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**Datasheet for the decision  
of 27 March 2023**

**Case Number:** T 2015/18 - 3.3.02

**Application Number:** 08103714.5

**Publication Number:** 1985688

**IPC:** C10M159/00, C10M159/12,  
C10M169/04, C10N40/02,  
C10N40/04, C10N40/08, C10N40/25

**Language of the proceedings:** EN

**Title of invention:**

Antiwear polymethacrylate and lubricating composition thereof

**Patent Proprietor:**

The Lubrizol Corporation

**Opponent:**

Afton Chemical Corporation

**Headword:**

**Relevant legal provisions:**

EPC Art. 69, 123(3), 123(2)

**Keyword:**

Amendments - Article 123(3) EPC: interpretation of the  
expression "consisting essentially of"

**Decisions cited:**

T 0472/88, T 0053/92, T 0868/02, T 1170/07, T 0274/16,  
T 1127/16

**Catchword:**



**Beschwerdekammern**

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**Case Number:** T 2015/18 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 27 March 2023**

**Appellant:** The Lubrizol Corporation  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 22 May 2018  
revoking European patent No. 1985688 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** P. O'Sullivan  
S. Fernández de Córdoba

## **Summary of Facts and Submissions**

I. The appeal of the patent proprietor (hereinafter appellant) lies from the decision of the opposition division according to which European patent 1 985 688 was revoked.

According to the contested decision, claim 1 of the main request and the respective claim 1 of auxiliary requests 2-4 contravened Article 123(3) EPC. Claim 1 of auxiliary request 1 contravened Article 123(2) EPC, and the respective claim 1 of auxiliary requests 5 and 6 lacked clarity.

II. With the reply to the statement of grounds of appeal, the opponent (hereinafter respondent) submitted the following document:

D15: Lubricant Additives: Chemistry and Applications, edited by Leslie R. Rudnick, Marcel Dekker, Inc., 2003, pages 329-336, 352, 353.

III. In preparation for oral proceedings, scheduled according to the appellant's request, the board issued a communication pursuant to Article 15(1) RPBA 2020.

IV. Oral proceedings before the board took place as scheduled on 27 March 2023 in the presence of both parties.

V. Requests relevant to the present decision

The appellant requested that the contested decision be set aside and the patent be maintained on the basis of the set of claims of the main request underlying the contested decision or, alternatively, on the basis of one of the sets of claims of the first to sixth auxiliary requests.

The main request underlying the contested decision was submitted as auxiliary request 2 with the letter dated 23 February 2018, and renumbered as the main request during oral proceeding before the opposition division.

The first auxiliary request is the patent as granted.

The second auxiliary request was filed with the statement of grounds of appeal, and is identical to auxiliary request 2 submitted during oral proceedings before the opposition division, with the exception that a typographical error is corrected.

The third auxiliary request was filed as auxiliary request 3 on 23 February 2018.

The fourth auxiliary request was filed as auxiliary request 4 on 23 February 2018.

The fifth auxiliary request was filed as main request on 28 June 2017.

The sixth auxiliary request was filed as auxiliary request 1 on 28 June 2017.

The respondent requested dismissal of the appeal.

VI. For the text of the claims relevant to the present decision, reference is made to the reasons for the decision, below.

VII. The appellant's submissions relevant to the present decision may be summarised as follows. For further details, reference is made to the reasons for the decision.

Main request, second, third and fourth auxiliary requests

- the respective claim 1 of each request failed to meet the requirements of Article 123(3) EPC.

First, fifth and sixth auxiliary requests

- the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent according to the first auxiliary request (patent as granted), and
- the respective claim 1 of the fifth and sixth auxiliary requests failed to meet the requirements of Article 123(2) EPC.

VIII. The respondent's submissions relevant to the present decision may be summarised as follows. For further details, reference is made to the reasons for the decision.

Main request, second, third and fourth auxiliary requests

- the respective claim 1 of each request met the requirements of Article 123(3) EPC.

First, fifth and sixth auxiliary requests

- the ground for opposition under Article 100(c) EPC did not prejudice the maintenance of the patent according to the first auxiliary request (patent as granted), and
- the respective claim 1 of the fifth and sixth auxiliary requests met the requirements of Article 123(2) EPC.

