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**Datasheet for the decision
of 10 November 2017**

Case Number: T 1593/13 - 3.2.07

Application Number: 00941456.6

Publication Number: 1233916

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C08L69/00, C08L77/00, C08J9/26,
F26B3/28, F26B21/08

Language of the proceedings: EN

Title of invention:

BARRIER PACK WITH ABSORBING AGENT THEREIN

Patent Proprietor:

CSP Technologies, Inc.

Opponent:

Airsec S.A.S.

Headword:

Relevant legal provisions:

EPC Art. 100 (c), 123 (3)

Keyword:

Grounds for opposition - added subject-matter (yes)
Amendments - broadening of claim (yes)

Decisions cited:

Catchword:



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Case Number: T 1593/13 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 10 November 2017

Appellant: Airsec S.A.S.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
16 May 2013 concerning maintenance of the
European Patent No. 1233916 in amended form.

Composition of the Board:

Chairman K. Poalas
Members: V. Bevilacqua
P. Guntz

Summary of Facts and Submissions

- I. The patent proprietor and the opponent lodged appeals against the interlocutory decision of the opposition division maintaining patent EP-B-1 233 916 in amended form.
- II. The Opposition Division held that the ground of Article 100(c) EPC prejudiced the maintenance of the patent as granted (corresponding to the present main request), and that the then auxiliary request (corresponding to the present auxiliary request 3) satisfied the requirements of the EPC.
- III. The patent proprietor requested with its statement setting out the grounds of appeal and with its letter of 4 February 2014 that the decision under appeal be set aside and the patent be maintained as granted (main request), or, as an auxiliary measure, on the basis of one of the sets of claims submitted together with its statement setting out the grounds of appeal as auxiliary requests 1 to 3 and further submitted together with its letter of 4 February 2014 as auxiliary requests 4 and 5. Oral proceedings were requested as an auxiliary measure.
- IV. The opponent requested with its statement setting out the grounds of appeal that the decision under appeal be set aside and the patent be revoked. Oral proceedings were requested as an auxiliary measure.
- V. In its communication annexed to the summons to oral proceedings scheduled for 10 November 2017 the Board gave its preliminary opinion according to which, *inter alia*, the ground of opposition according to Article 100(c) EPC holds against claim 1 of the main request

and the respective claims 1 of the auxiliary requests 1 to 5 do not meet the requirements of Article 123(3) EPC, see chapters 2.1 to 2.4 of said communication.

VI. With its letter of 12 October 2017 the patent proprietor withdrew its appeal and its request for oral proceedings. It announced further that it will not attend the scheduled oral proceedings. No comments were submitted in respect to the above-mentioned communication of the Board.

VII. With its letter of 20 October 2017 the opponent, being now the sole appellant in the present case, requested that the decision under appeal be set aside and the patent be revoked in its entirety in the written procedure. The request for oral proceedings was upheld only as a precautionary measure.

VIII. On 2 November 2017 the Board cancelled the scheduled oral proceedings and decided the present case in written proceedings.

IX. The wording of independent claim 1 of the **main request**, i.e. of the patent as granted, is as follows (the features added with respect to the originally filed independent claim 5 are in bold and those removed are struck through):

"A barrier pack (1) comprising a cover portion (20) bonded to a base portion (5) to form a sealed unit package capable of containing a product:

(a) the cover portion (20) comprises at least one cavity (24); and

(b) the base portion (5) comprising an absorbing agent material applied to an interior of the base portion (5) **characterized in that**

the absorbing agent material is and coextensively aligned with the corresponding cavity (24) of the cover portion (2),
~~wherein~~ the absorbing agent material is formed by combining at least the following components to form a monolithic composition: an absorbing agent, a water-insoluble polymer and hydrophilic agent; and the composition comprises at least three phases and has interconnecting channels of hydrophilic agent with the absorbing agent in or adjacent to these channels, **and the absorbing agent is in the form of an absorbing agent containing layer.**"

Claim 1 of the **auxiliary request 1** differs from claim 1 of the main request in that its last feature has been amended as follows (added features are in bold, those removed are struck through):

"the absorbing agent is in the form of an ~~absorbing agent containing~~ layer **of absorbing agent material.**"

Claim 1 of the **auxiliary request 2** differs from claim 1 of auxiliary request 1 in that its last feature has been amended as follows (added features are in bold):

"the absorbing agent **is a desiccant and** is in the form of a layer of absorbing agent material."

Claim 1 of the **auxiliary request 3** differs from claim 1 of the main request in that its last feature has been amended as follows (added features are in bold):

"the absorbing agent **material** is in the form of an absorbing agent containing layer."

