminus and the given catalyst is not disclosed in the application as filed.

Consequently the requirements of Art. 123(2) EPC are not satisfied.

3.3 Art. 84 EPC

The use of the curable composition in a "sealant for a working joint in a building in a seam" is defined in terms of the ratio of the displacement width to the average width as being 15% or greater. This feature is defined in the patent only to the extent that it relates to sealants used in working joints in buildings. However the precise relation of the “seam” to the various building components is not defined. It is not specified what is meant by “average width”, i.e. under which conditions or over which period of time this is measured. Nor is it defined under what conditions the displacement is to be measured. The patent contains no further information about this feature.
D11, submitted by the opponent, discusses the movement of joints in buildings and the effect thereof on the sealants used. According to D11, page 100, at the top the largest cause of joint movement is temperature variation (daily and seasonal). According to the top of page 101, the amplitude and frequency of movement is influenced by the type of materials involved as well as other details of the construction, e.g. the fixing methods, construction of the building. As a consequence, it is stated, it is difficult to generalise about typical rates and amount of movement of joints in buildings.
The results – discussed starting on page 104 - show that the joint movement is greatest in spring and summer due to greater daily temperature ranges, greater movement being recorded for vertical joints. Changes in movement also arise due to temperature changes during

the day (e.g. change from sunny to cloudy conditions, rain). D11 confirms that the meaning of terms such as "average width" or "average displacement" are not inherent to a seam made of a particular composition but are subject to multiple influences and interpretations, depending on the nature of the construction being considered, the materials used, the type of seam and location in the building and indeed the time period(s) over which the measurements are carried out.
Due to these multiple sources of variability or uncertainty and the absence of any indication of the conditions to be applied for the measurement in the patent, it will not be possible to ascertain whether a given use, based on a measurement of the ratio of the displacement width to the average width falls under the claim.
This leads to the conclusion that the requirements of Art. 84 EPC are not complied with.

3.4 The first auxiliary request (corresponding to the set of claims of the sixth auxiliary request as filed with letter of 26 May 2016) therefore does not meet the requirements of Art. 123(2) or 84 EPC.

4. Second auxiliary request (corresponding to the set of claims filed as seventh auxiliary request with letter of 26 May 2016).

4.1 Admissibility
Claim 1 is limited in respect of the composition in the same manner as claim 1 of the first auxiliary request. The use is limited to that of automotive adhesive. Analogously to the first auxiliary request, it is considered that this request can be seen as a direct response to matters raised in the communication of the board, eliminates a number of aspects of the previous

requests and thus does not complicate the case. Accordingly the request can be admitted to the proceedings (Art. 13(1) and (3) RPBA).

4.2 Art. 123(2) EPC

As explained for the main request, although all the individual aspects of the claim are to be found in the application as filed, there is no basis, either explicitly or implicitly, for the combination of features now claimed, i.e. the specific use as an automotive panel adhesive in combination with one of the two polymers having a polyoxyalkylene chain or a pol(meth)acrylate chain, a silicon-containing group at the molecular chain terminus and the given catalyst is not disclosed in the application as filed.

Consequently the set of claims according to the seventh auxiliary request as filed on 26 May 2016 (now the second auxiliary request) does not meet the requirements of Art. 123(2) EPC.

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:

B. ter Heijden D. Marquis

Decision electronically authenticated