## Reasons for the Decision

1. Main request - Article 123(3) EPC

1.1 The patent relates to the use of a Reversible Addition Fragmentation Transfer (RAFT) polymer as an antiwear agent in a lubricant (paragraph [0001]).

1.2 Claim 1 of the main request reads as follows:

*"1. The use of a polymer obtained from a reversible addition-fragmentation chain transfer controlled radical polymerisation process as an antiwear agent in a lubricant, wherein the polymer is a polymethacrylate and derived from a monomer composition consisting essentially of:*

- (a) 65 wt% to 95 wt% of an alkyl methacrylate, wherein the alkyl group of the methacrylate has 10 to 30 carbon atoms; and*
- (b) 5 wt% to 30 wt% of an alkyl methacrylate, wherein the alkyl group of the methacrylate has 1 to 9 carbon atoms; **and***

***(c) 0 wt% to 5 wt% of a nitrogen-containing monomer.***"

(text struck through and in bold denoting deletion and addition compared to claim 1 of the patent as granted).

- 1.3 While claim 1 of the main request defines a polymethacrylate derived from a monomer composition **consisting of** (a), (b) and **(c)**, granted claim 1 defines a polymethacrylate derived from a monomer composition **consisting essentially of (a) and (b)**. In granted claim 1 therefore, component (c) of the monomer composition is not listed.
- 1.4 The appellant submitted that the finding in the contested decision that the subject-matter of claim 1 of the main request contravened Article 123(3) EPC was incorrect.
- 1.5 Article 123(3) EPC stipulates that the European patent may not be amended in such a way as to extend the protection it confers.
- 1.6 Both parties agree that:
- protection was not extended if the nitrogen-containing monomer (c) of claim 1 of the main request was encompassed within the monomer composition as defined in granted claim 1. In particular, it depended on whether said nitrogen-containing monomer was encompassed by the term "consisting essentially of" in granted claim 1 (e.g. statement of grounds of appeal, point 53), and that



- in line with established case law, the expression "consisting essentially of" in the context of granted claim 1 meant that monomer components (a) and (b) were present as mandatory components of the monomer composition. Further components could be present **only** insofar as they did not materially affect the essential characteristics of the polymethacrylate polymer.

1.7 The appellant essentially argued that the expression "consisting essentially of" in granted claim 1 was to be interpreted in the light of the description. In paragraph [0048] of the application as filed, components (a), (b) and (c) of claim 1 of the main request were listed. Component (c), by virtue of the lower limit of 0%, was taught as an optional component, and at a maximum it could be present in a low amount of 5 wt%. There was no indication that it had any material effect on the essential characteristics of the polymethacrylate polymer. This was supported by paragraph [0053] of the patent in which the nitrogen-containing monomer was not taught to provide any material effect. Hence, it was implicit but unambiguous that the essential characteristics of the polymethacrylate polymer were solely due to the mandatory components (a) and (b) of claim 1. Component (c) was hence encompassed by the term "consisting essentially of" in granted claim 1, and claim 1 of the main request complied with Article 123(3) EPC.

1.8 The board disagrees. In the first place, it is the description of the patent which is determinative for the interpretation of a term in a claim, and not the application as filed. Paragraph [0048] of the application as filed in which the nitrogen-containing monomer (c) is mentioned is not reproduced in the

patent - the corresponding paragraph [0049] refers to a monomer composition consisting essentially of components (a) and (b), as defined in granted claim 1. This paragraph therefore does not aid in determining whether the expression "consisting essentially of" in granted claim 1 encompasses the nitrogen-containing monomer component (c).

1.9 Furthermore, according to paragraph [0053] of the patent, in one embodiment, the RAFT polymer is further functionalised in the core or in the polymeric arms with a nitrogen-containing monomer, i.e. component (c). It is true, as stated by the appellant, that the patent is absent any explicit statement that such functionalisation will have a material effect on the polymethacrylate polymer. As noted by the respondent however, there is no disclosure to the contrary. In the absence of any disclosure as regards the presence or absence of any material effect of component (c) on the polymethacrylate properties, one cannot conclude that no such effect is present. In fact, if anything, such a material effect must be assumed to be present. More specifically, it would be inherently illogical that the patent in paragraph [0053] refers to functionalisation with component (c) if it were without purpose and thus effect.

