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**Datasheet for the decision  
of 24 July 2018**

**Case Number:** T 2230/16 - 3.3.05

**Application Number:** 07710405.7

**Publication Number:** 1979293

**IPC:** C04B41/63, C04B41/71, E04C2/06

**Language of the proceedings:** EN

**Title of invention:**  
COATING SYSTEM FOR CEMENT COMPOSITE ARTICLES

**Patent Proprietor:**  
Valspar Sourcing, Inc.

**Opponent:**  
BASF SE

**Headword:**  
Freeze-thaw cycles/VALSPAR SOURCING

**Relevant legal provisions:**  
EPC Art. 56, 100(a)  
RPBA Art. 12(4), 13(1), 13(3)

**Keyword:**

Late-filed document - admitted (yes)

Inventive step - main request (no)

Late-filed auxiliary requests - admitted (no)

**Decisions cited:**

G 0003/98, T 1913/06, T 0519/07, T 0764/07, T 0608/08,

T 0615/08, T 0724/08, T 0253/10, T 1647/10, T 0037/12,

T 0563/13, T 2191/16

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2230/16 - 3.3.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.05**  
**of 24 July 2018**

**Appellant:**  
(Opponent)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 25 July 2016  
rejecting the opposition filed against European  
patent No. 1979293 pursuant to Article 101(2)  
EPC**

**Composition of the Board:**

**Chairman**            E. Bendl  
**Members:**            A. Haderlein  
                             O. Loizou

## Summary of Facts and Submissions

- I. The opponent (appellant) filed notice of appeal against the decision of the opposition division rejecting the opposition against European patent No. 1 979 293. The patent in suit concerns a coating system for cement composite articles.
- II. The opposition division held that the grounds for opposition mentioned in Articles 100(b) and 100(a) in conjunction with Articles 52(1), 54 and 56 EPC did not prejudice the maintenance of the patent as granted. In particular, it held that the documents cited in paragraphs [0032] and [0099] of the patent, passages which had been cited by the patent proprietor (now respondent), provided enough information to enable the skilled person to carry out the invention.

In the proceedings before the opposition division, the following document was among those discussed:

D1: DE 197 32 621 A1.

- III. With its grounds of appeal, the appellant filed *inter alia* the following document:

D18A: WO 2006/065914 A1.

- IV. The respondent requested a first extension of the time limit for replying to the grounds of appeal. The board then granted an extension of two months.
- V. By letter of 9 June 2017 the respondent requested a second extension of a further three months of the time limit for replying to the grounds of appeal. It also filed *inter alia* the following documents:

D19: Experimental Report  
D20: Declaration Andrew Ubel.

In this letter, the respondent stated that "[o]wing to the current changes, the strategy to prepare a reply to the grounds of appeal ... could not be finalized within the existing time limit and more time is still needed in order to discuss the present case with the new owner and in particular to present auxiliary requests". It also submitted "preliminary observations in response to ... the statement setting out the grounds of appeal".

- VI. The board refused the second request for extension of the time limit for replying to the grounds of appeal (see communication dated 22 June 2017). It also informed the respondent that "considering the current workload, the Board at present does not intend to work on this case before 2018".
- VII. With a communication dated 22 February 2018 the parties were summoned to oral proceedings scheduled for 24 July 2018.
- VIII. A communication under Article 15(1) RPBA was issued by the board on 3 May 2018.
- IX. By letter of 20 June 2018 the respondent filed 27 auxiliary requests.
- X. At the oral proceedings before the board, the respondent filed auxiliary request 28.
- XI. The wording of claim 1 of the respondent's requests is as follows:

Main request (patent as granted):

"1. A coated article, comprising:  
a cement fiberboard substrate; and  
a radiation-curable coating system applied to the  
substrate;  
wherein the coating system comprises:  
an aqueous dispersion of polymer particles which have  
been functionalized so that the polymer can participate  
in radiation curing; and  
one or more olefinic compounds; and  
wherein the coating system includes one or more coating  
compositions that may be applied in one or more  
layers."

Claim 1 of auxiliary request 1 corresponds to claim 1  
of the main request with the passage "wherein the  
polymer is a latex polymer or a polyurethane  
dispersion" introduced after the expression "can  
participate in radiation curing".

