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**Datasheet for the decision
of 7 December 2020**

Case Number: T 2903/18 - 3.2.06

Application Number: 08868572.2

Publication Number: 2231912

IPC: D04H1/4382, B32B5/14, B32B5/26,
B32B27/02, D04H13/00, D04H1/42

Language of the proceedings: EN

Title of invention:

COMPOSITE NONWOVEN FIBROUS WEBS AND METHODS OF MAKING AND
USING THE SAME

Patent Proprietor:

3M Innovative Properties Company

Opponents:

Polymer Group, Inc.
MANN + HUMMEL GmbH

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - added subject-matter (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2903/18 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 7 December 2020

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 October 2018 concerning maintenance of the
European Patent No. 2231912 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	P. Cipriano
	E. Kossonakou

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent 1) against the interlocutory decision of the opposition division in which it held that the European patent No. 2 231 912 in an amended form met the requirements of the EPC.
- II. The appellant requested that the interlocutory decision be set aside and the patent be revoked in its entirety.
- III. The respondent (patent proprietor) requested that the appeal be dismissed. As an auxiliary measure, oral proceedings were requested.
- IV. With a further letter the respondent stated that it had decided to discontinue the prosecution/maintenance of the patent and withdrew its request for oral proceedings.
- V. The oral proceedings were duly cancelled.
- VI. The Board issued a communication containing its provisional opinion, in which it stated *inter alia* that the subject-matter of dependent claims 2 and 3 did not fulfil the requirements of Article 123(2) EPC and that a written decision revoking the patent should be expected.
- VII. Claims 1 to 3 of the sole request read as follows:
"1. A composite nonwoven fibrous web comprising:

a population of sub-micrometer fibers having a median diameter less than one micrometer (μm); and

a population of microfibers having a median diameter of at least 1 μm , wherein at least one of the fiber populations is oriented, and further wherein the composite nonwoven fibrous web has a thickness and exhibits a Solidity of less than 10%, wherein the population of sub-micrometer fibers is intermixed with the population of microfibers to form an inhomogenous mixture of fibers, wherein a ratio of the number of sub-micrometer fibers to the number of microfibers varies across the thickness of the composite nonwoven fibrous web, and wherein the ratio of the number of sub-micrometer fibers to the number of microfibers varies from a peak value proximate a centerline defined by the half-thickness of the composite nonwoven fibrous web, to a lower value at a major surface of the composite nonwoven fibrous web.

2. The web of claim 1, wherein the population of sub-micrometer fibers has a median fiber diameter ranging from about 0.2 μm to about 0.9 μm , optionally wherein the population of microfibers has a median fiber diameter ranging from about 2 μm to about 50 μm .

3. The web of claim 1, wherein at least one of the population of sub-micrometer fibers and the population of microfibers comprises polymeric fibers, optionally wherein the polymeric fibers comprise polypropylene, polyethylene, polyester, polyethylene terephthalate, polybutylene terephthalate, polyamide, polyurethane, polybutene, polylactic acid, polyvinyl alcohol, polyphenylene sulfide, polysulfone, liquid crystalline polymer, polyethylene-co-vinylacetate, polyacrylonitrile, cyclic polyolefin, polyoxymethylene, polyolefinic thermoplastic elastomers, or a combination thereof."

VIII. The appellant's arguments relevant to the decision may be summarised as follows:

Article 123(2) EPC

The subject-matter of dependent claims 2 and 3 did not fulfil the requirement of Article 123(2) EPC.

Claim 1 was a combination of originally filed claims 1, 17, 18 and 20, which corresponded to granted claims 1, 10, 11 and 12. Dependent claims 2 and 3 however corresponded to originally filed claims 2 and 3 (combined) and 4 and 5 (combined), and had the same wording as granted claims 2 and 3 respectively.

However, granted claims 10 to 12 only referred back to granted claim 1 (and not to granted claims 2 and 3). Thus, a combination of granted claims 10 to 12 and granted claims 2 and 3 was not encompassed by the originally filed claims. There was also no further part of the application as filed which disclosed such subject-matter. Accordingly, the embodiments defined in present claims 2 and 3 constituted an inadmissible intermediate generalization of the content of the application as originally filed.

IX. The respondent's arguments relevant to the decision may be summarised as follows:

Article 123(2) EPC

The subject-matter of dependent claim 2 could be derived from page 14, lines 8-10 of the application as filed (which corresponds to the pages of the published PCT application) and claim 3 from page 14, lines 17-24

and page 16, lines 7-12. The optional medium fibre diameter of the population of microfibers in claim 2 was derived from page 15, lines 21-24.

Reasons for the Decision

1. Article 123(2) EPC

1.1 In its preliminary opinion, the Board noted the following:

"The Board considers that the subject-matter of dependent claims 2 to 6 does not fulfil the requirements of Article 123(2) EPC.

Claim 1 is a combination of originally filed claims 1, 17, 18 and 20, which corresponds to the combination of granted claims 1, 10, 11 and 12. Dependent claims 2 to 6 correspond to originally filed claims 2+3(combined), 4+5(combined), 8+9(combined), 11 and 12 respectively, which correspond to granted claims 2, 3 and 5 to 7 respectively.

However, originally filed claim 17 (corresponding to granted claim 10) was only dependent on claim 1, originally filed claim 18 referred back to claim 17 and originally filed claim 20 referred back to claim 18, such that the dependent claims 2 to 6 of the request under appeal do not result from a combination of dependent claims as originally filed.

The respondent argues that the subject-matter of dependent claim 2 can be derived from page 14, lines

8-10 of the application as filed (which corresponds to the pages of the published PCT application) and claim 3 from page 14, lines 17-24 and page 16, lines 7-12. The optional medium fibre diameter of the population of microfibers in claim 2 is, as far as the Board understands the argument, derived from page 15, lines 21-24.

Whilst these passages disclose the specific features of dependent claims 2 and 3, they are considered to relate to general alternative embodiments ("in some exemplary embodiments") of the sub-micrometer fiber and microfiber components and do not seem to provide a direct and unambiguous basis for a composite nonwoven fibrous web comprising these features in combination with (for example) the specific inhomogeneous mixture of fibres defined in claim 1 of the sole request under consideration.

Already for the foregoing reasons, the Board considers that the requirements of Article 123(2) EPC are not fulfilled for the subject-matter of each of claims 2 and 3."

- 1.2 The respondent did not submit any further comments in reply to the preliminary opinion of the Board. The Board therefore has no reason to deviate from its opinion and confirms same herewith.
- 1.3 Consequently, the subject-matter of claims 2 and 3 does not fulfil the requirement of Article 123(2) EPC, such that the sole request is therefore 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:



D. Grundner

M. Harrison

Decision electronically authenticated