1.10 Furthermore, the appellant's argument that since the nitrogen-containing monomer (c) is optional, it would be viewed by the skilled person as "passive", i.e. not having a material effect on the essential characteristics of the polymethacrylate, is also not convincing. The fact that a component is optional in no way implies that its presence would not lead to a material effect. On the contrary, it would be illogical for a skilled person to consciously choose the

inclusion of said component if it were not for a specific purpose, i.e. to confer specific properties on the polymethacrylate polymer. For the same reason, the appellant's argument that the inclusion in the monomer composition of component (c) in the claimed amount of up to 5 % would be "minimal", and hence would not materially affect the essential characteristics of the polymethacrylate polymer, must fail.

1.11 In the same context, the appellant argued that the situation in the present case was analogous to that underlying decision T 1170/07. Specifically, in that decision, the replacement of "comprising" by "consisting essentially of" was found allowable on the basis that the unit dosage form defined in the claim necessarily comprised a vehicle or carrier for the active agent. Analogously in the present case, in view of the fact that the polymer in paragraph [0049] of the patent was defined as a polymethacrylate, the skilled person would understand components (a) and (b) as "active" monomers, and optional component (c) as "passive", i.e. equivalent to the carrier in decision T 1170/07. Hence, the amendment to granted claim 1 was also allowable in the present case.

1.12 The board does not agree. As set out by the respondent, under the specific circumstances of T 1170/07, the amendment of "comprising" to "consisting essentially of" was found allowable because it made technical sense: the presence of a carrier was deemed a necessary feature of the invention (reasons for the decision, 3 and in particular 3.1, third paragraph). That situation contrasts with the present case in which there are no such special circumstances. In particular, **no further monomer components** are required in addition to monomer

components (a) and (b) for granted claim 1 to make technical sense in the context of the patent.

- 1.13 Hence, there is no reason to doubt that the inclusion of nitrogen-containing monomers (c) in the amounts stated in contested claim 1, in a monomer composition from which the polymethacrylate polymer is derived, would have a material effect on the essential characteristics of polymethacrylate.
- 1.14 In consequence, granted claim 1 is to be interpreted as covering the use of compositions which, in terms of monomers in the monomer composition, contain only monomers (a) and (b), to the exclusion of any other monomers. The monomer composition of granted claim 1 therefore does not encompass the nitrogen-containing monomer (c) stipulated in claim 1 of the main request.
- 1.15 This view is at least supported by book excerpt D15, submitted by the respondent. This document discloses that incorporating monomers more polar than alkyl methacrylates, typically containing nitrogen, into polymethacrylate viscosity modifiers in sufficient concentration, creates hydrophilic zones along an otherwise hydrophobic oleophilic chain. This results in dispersant polymethacrylates, which suspend in solution what might otherwise be harmful materials (D15, page 331, second full paragraph). Hence, D15 shows that "functionalisation" with a nitrogen-containing monomer materially affects the essential characteristics of the polymethacrylate.
- 1.16 D15 was criticised by the appellant as not specific to the RAFT polymers of claim 1. Furthermore, according to D15, the monomers were required "in sufficient concentration" to have the desired effect - the claimed

5% of nitrogen-containing monomer (c) would however not be sufficient.

1.17 The board notes that while D15 does not refer specifically to RAFT polymers, it nevertheless concerns lubricant additives, under which the claimed RAFT polymers are encompassed by virtue of being used as antiwear agents in a lubricant (contested claim 1). Furthermore, it is not credible that 5 wt% of a nitrogen-containing monomer will not be sufficient to change the essential characteristics of the polymer concerned, and there is no evidence for this assertion. Hence, D15 supports the board's view set out above.

1.18 In the same context the appellant also submitted that the examples of the patent (paragraphs [0079] - [0086]) demonstrated that the essential characteristics of the polymethacrylate in a lubricant, namely the provision of antiwear performance, were provided by a monomer composition including components (a) and (b), and absent component (c) (see in particular preparative Example 1, paragraph [0079]). Hence component (c), did not affect the essential characteristics of the polymethacrylate.

1.19 As stated by the respondent however, nothing about the material effect of component (c) can be deduced from an example in which it is absent.

1.20 Also the appellant's further arguments to the contrary failed to convince the board.

1.20.1 First, with reference to various decisions of the Boards of Appeal (T 472/88, T 53/92, T 868/02 and T 274/16), the appellant argued that the meaning of the expression "essentially consisting of" depended on the

specific circumstances of the case, and in particular on the specific technical field. Furthermore, the expression was to be interpreted in the light of the description of the patent in question. On the basis of the description of the contested patent, nitrogen-containing monomer (c) did not materially affect the essential characteristics of mandatory components (a) and (b), and hence it was encompassed by the term "consisting essentially of" in granted claim 1.