Claim 1 of auxiliary request 2 corresponds to claim 1  
of the main request with the passage "wherein the  
polymer is a latex polymer" introduced after the  
expression "can participate in radiation curing".

Claim 1 of auxiliary request 3 corresponds to claim 1  
of the main request with the passage "wherein the  
aqueous dispersion of functionalized polymer particles  
comprises a polyurethane dispersion" introduced after  
the expression "can participate in radiation curing".

Claim 1 of auxiliary request 4 corresponds to claim 1  
of the main request with the passage "and wherein the  
coating system includes an aqueous mixture of latex  
polymer and water-dispersible polymer" introduced after

the expression "in one or more layers".

Claim 1 of auxiliary request 5 corresponds to claim 1 of the main request with the passage "wherein the coating system is applied as a single coating composition" introduced after the expression "in one or more layers".

Claim 1 of auxiliary request 6 corresponds to claim 1 of the main request with the passage "wherein the coating system is applied as multiple compositions that mix at an interface" introduced after the expression "in one or more layers".

The wording of claim 1 of auxiliary requests 7 to 13 corresponds to the wording of claim 1 of the main request and auxiliary requests 1 to 6 with the additional amendment that the passage "wherein the article is coated on a major surface and up to four minor surfaces including any edges; and" is introduced after the expression "applied to the substrate;".

The wording of claim 1 of auxiliary requests 14 to 27 is identical to the wording of claim 1 of the main request and auxiliary requests 1 to 13.

Claim 1 of auxiliary request 28 corresponds to claim 1 of the main request with the passage "which coating system comprises a first composition that includes one or more olefinic compounds and a second composition that includes a latex polymer and water and wherein the coating system is cured using radiation" introduced after the expression "in one or more layers".

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



D18A was not new evidence because its content corresponded to a document cited in the patent in suit and referred to by the respondent in the proceedings before the opposition division and also in the impugned decision. D18A was *prima facie* relevant and in particular could be considered the closest prior art because the patent referred not only to the problem of withstanding multiple freeze-thaw cycles but also to other problems such as "superior seal" and "ability to cure rapidly". It was not credible that the alleged improvement was due to a change in substrate when starting from D18A, examples 2 and 4, nor did the tests in the patent and in D19 provide any evidence of that. The subject-matter of claim 1 of the patent as granted therefore lacked an inventive step.

The auxiliary requests should not be admitted into the proceedings because they were late-filed and did not overcome the objections of lack of inventive step and/or gave rise to new objections under Article 123(2) EPC and/or stemmed from the description and therefore put the appellant in a position where it could not react appropriately.

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

Document D18A had not been discussed before the opposition division in the context of novelty and inventive step. It could have been filed in those proceedings and should not be admitted into the present appeal proceedings. D18A was not *prima facie* relevant, in particular because it did not deal with the problem of the coating being exposed to freeze-thaw cycles. If D18A were admitted into the proceedings, remittal to the opposition division was requested in order to

safeguard the right to have the case examined by two instances.

While the invalidity of the priority of claim 1 was not contested, D18A would not be considered by the skilled person to represent the closest prior art because it dealt with a problem different from the one underlying the patent in suit. The latter dealt with the problem of freeze-thaw cycles. The skilled person would need to choose examples 2 and/or 4, but these examples related to a "finish", i.e. to surfaces of kitchen furniture. The effects/problems referred to in D18A related to interior and more particularly kitchen furniture surfaces, whereas the patent referred to outdoor surfaces which were exposed to the atmosphere in northern climates. The patent in suit and experimental report D19 showed that the fiberboard according to claim 1 of the patent had improved results when submitted to multiple freeze-thaw cycles. Thus inventive step should be acknowledged.

Auxiliary requests 1 to 27 had been filed late because of a transfer of ownership of the patent in suit, as evidenced by D20. Auxiliary requests 1 to 6 corresponded to auxiliary requests 1 to 6 submitted in the proceedings before the opposition division and were intended to delimit the claimed subject-matter in particular with regard to document D1. These requests had also been dealt with by the appellant in its grounds of appeal. Auxiliary requests 7 to 13 were intended to achieve further delimitation with regard to D18A. Auxiliary requests 14 to 27 corresponded to auxiliary requests 1 to 13, with claim 27 deleted in order to establish further delimitation with regard to D1.