Claim 1 of the **auxiliary request 4** differs from claim 1 of the main request in that its last feature has been amended as follows (added features are in bold):

"the absorbing agent is in the form of an absorbing agent containing layer **of absorbing agent material.**"

Claim 1 of the **auxiliary request 5** differs from claim 1 of auxiliary request 4 in that its last feature has been amended as follows (added features are in bold):

"the absorbing agent **is a desiccant and** is in the form of an absorbing agent containing layer of absorbing agent material."

Reasons for the Decision

1. Claim 1 of the main request

1.1 The opposition division had decided that claim 1 does not meet the requirements of Article 123(2) EPC. The decision is reasoned as follows (cf. Reasons 2.2.2.3 of the impugned decision):

"In the original disclosure, see particularly Claims 1 and 5, the "absorbing agent material" is defined as containing at least three components, namely an absorbing agent, a water-insoluble polymer, and a hydrophilic agent. Accordingly, the "absorbing agent" is clearly mentioned as a component of the "absorbing agent material", wherein the composition including the aforementioned three components comprises at least three phases and has interconnecting Channels with the absorbing agent in or adjacent to these Channels. According to original page 13, lines 22-24, said "absorbing agent material" may be in the form of an "absorbing agent containing layer".

Consequently, the original disclosure clearly distinguishes between the absorbing agent and the absorbing agent material, wherein the absorbing agent is in or adjacent to interconnecting Channels formed in the absorbing agent material and the absorbing agent material is in the form of an absorbing agent containing layer.

Thus, although it is clear from the original disclosure as a whole, that the feature "the absorbing agent is in the form of an absorbing agent containing layer" is to be read "the absorbing agent material is in the form of an absorbing agent containing layer", it is to be concluded that there is no basis in the original disclosure supporting the aforementioned feature of Claim 1 as granted."

1.2 Under the section 2.1.1 of its above-mentioned communication the Board stated the following:

"2.1.1 The Board concurs with the reasoning presented under point 2.2.2.3 of the impugned decision and under point 2.1 of appellant 2's [opponent's] submissions dated 14 February 2014 and considers that the subject-matter of claim 1 of the main request seems to extend beyond the content of the application as originally filed. The ground of opposition according to Article 100(c) EPC seems therefore to hold against claim 1 of the main request."

1.3 The above-mentioned preliminary finding of the Board has not been commented on nor has it been contested by the patent proprietor during the appeal proceedings, see point VI above.

1.4 Under these circumstances, the Board - having once again taken into consideration all the relevant aspects concerning said issue - sees no reason to deviate from its above-mentioned finding.

1.5 As a consequence, the main request is considered to be not allowable.

2. Claim 1 of the auxiliary requests 1 to 5

2.1 Under the sections 2.2 to 2.4 of its above-mentioned communication the Board stated the following:

"2.2 Claim 1 of auxiliary request 1

2.2.1 Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that its last feature has been amended as follows (added features are in bold, those removed are struck through):

*"the absorbing agent is in the form of an ~~absorbing agent containing layer~~ **of absorbing agent material.**"*

2.2.2 Claim 1 of auxiliary request 1 seems to stipulate that the barrier pack comprising an absorbing agent material is in the form of a layer, whereby the absorbing agent present in said absorbing agent material layer can have any form or shape. According to claim 1 of the main request the absorbing agent had to have the form or shape of a layer.

2.2.3 Therefore, claim 1 of auxiliary request 1 does not seem to be in compliance with the requirements of Article 123(3) EPC.

2.3 Claim 1 of auxiliary requests 2, 4 and 5

2.3.1 These claims contain the feature that "the absorbing agent is in the form of layer of absorbing agent material". This means again that the absorbing agent present in said absorbing agent material layer can have any form or shape.

2.3.2 Accordingly, claim 1 of auxiliary requests 2, 4 and 5 does not seem to be in compliance with the requirements of Article 123(3) EPC.

2.4 Claim 1 of auxiliary request 3

2.4.1 Claim 1 of auxiliary request 3 differs from claim 1 of the main request in that its last feature has been amended as follows (added feature is in bold):

"the absorbing agent **material** is in the form of an absorbing agent containing layer."

2.4.2 The Board concurs with the reasoning given under point 3.1 of the grounds of appeal of appellant 2 [opponent] and considers that claim 1 does not seem to be in compliance with the requirements of Article 123(3) EPC."

2.2 The above-mentioned preliminary finding of the Board has not been commented on nor has it been contested by the patent proprietor during the appeal proceedings, see point VI above.

2.3 Under these circumstances, the Board - having once again taken into consideration all the relevant aspects concerning said issues - sees no reason to deviate from its above-mentioned finding that any of the auxiliary

requests extended the scope of protection the patent as granted confers.

- 2.4 As a consequence, the auxiliary requests 1-5 are also considered to be not allowable.

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:



G. Nachtigall

K. Poalas

Decision electronically authenticated