The board sees no reason to disagree with the respective boards' interpretations in said cited decisions, but finds that they do not support the appellant's position with regard to component (c) in claim 1. Specifically, as outlined above, there is no reason on the basis of the description of the patent to conclude that nitrogen-containing monomers (c) in the claimed amount will not materially affect the essential characteristics of the polymethacrylate, nor would such a conclusion be logical, as set out above.

- 1.20.2 Second, the appellant referred to paragraph [0012] of the patent. This paragraph addresses the need for antiwear agents capable of providing acceptable wear performance whilst not having detrimental impact on numerous further listed properties.
- 1.20.3 The appellant submitted that as long as the addition of nitrogen-containing monomer (c) in claim 1 were not to detrimentally impact said further listed properties, and at the same time still maintain acceptable antiwear properties in the polymethacrylate, even if those properties had changed relative to the polymethacrylate polymer absent component (c), said polymethacrylate would still display its "essential characteristics" as set out in paragraph [0012]. Hence, even in such a

situation, the inclusion of component (c) in claim 1 of the main request would not materially affect the essential characteristics of the polymethacrylate, and the presence of component (c) would thus fall within the scope of granted claim 1.

- 1.20.4 The board disagrees with this understanding of whether the essential characteristics of the polymethacrylate polymer are materially affected by the addition of component (c) in claim 1. Rather, the board holds the view that a relative change to the essential characteristics of the polymethacrylate by definition materially affects the essential characteristics thereof.
- 1.20.5 More specifically, whether the presence of component (c) materially affects the essential characteristics of the polymethacrylate polymer is a relative determination of change: as soon as the presence of component (c) gives rise to any relative change to the characteristics of the polymethacrylate derived from components (a) and (b), relative to the same polymethacrylate absent component (c), the essential characteristics of said polymethacrylate are to be considered materially affected. Hence, the question of whether the polymethacrylate of claim 1 continues, in an absolute sense, to display the broadly defined characteristics set out in paragraph [0012] of the patent after incorporation of a nitrogen-containing monomer (c), is irrelevant in the present context.
- 1.20.6 As set out above, there is no reason to doubt that the inclusion of nitrogen-containing monomers (c) relative to a polymethacrylate polymer prepared from exclusively monomers (a) and (b) will have a material effect on said characteristics. Hence, the presence of component

(c) in the monomer composition of claim 1 of the main request extends the protection conferred compared to claim 1 as granted.

1.21 It should be noted that the above interpretation of the expression "consisting essentially of" in the context of granted claim 1 does not necessarily exclude the presence of further substances in the monomer composition in addition to (a) and (b) in an absolute sense. Hence, for example, the monomer composition of granted claim 1 may include substances present in minor amounts as unintended but inconsequential impurities, or reagents necessary for the polymerisation, such as initiators.

1.22 It follows from these conclusions that claim 1 of the main request extends the protection conferred by the patent compared to granted claim 1, and thereby infringes Article 123(3) EPC.

1.23 Star polymers

During oral proceedings, the question arose whether star polymethacrylate polymers were included within the scope of granted claim 1. As is evident from the above, and as stated by the respondent at oral proceedings and in writing (e.g. letter dated 27 February 2023, page 2, penultimate paragraph), it is not necessary to address this issue in order to conclude that claim 1 of the main request does not comply with Article 123(3) EPC.



2. First auxiliary request - claims as granted -  
Article 100(c) EPC

2.1 Granted claim 1 reads as follows:

Claim 1 of this request reads as follows:

*"The use of a polymer obtained/~~obtainable~~ from a reversible addition-fragmentation chain transfer controlled radical polymerisation process as an antiwear agent in a lubricant, **wherein the polymer is a polymethacrylate and derived from a monomer composition consisting essentially of:***

- (a) **65 wt% to 95 wt% of an alkyl methacrylate, wherein the alkyl group of the methacrylate has 10 to 30 carbon atoms; and***
- (b) **5 wt% to 30 wt% of an alkyl methacrylate. wherein the alkyl group of the methacrylate has 1 to 9 carbon atoms."***

(text struck through and in bold denoting deletion and addition compared to claim 1 of application as filed).