The auxiliary requests should be admitted because of the principle of equal opportunities (in German "Gebot der Waffengleichheit"), since the opponent had filed document D18A. Moreover, auxiliary request 6 *prima facie* complied with Article 123(2) EPC because the added features were based on paragraph [0089] of the application as filed and the feature "prior to drying" was inherent in the remaining features. The features introduced in auxiliary requests 7 to 13 were based on the description and were intended to clarify that the claimed subject-matter related to fiberboards used on surfaces exposed to an external environment.

Auxiliary request 28 had been filed in reaction to the discussion that had taken place at the oral proceedings before the board and was based in particular on a combination of granted claims in order to address the issue of a feature being taken from the description. The amendment clarified that the two compositions were applied separately, i.e. in two layers. This was clear from the wording "one or more coating compositions that may be applied in one or more layers" in the last two lines of granted claim 1.

#### XIV. Requests

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

The respondent requested that the appeal be dismissed (main request) or, in the alternative, that the patent be maintained in amended form on the basis of the set of claims of one of auxiliary requests 1 to 27, as filed with letter dated 20 June 2018, or the auxiliary request 28, filed during oral proceedings.

## **Reasons for the Decision**

1. Admissibility of the cited documents
  - 1.1 D18A was filed for the first time with the appellant's grounds of appeal. It is an international application designating EPC contracting states and having a priority date before the priority date of the patent in suit. It is uncontestedly a patent family member of U.S. Patent Application Serial No. 11/300 070 mentioned in paragraphs [0032] and [0099] in the patent in suit, the applicant for all designated states except the USA being the same as the respondent in the present proceedings.
  - 1.2 In the proceedings before the opposition division, the proprietor (now respondent) and the opposition division referred to the aforementioned US patent application in the context of the discussion on sufficiency of disclosure (see in particular the impugned decision, point 4.2). It is uncontested that the content of D18A essentially corresponds to the content of the aforementioned US patent application. According to the appellant, in view of the substantial identity of the content of D18A with the content of one of the documents discussed in the proceedings before the opposition division, D18A should not be considered new evidence in the sense of Article 12(4) RPBA.
  - 1.3 The board is not persuaded by this argument. The mere fact that D18A, unlike the aforementioned US patent application, relates to an international application designating EPC contracting states and making this document potential prior art under Article 54(3) EPC if the claimed priority thereof were valid, makes this

document on its own new evidence in the sense of Article 12(4) EPC.

- 1.4 It is uncontested that D18A could have been filed in the proceedings before the opposition division. The admittance of this document was therefore at the board's discretion (Article 12(4) RPBA).
- 1.5 This document is *prima facie* relevant because it uncontestedly discloses radiation-curable coating systems as called for in claim 1 of the patent in suit (see in particular examples 2 and 4) and also mentions cement fiberboard as a possible substrate for their application (see page 20, lines 7 et seq.).
- 1.6 Considering that this document is *prima facie* relevant for the outcome of the proceedings (cf. also T 2191/16, Reasons 2.1 to 2.4, citing T 724/08, Reasons 3.4), considering that this document is a patent family member of a document cited in the patent in suit, the latter document being referred to by the respondent and the opposition division in the proceedings before the opposition division, and further considering that the applicant of this document and the present respondent are the same legal person, the board admitted D18A into the proceedings.
- 1.7 Furthermore, the appellant requested that the experimental report (D19) submitted by the respondent with its letter dated 10 April 2017 not be admitted into the appeal proceedings. However, as the appellant's request for revocation of the patent ultimately succeeds (see below), the board sees no need to give further reasons for the admittance of D19.

2. Respondent's request for remittal to the opposition division

2.1 The respondent requested that the case be remitted to the department of first instance for further prosecution in the event that the board admitted document D18A into the proceedings.

2.2 According to Article 111(1) EPC, remittal for further prosecution is at the board's discretion.

The board notes that the impugned decision deals with all the grounds for opposition relied upon in the opposition brief (sufficiency of disclosure, novelty and inventive step). Furthermore, the parties to proceedings before the EPO do not have an absolute right to have each individual issue (or document) considered by two instances (see T 764/07, Reasons 2.2, citing T 1913/06, Reasons 4.3). Taking these circumstances into account, considering also the principle of procedural economy (T 1913/06, *supra*, Reasons 4.4) and the fact that D18A is a patent family member of a document cited in the patent in suit, considering that the latter document was referred to by the respondent and the opposition division in the proceedings before the opposition division and further considering that the applicant of D18A and the present respondent are the same legal person (see point 1.6 above), the board decides not to remit the case to the opposition division for further prosecution.

