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Datasheet for the decision of 11 January 2019

Case Number: T 0027/15 - 3.2.07

Application Number: 10158378.9

Publication Number: 2236427

IPC: B65B27/12, B65B63/02

Language of the proceedings: EN

Title of invention:
Method of packaging a compressed filter tow bale

Patent Proprietor:
Daicel Corporation

Opponents:
Solvay Acetow GmbH
EASTMAN CHEMICAL COMPANY

Headword:

Relevant legal provisions:
EPC Art. 100(c), 123(2)

Keyword:
Grounds for opposition - extension of subject-matter (yes)
Amendments - added subject-matter (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

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Case Number: T 0027/15 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 11 January 2019

Appellant: (Patent Proprietor)	Daicel Corporation 3-1, Ofuka-cho Kita-ku Osaka-shi, Osaka 530-0011 (JP)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Respondent: (Opponent 1)	Solvay Acetow GmbH Engesserstrasse 8 79108 Freiburg (DE)
Representative:	Trinks, Ole Meissner Bolte Patentanwälte Rechtsanwälte Partnerschaft mbB Postfach 86 06 24 81633 München (DE)
Respondent: (Opponent 2)	EASTMAN CHEMICAL COMPANY 100 North Eastman Road Kinsport TN 37660 (US)
Representative:	Best, Michael Lederer & Keller Patentanwälte Partnerschaft mbB Unsöldstrasse 2 80538 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 17 October 2014 revoking European patent No. 2236427 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	I. Beckedorf
Members:	V. Bevilacqua
	A. Pieracci

Summary of Facts and Submissions

I. The patent proprietor (appellant) lodged in due time and form an appeal against the decision of the opposition division revoking the European patent No. 2 236 427.

II. Two oppositions had been filed against the patent as a whole, both based also on Article 100(c) EPC (unallowable extensions).

III. The appellant initially requested

that the decision under appeal be set aside and that the patent be maintained as granted
or, in the alternative,
that the patent be maintained in amended form on the basis of one of the auxiliary requests I and II, already discussed in the appealed decision, both re-submitted with the statement setting out the grounds of appeal;

or, in the further alternative,
that the conformity of the claimed subject-matter with the requirements of Article 123(2) EPC in respect of the main request of any of the auxiliary requests I and II be acknowledged and that the case be then remitted to the opposition division for further prosecution.

The respondents (opponent 01 and opponent 02) requested in unison:

that the appeal be dismissed;

respondent 02 (opponent 02) in addition:

that the case be remitted to the opposition division for further prosecution in the event that the Board acknowledged the compliance with the requirements of Article 123(2) EPC of any one of the appellant's requests.

IV. By communication pursuant to Article 15(1) RPBA the Board provided the parties with its preliminary opinion on the above requests.

V. When responding to this preliminary opinion, the appellant replaced, with letter dated 11 December 2018, auxiliary requests I and II with new auxiliary requests 1 to 6.

VI. Oral proceedings were held on 11 January 2019. For the further course of the oral proceedings, in particular the issues discussed with the parties, reference is made to the minutes thereof.

At the end of oral proceedings the respondents confirmed their original main request

that the appeal be dismissed.

The appellant requested

that the decision under appeal be set aside
and
that the patent be maintained as granted (main request),
or, in the alternative,

that the patent be maintained in amended form on the basis of one of the auxiliary requests 1 to 6 filed with letter dated 11 December 2018,
or, in the further alternative,
that the conformity of the claimed subject-matter with the requirements of Article 123(2) EPC in respect of the main request or of any of the auxiliary requests 1 to 6 be acknowledged and that the case be then remitted to the opposition division for further prosecution.

The decision was pronounced at the end of the oral proceedings.

VII. **Claim 1 of the main request** reads as follows (features added with respect to claim 1 as originally filed, which also did not comprise reference signs, are highlighted by the Board):

"A packaging method for a filter tow bale in which filter tow (10) is compressed and packed with a compressing device including an upper press base (12) and a lower press base (13) to manufacture the filter tow bale, comprising steps of:

(a) setting a top-side film (20) on a compression surface of the upper press base (12), setting a bottom-side film (15) on a compression surface of the lower press base (13), and feeding the filter tow (10) between the compression surface of the upper press base (12) and the compression surface of the lower press base (13);

(b) compressing the filter tow (10) with a pressure of 100 t/m^2 or more by said upper press base (12) and said lower press base (13) by making the distance between

said upper press base (12) and said lower press base (13) **smaller than a desired height of the finished bale by 50 to 250 mm** so as to form a pressed bale **having the packing density of 450 to 1200 kg/m^3**;

(c) packaging the pressed bale with the top-side film (20) and the bottom-side film (15) and then sealing the top-side film (20) and the bottom-side film (15) to each other in an airtight state;

(d) increasing a distance between said upper press base (12) and said lower press base (13) of the steps (b) and (c) by a range of 50 to 250 mm **at the moving speed of 10 to 50 mm/sec** so as to expand the pressed bale; and

(e) releasing the compression pressure applied on the pressed bale after the sealing."

The only amendment made to **claim 1 of auxiliary request 1** with respect to claim 1 of the main request is that step (b) thereof now foresees forming a pressed bale having the **packing density of 500 kg/m^3 or more and 1200 kg/m^3 or less.**

In **claim 1 of auxiliary request 2,** again only step (b) has been amended in comparison with claim 1 of the main request. According to this request the pressed bale is formed to a **packing density of 500 kg/m^3 or more and 900 kg/m^3 or less.**

The compressing step (step (b)) of **claim 1 of auxiliary requests 3 and 4** is also performed so as to form a pressed bale having this **packing density of 500 kg/m^3 or more and 900 kg/m^3 or less.**

According to **claim 1 of auxiliary requests 5 and 6** the pressed bale is formed to the same packing density mentioned in claim 1 of the main request, namely **of 450 to 1200 kg/m^3**.

VIII. The appealed decision was based on the assessment that the subject-matter of claim 1 of all the requests on file contained unallowable extensions, in particular because of the values of **packing density** claimed therein.

IX. As the basis supporting the values of packing density claimed in to claim 1 of all its requests the appellant refers to paragraph [45] of the originally filed description (reference is made, also in the following, to EP 2 236 427 A1).

X. The respondent replied substantially as follows.

Claim 1 of all requests foresee values of packing density for the pressed bale. These were not derivable from the originally filed application documents, in particular because the values given in paragraph [45] of the original description did not relate to the pressed bale but to the packed bale.

Reasons for the Decision

1. Packing density - Added subject-matter

1.1 According to the appellant claim 1 of all its requests did not extend beyond the content of the original disclosure because the packing density values claimed for the pressed bale were to be found in paragraph [45] of the original description.

In the light of the entire application, it was clear to a skilled reader that these values were given in relation to the **pressed bale**, and not to the **packed bale**.

This was because to get a packed bale with 1200 kg/m^3 (see paragraph [45], line 19) it was necessary to form a pressed bale having a packing density above this value, and this would have inevitably damaged the filter tow material. As a consequence of that, and also taking the information given by figures 1 and 4 of the application as filed into account, the interpretation of the respondents according to which the values given in paragraph [45] of the original description related to the packed bale would have been excluded by a skilled reader.

1.2 The Board disagrees. Even if the application as filed contains, in this respect, a general teaching according to which "if the compression pressure is high, the quality of the bale tow might be damaged" (see paragraph [45], lines 35-38), there is no indication whatsoever that values above 1200 kg/m^3 for the packed

bale would be considered as being excessive by a skilled person.

Also the diagrams of figures 1 and 4 do not provide any direct support for considering 1200 kg/m^3 as an upper limit, as they both relate to the pressure applied, and not to the packing density.

1.3 The appellant also argued that paragraph [45] only referred, in the eyes of a skilled reader, to the pressed bale, as it constantly mentioned rebound pressure, which notoriously only existed in the pressed state, and not in the packed state, as explained at paragraph [17], lines 45-55, paragraph [27], lines 32-36 and 49-53, and paragraph [33], lines 9-17 as well as in paragraph [50] of the originally filed description.

1.4 The Board disagrees again, because none of these passages supports the conclusion that in the packed state there is no rebound pressure at all.

The passage at paragraph [17], lines 45-55, relates to the prior art and addresses the problem that the film used for packaging a bale may be fractured by rebound pressure.

Paragraph [27], lines 32-53 and paragraph [33], lines 9-17 convey the information that if a bale is over-compressed (according to the invention) the rebound pressure is damped, but not necessarily eliminated, such that fracturing of the bale package may be avoided.

Paragraph [50] of the originally filed description also does not disclose that there is zero rebound pressure

for the packed bale, as it mentions a "small expansion caused by rebound pressure".

1.4.1 The appellant also argued that as a pressed bale was mentioned in the last sentence (starting from line 30) of paragraph [45], also the two previous sentences thereof (were a value of 450 kg/m^3 was given) necessarily related thereto.

1.4.2 The Board disagrees.

There is no direct link between the last sentence of paragraph [45] where compression pressure values for the pressed bale are unambiguously given, and the previous one, discussing the desired packing density, which clearly is the density of the packed bale.

Looking now at the sentence at lines 25-27, this conveys the information that, starting from a bale density 450 kg/m^3, the invention may reduce the negative effects of rebound pressure.

This sentence clearly does not disclose 450 kg/m^3 as a value of packing density for the pressed bale, because a step of over-compression, according to the invention, applied when the bale has reached 450 kg/m^3, necessarily results in a packing density which is above said value (but which is not disclosed in this sentence).

1.5 Based on all that the Board concludes that it cannot be clearly and unambiguously derived from paragraph [45] of the originally filed description that the values mentioned therein refer to the packing density of the pressed bale.

On the contrary, the Board notes that the expression "packing density" is clearly used in paragraph [44] in relation to the packed bale, as it is this density which determines the load efficiency (see column 13,lines 11-14).

Looking at paragraph [46], "packing density" also clearly relates to the packed bale ("bale finishing", see line 39, column 13).

The Board sees no reason why a skilled reader would refer "packing density" to the pressed bale only when reading paragraph [45].

This is also, as already discussed above, because (see line 36) paragraph [45] clearly mentions a "desired" packing density, which clearly is the density of the packed bale achieving the load efficiency mentioned at lines 11-14 of paragraph [44].

1.6 As acknowledged by the appellant, claim 1 of all the requests of the appellant contain a step of compressing the filter tow so as to form a pressed bale having packing density values corresponding to values mentioned in paragraph [45] of the original description. At the oral proceedings the appellant confirmed that none of the auxiliary requests 1 to 6 addressed the issue of whether the claimed ranges of packing density (500 to 1200 kg/m3 / 500 to 900 kg/m3 / 450 to 1200 kg/m3) were clearly and unambiguously derivable from the application as filed (paragraph [45]).

As discussed above, these values do not relate, in the original description, to the packing density of a pressed bale.

As a consequence of that the Board concludes that the subject-matter of claim 1 of all these requests extends beyond the content of the originally filed documents.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Nachtigall I. Beckedorf

Decision electronically authenticated