2.2 The amendments to claim 1 of this request originate in paragraph [0048] of the application as filed. This paragraph reads as follows:

*"When the RAFT polymer is a polymethacrylate, the RAFT polymer may be derived from a monomer composition **comprising:***

- (a) **50 wt % to 100 wt % (or 65 wt % to 95 wt %) of an alkyl methacrylate, wherein the alkyl group of the methacrylate has 10 to 30, or 10 to 20, or 12 to 18, or 12 to 15 carbon atoms;***
- (b) **0 wt% to 40 wt% (or 5 wt % to 30 wt%) of an alkyl methacrylate,***

*wherein the alkyl group of the methacrylate has 1 to 9, or 1 to 4 carbon atoms (for example methyl, butyl, or 2-ethylhexyl); and (c) 0 wt % to 10 wt % (or 0 wt % to 5 wt % or 0 wt %) of a nitrogen-containing monomer."*

(emphasis added by the board)

- 2.3 It is undisputed that the expression "consisting essentially of", used to define the monomer composition in claim 1, is neither disclosed in paragraph [0048] nor in any other part of the application as filed.
- 2.4 As for compliance with Article 123(3) EPC in relation to the main request, the appellant argued that the term "consisting essentially of" in granted claim 1 encompassed the optional presence of a component (c), in addition to components (a) and (b). This was disclosed in paragraph [0048] of the application as filed as set out above, which therefore provided basis for the monomer composition defined in granted claim 1.
- 2.5 The board disagrees. As stated by the respondent, paragraph [0048] of the application as filed provides basis for a monomer composition **comprising** from 65 to 95 wt % component (a) and 5 to 30 wt % component (b). However, it does not provide basis for a monomer composition **consisting essentially of** these components (i.e. a monomer composition in which the only monomers present are (a) and (b)).
- 2.6 Specifically, according to paragraph [0048], when the monomer composition comprises the (claimed) lower amount of 65 wt % for component (a), it **cannot** comprise **only** component (b) as a further monomer, because an additional monomer must necessarily be present in an amount of at least 5% to bring the total monomer

content up to 100%. Having regard to the open "comprising" language used to define the monomer composition in paragraph [0048] of the application as filed, this could be a nitrogen-containing monomer (c), or any other monomer.

- 2.7 However, this possibility is excluded from claim 1 of this request, because as set out above in relation to Article 123(3) EPC for claim 1 of the main request, neither a nitrogen-containing monomer (c), nor any other monomer is encompassed with the monomer composition stipulated in claim 1 as granted. While by virtue of the expression "consisting essentially of", the monomer composition may comprise further components in minor amounts, such as impurities and initiators as set out above, this distinction is also not derivable from paragraph [0048] of the application as filed.
- 2.8 Furthermore, as set out above, the situation underlying decision T 1170/07 in which the amendment of "comprising" to "consisting essentially of" was accepted was different to that underlying the present case. In the present case, there is no technical reason to understand paragraph [0048] of the application as filed in the sense now claimed. Hence, paragraph [0048] of the application as filed does not provide basis for the amendments in granted claim 1, in particular that further components are allowed in the monomer composition of claim 1 only to the extent that they do not materially affect the essential characteristics of the polymethacrylate polymer derived therefrom.
- 2.9 The appellant also submitted that preparative example 1 of the application as filed served as a pointer towards the monomer composition defined in granted claim 1 as "consisting essentially of" components (a) and (b).

- 2.10 The board disagrees. The example discloses a composition containing, apart from monomers (a) and (b), ethylene glycol dimethacrylate. This fails to point to the limitation that further components are allowed, specifically in the monomer composition of claim 1, but only to the extent that they do not materially affect the essential characteristics of the polymethacrylate polymer derived therefrom. Therefore, the example cannot serve as a basis for claim 1 of the first auxiliary request.
- 2.11 Consequently, the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted.

3. Second auxiliary request - Article 123(3) EPC

Claim 1 of the second auxiliary request is identical to claim 1 of the main request with the exception that the nitrogen-containing monomer (c) is limited to the specific monomers stipulated in paragraph [0054] of the application as filed.