3. Inventive step - main request

3.1 The patent relates to a coated article comprising a cement fiberboard substrate and a radiation-curable

coating system.

- 3.2 The respondent did not object to the appellant's submission that the priority was not validly claimed for claim 1. As the board shares the appellant's view in this respect (see grounds of appeal, item 4), D18A is considered to be prior art under Article 54(1), (2) EPC. However it was contentious between the parties whether D18A could serve as the closest prior art when assessing inventive step.
- 3.2.1 According to the respondent, D18A was neither the closest prior art nor a suitable starting point for assessing inventive step because the patent dealt with the problem of repeated freezing and thawing of water absorbed into a cement fiberboard due to its exposure to the environment outside of buildings in northern climates ("freeze-thaw cycles"). In contrast, D18 dealt with a different problem, namely furniture surface finishes, in particular finishes for kitchen furniture.
- 3.2.2 According to the case law of the boards of appeal, a document serving as the starting point for evaluating the inventive merits of an invention should relate to the same or a similar purpose or technical problem or a similar use or, at least, to the same or a closely related technical field (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016 ("Case Law"), I.D.3.2, first and second paragraphs, and I.D.3.3, first paragraph). The board observes that the patent in suit generally concerns the technical field of cement fiberboard substrates and radiation-curable coatings (see paragraph [0001]). Apart from specifically referring to freeze-thaw cycles, the introductory portion of the patent also refers to the problem of chemical changes in articles made from

cement fiberboard compositions over time and to the need for coating compositions that provide a "superior seal" and have the "ability to cure rapidly" (page 2, lines 13 et seq.). In comparison, D18A relates to substrates including cement and cement fiberboards (see page 20, lines 7 et seq.) and also to radiation-curable coatings (page 6, lines 18 et seq., examples 2, 4, 6 and 9) and refers to the problem of providing "good block and chemical resistance" and "other similar characteristics" (page 1, line 21; page 20, lines 3 to 6). It follows that D18A is directed to a use or problem which is at least similar to the one the patent is concerned with. Likewise, the technical fields of both are at least similar. In this context it is irrelevant whether the patent more specifically deals with the problem of freeze-thaw cycles and D18A more specifically deals with gloss and reflectivity, properties which are relevant for furniture such as kitchen furniture as contended by the respondent.

- 3.2.3 According to the respondent, even if the skilled person chose D18A as the closest prior art, he or she would not necessarily have chosen examples 2 or 4 thereof because these dealt with "finishes", i.e. a coating layer on furniture surfaces and in particular kitchen furniture surfaces.

The board is not persuaded by this argument, because there is no evidence that would show that the expression "finish" refers to coating systems which are exclusively used on (kitchen) furniture surfaces, and examples 2 and 4 are not restricted to such uses because they need to be read in the context of the whole of document D18A, which mentions a variety of substrates going beyond the realm of (kitchen)



furniture (see page 20, lines 7 et seq.).

3.2.4 For these reasons, the board starts from D18A, and more particularly examples 2 and 4 thereof, as the closest prior art.

3.2.5 It is not contested that examples 2 and 4 disclose a coating system as called for in claim 1. In these examples, it is taught that the coating systems disclosed therein "will cure to a hard, chemically resistant finish upon exposure to ultraviolet light" (page 23, lines 21 et seq., and page 22, lines 25 et seq.); i.e. in these examples coating onto a substrate is taught, but the nature of the substrate is not disclosed. The subject-matter of claim 1 thus differs from the coated article in these examples only in that the substrate is cement fiberboard.

3.3 The problem which underlies the patent in suit, and on which the appellant relies, resides in the provision of "coating systems and coating compositions that provide a superior seal, have the ability to cure rapidly or can provide improved results when an article coated with the composition is submitted to wet adhesion testing and multiple freeze-thaw cycles" (paragraph [0003]).

3.4 As a solution to this problem the patent proposes a coated article comprising a radiation-curable system applied to a substrate, characterised in that the substrate is a cement fiberboard.

3.5 It needs to be assessed whether the proposed solution solves the problem set out in point 3.3 above.

- 3.5.1 It is uncontested that there is no evidence in the proceedings wherein a coating system as called for in claim 1 would be applied to different types of substrate in order to show that the combination of a cement fiberboard with the coating system known from D18A showed a particular effect. While acknowledging that the comparative test shown in D19 was not directed to the coating system according to claim 1 being applied to different substrates, the appellant contends that D19 along with the tests provided in the patent in suit showed that the coated article of claim 1 showed superior resistance to freeze-thaw cycles.
- 3.5.2 The board observes that the advantages referred to in the patent in suit, such as improved results upon exposure to freeze-thaw cycles (paragraph [0003]) or improved wetting or penetration (paragraph [0026]), all relate to the coating system or components thereof such as the olefinic compound, i.e. the same coating system as the one disclosed in D18A, and do not relate to the substrate being cement fiberboard as opposed to other substrates.
- 3.5.3 In this context it should be borne in mind that, where comparative tests are chosen to establish inventive step on the basis of an effect produced over the claimed area, the comparison with the closest prior art has to show convincingly that the effect was attributable to the feature distinguishing the invention, i.e. in the present case the substrate being cement fiberboard (cf. T 519/07, Reasons 7.4.2).
- 3.5.4 Applying these principles to the case at hand, the board concludes that it is not credible that applying the coating known from D18A to a different substrate, i.e. a cement fiberboard, leads to an improvement in

terms of wet adhesion and resistance to freeze-thaw cycles.

3.5.5 The problem thus needs to be reformulated such that it consists in the provision of an alternative coated article.

3.6 As to obviousness, D18A itself teaches that the coating systems disclosed therein may be applied to a variety of substrates including a cement fiberboard (page 20, line 8). It was therefore obvious for the skilled person to apply the coating system disclosed in examples 2 or 4 to a cement fiberboard, thus arriving at the claimed subject-matter without inventive skill.

3.7 For the above reasons, the ground for opposition set forth in Article 100(a) in conjunction with Article 56 EPC prejudices the maintenance of the patent as granted. The main request is therefore not allowable.

#### 4. Auxiliary requests - admissibility

4.1 The auxiliary requests were filed after the reply to the grounds of appeal, and in particular after the oral proceedings had been arranged. Their admission into the proceedings was therefore at the board's discretion (Article 13(1), (3) RPBA). This discretion was to be exercised in view of *inter alia* the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy (Article 13(1) RPBA).

4.2 According to the respondent, the late filing of the auxiliary requests should be excused because of a transfer of ownership of the patent, as evidenced by D20, and because of the filing of D18A by the appellant

with its grounds of appeal. Moreover, auxiliary requests 1 to 6 had been filed in the proceedings before the opposition division and were dealt with by the appellant in its grounds of appeal.

- 4.2.1 The board observes that the respondent was granted a first extension of the time limit to reply to the grounds of appeal (see point IV above), and while the board refused a second request for extension dated 9 June 2018 (see points V and VI above) it informed the respondent in a communication dated 22 June 2017 that the present case would not be dealt with before 2018. The board also observes that the respondent intentionally refrained from filing auxiliary requests within the (extended) time limit for filing the reply to the grounds of appeal (see point V above). Furthermore, according to D20, transfer of ownership was supposed to be concluded on 1 June 2017. The alleged transfer of ownership thus cannot justify the late filing of the auxiliary requests by letter of 20 June 2018 (auxiliary requests 1 to 27) or even only during oral proceedings (auxiliary request 28).
- 4.2.2 According to the respondent, in order to guarantee equal opportunities for both parties and in view of the filing of D18A by the appellant, the auxiliary requests should be admitted into the proceedings.

The board agrees with the respondent to the extent that in *inter partes* proceedings equal opportunities for both parties should be guaranteed ("Gebot der Waffengleichheit" in German, cf. G 3/98, Reasons 2.5.3, second paragraph; T 37/12, Reasons 2.8, fifth paragraph; T 253/10, Reasons 9.3, fourth paragraph) and that the respondent should be given the opportunity to react to the filing of new evidence with the grounds of

appeal. This however does not mean that the respondent is free to choose the point in time for reacting to the new evidence. Rather, the principle of equal opportunities for both parties would require that the respondent should have reacted to the new evidence at the earliest possible point in time, i.e. with its reply to the grounds of appeal.

4.3 When exercising their discretion to admit late-filed auxiliary requests into the proceedings, in particular auxiliary requests filed after arrangement of oral proceedings, the boards of appeal take into account whether the proposed amendments (i) clearly overcome the objection raised, (ii) do not introduce new objections (Case Law, *supra*, IV.E.4.1.3, second paragraph) and (iii) are not related to subject-matter that is only disclosed in the description and that has never previously been discussed in the proceedings, such that the opponent cannot reasonably be expected to deal with such amendments and would need to carry out an additional search (T 608/08, Reasons 9; T 615/08, Reasons 8 and 9; T 1647/10, Reasons 4; T 563/13, Reasons 4.4). With respect to criteria (i) and (ii) above, it is of less importance whether a corresponding request has already been filed before the department of first instance and whether the opposing party has already commented on it.

4.4 As set out below, each of the auxiliary requests fails to fulfil at least one of the above criteria.

4.4.1 With respect to auxiliary request 14, it is uncontested that claim 1 thereof is identical to claim 1 of the main request and therefore does not overcome the objections raised (cf. criterion (i) in point 4.3).

- 4.4.2 With respect to auxiliary requests 1 to 5 and 15 to 19, it is uncontested that these include amendments to features which are disclosed in the closest prior art D18A and therefore fail to overcome the inventive step objection with respect to the main request. In particular, in example 4 of D18A the coating system comprises a latex polymer and an aqueous dispersion of functionalized polymer particles comprising a polyurethane dispersion (latex from example 1 and functional polyurethane dispersion from example 3 are mixed, see page 24, lines 13 et seq.). The amendments proposed in auxiliary requests 1 to 5 and 15 to 19 therefore do not clearly overcome the objection raised (cf. criterion (i) in point 4.3).
- 4.4.3 With respect to auxiliary requests 6 and 20, the respondent submits that the additional features are based on paragraph [0089] of the application as filed. That passage, however, includes the feature "prior to drying the previously applied coating composition(s)", which appears to be inextricably linked to the features now incorporated in claim 1 because the above passage teaches that no drying should occur in order to have the multiple compositions mix at an interface. However, claim 1 now encompasses products where a (partial) drying step is carried out between the application of the two adjacent layers, still leading to some sort of intermixing. Put differently, the amendment is not clearly allowable under Article 123(2) EPC, and therefore its admission would raise new objections (cf. criterion (ii) in point 4.3).
- 4.4.4 Claim 1 of auxiliary requests 7 to 13 and 21 to 27 includes the feature "wherein the article is coated on a major surface and up to four minor surfaces including any edges" from paragraph [0093] of the description.

According to the respondent, this amendment was aimed at clearly specifying that the coated article was intended for use on an outdoor surface, as opposed to the coatings for furniture disclosed in D18A.

The board observes that, on the one hand, it is not apparent from the above passage or from common general knowledge that an article coated on the surfaces as referred to above would necessarily be an article for use in the outdoor environment and thus cannot be considered clearly delimiting with respect to D18A; it therefore does not clearly overcome the inventive step objection (cf. criterion (i) in point 4.3). On the other hand, if this feature were clearly delimiting with respect to D18A, its incorporation into claim 1 cannot be said to have been foreseeable for the opponent (appellant), which would have needed to carry out an additional search (cf. criterion (iii) in point 4.3).

- 4.4.5 Finally, the amendments proposed in auxiliary request 28 do not clearly constitute a further distinguishing feature over D18A because, in particular in example 4 thereof, a first composition comprising an olefinic compound (EOTMPTA) is mixed with a second composition including a latex polymer and then applied as a single coating. In this context the respondent's argument that the amendment implied that the two compositions were applied separately and in two layers is not persuasive, because the wording of claim 1 still covers the possibility that only a single layer is applied. Thus, the amendments do not clearly overcome the objection of lack of inventive step (cf. criterion (i) in point 4.3).

4.5 For all these reasons, the board did not admit the respondent's auxiliary requests into the proceedings.

## 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:



C. Vodz

E. Bendl

Decision electronically authenticated