As set out above in relation to claim 1 of the main request, there is no reason to doubt that the inclusion of nitrogen-containing monomers (c) would have a material effect on the essential characteristics of the polymethacrylate polymer. Since there is no reason why the same would not apply to the limited list of nitrogen-containing monomers in claim 1 of this request, nor was any reason proposed by the appellant, claim 1 of the second auxiliary request contravenes Article 123(3) for the same reason as provided for claim 1 of the main request, above.

4. Third auxiliary request - Article 123(3) EPC

Independent claim 2 of the third auxiliary request is identical to claim 1 of the main request with the exception that it is further specified that the polymethacrylate polymer is a linear polymer.

The amendment to a linear polymer and thus the intended exclusion of star polymers in claim 2 of this request does not change the board's conclusion on Article 123(3) EPC given for the main request, since as set out in point 1.23 above, this conclusion does not depend on whether or not the claimed polymethacrylate is a star polymer.

Hence, claim 2 of the third auxiliary request contravenes Article 123(3) EPC for the same reason as provided above for claim 1 of the main request.

5. Fourth auxiliary request - Article 123(3) EPC

Claim 1 of the fourth auxiliary request is identical to claim 1 of the main request with the addition of the following text:

*"wherein the polymer is a linear or star polymer and when the polymer is a star polymer, the wt% values for the methacrylate monomer are exclusive of the di-functional or higher monomer found in the polymer core".*

Since the monomer composition in claim 1 is however defined identically to claim 1 of the main request at least insofar as it pertains to linear polymers, the same conclusions set out above for claim 1 of the main

request apply to claim 1 of this request with regard to non-compliance with Article 123(3) EPC, for the same reasons.

6. Fifth auxiliary request - Article 123(2) EPC

6.1 Claim 1 of the fifth auxiliary request differs from granted claim 1 (claim 1 of the first auxiliary request) in the deletion of the term "essentially".

Hence, claim 1 defines a monomer composition **consisting of**:

- 65 wt% to 95 wt% of component (a) and
- 5 wt% to 30 wt% of component (b).

6.2 The respondent submitted that claim 1 contravened Article 123(2) EPC.

6.3 The board agrees. Compared to claim 1 of the first auxiliary request, the term "essentially" has been deleted from this claim. As stated by the respondent, paragraph [0048] of the application as filed provides basis for a monomer composition **comprising** from 65 to 95 wt % component (a) and 5 to 30 wt % component (b). However, it does not provide basis a monomer composition **consisting of** these components in the claimed amounts (i.e. a monomer composition in which the only components present are (a) and (b)).

6.4 Specifically, according to paragraph [0048], when the monomer composition comprises the (claimed) lower amount of 65 wt % for component (a), it **cannot** comprise **only** component (b) as a further monomer, because an additional monomer must necessarily be present in an amount of at least 5% to bring the total monomer content up to 100%. Having regard to the open

"comprising" language used to define the monomer composition in paragraph [0048] of the application as filed, this could be a nitrogen-containing monomer (c), or any other monomer. However, this possibility is excluded from claim 1 of this request, which consequently does not find basis in paragraph [0048] of the application as filed.

6.5 In this context, the appellant submitted that in view of the maximum amount of component (b) in granted claim 1 of 30 wt%, the only technically sensible interpretation of granted claim 1 available to the skilled person would be to understand that component (a) must be present at a minimum of 70 wt% (such that both components would add up to 100%). Hence, claim 1 found basis in paragraph [0048] of the application as filed.

6.6 The board disagrees. Even if appellant's proposed interpretation of claim 1 were to be correct, there is no basis in paragraph [0048] of the application as filed to interpreting claim 1 such that the lower limit for component (a) is 70 wt%.

6.7 Claim 1 of this request therefore fails to meet the requirements of Article 123(2) EPC.

7. Sixth auxiliary request - Article 123(2) EPC

Claim 1 of the sixth auxiliary request differs from claim 1 of the fifth auxiliary request in that in component (a), the alkyl group of the methacrylate was restricted to 12 to 15 carbon atoms, and in component (b), the alkyl group of the methacrylate was restricted to 1 to 4 carbon atoms.

The respondent did not submit that this amendment would overcome the finding of non-compliance with Article 123(2) EPC with regard to claim 1 of the fifth auxiliary request. The board also sees no reason to arrive at a different conclusion.

Claim 1 of this request therefore fails to meet the requirements of Article 123(2) EPC.

8. It follows that none of the appellant's claim requests are allowable.

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated