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**Datasheet for the decision
of 29 October 2021**

Case Number: T 1286/19 - 3.3.09

Application Number: 12843796.9

Publication Number: 2771387

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D21B1/12, D21D1/20, C08L1/02,
C09D101/02, D21C9/00,
D21H11/18, D21H15/02

Language of the proceedings: EN

Title of invention:
PROCESS FOR PRODUCING A DISPERSION COMPRISING NANOPARTICLES
AND A DISPERSION PRODUCED ACCORDING TO THE PROCESS

Patent Proprietor:
Stora Enso Oyj

Opponent:
FiberLean Technologies Limited

Headword:
Dispersion comprising nanoparticles/STORA ENSO

Relevant legal provisions:
EPC Art. 100(b), 100(c), 111(1)
RPBA 2020 Art. 11
RPBA Art. 12(4)

Keyword:

Grounds for opposition - added subject-matter (no) -
insufficiency of disclosure (no)
Late-filed evidence - submitted with the statement of grounds
of appeal
Claim interpretation and content of the description
Remittal to the department of first instance

Decisions cited:

T 1414/08, T 2221/10, T 0378/11

Catchword:



Beschwerdekammern

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Case Number: T 1286/19 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 29 October 2021

Appellant: Stora Enso Oyj
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 3 April 2019
revoking European patent No. 2771387 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman A. Haderlein
Members: C. Meiners
C. Almberg

Summary of Facts and Submissions

- I. The appeal was filed by the patent proprietor (appellant) against the opposition division's decision to revoke European patent No. 2 771 387.
- II. With its notice of opposition, the opponent (respondent) had requested that the patent be revoked in its entirety on, *inter alia*, the grounds of insufficient disclosure (Article 100(b) EPC) and added subject-matter (Article 100(c) EPC).
- III. The opposition division held, *inter alia*, that the main request (claims as granted) met the requirement of not containing subject-matter extending beyond the content of the application as filed. However, the opposition division concluded that the patent did not disclose the claimed invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. Consequently, it revoked the patent (Article 101(2) EPC).
- IV. With its statement setting out the grounds of appeal the appellant filed six auxiliary requests. The main request corresponds to the patent as granted. Moreover, the appellant submitted the following document.

D22 EU Commission's recommendation of 18 October 2011 on the definition of the term "nanomaterial", Office Journal of the European Union, L275, pp. 38-40

V. Wording of the relevant claims of the main request.

Claim 1 as granted reads:

"A process for producing a dispersion comprising microfibrillated cellulose and nanoparticles wherein the process comprises the steps:

- providing a slurry comprising pre-treated cellulosic fibers wherein the cellulosic fibers have been pre-treated by mechanical treatment, enzymatic treatment, carboxy methylation, TEMPO oxidation, CMC grafting, chemical swelling or acid hydrolysis,
- adding nanoparticles to the slurry and
- treating the slurry by mechanical disintegration so that a dispersion comprising microfibrillated cellulose is formed in which the nanoparticles are being adsorbed to the surface of the microfibrillated cellulose and/or being adsorbed into the microfibrillated cellulose."

Claim 9 as granted reads:

"A dispersion being produced according to the process according to claims 1-8 wherein the dispersion has a dry content of above 50% by weight fibers."

Claim 10 as granted reads:

"The dispersion according to claim 9 wherein the majority of the nanoparticles in the dispersion, preferably at least 50% of the nanoparticles, are being adsorbed on the surface of or into the microfibrillated cellulose."

Claim 11 as granted reads:

"Use of the dispersion according to any of the claims 9 or 10 for coating of a paper or paperboard product."

VI. The appellant's arguments, where relevant to the decision, may be summarised as follows.

Document D22 should be taken into account by the board since it was *prima facie* highly relevant to the case. The document had been introduced at the earliest possible point in time.

The subject-matter of the main request (patent as granted) was directly and unambiguously derivable from the application as filed.

The invention could be carried out without imposing an undue burden. The question of the meaning of the term "nanoparticles" related to the clarity of the claims and not to sufficiency of disclosure. In paragraph [0026] of the patent, the term "nanoparticles" was explained. The description also contained an example of the claimed invention in which bentonite nanoparticles were employed.

The burden of proof that the claimed invention could not be carried out was on the opponent. The adsorption of nanoparticles to microfibrillated cellulose (MFC) was an inherent consequence of the mechanical disintegration of the slurries employed in claim 1, as was set out in paragraph [0029] of the description. Methods for carrying out disintegration of cellulosic fibres to MFC were well known to the skilled person. Likewise, a skilled person was able to study the

surface of the produced MFC by suitable methods, such as scanning electron microscopy (SEM).

Consequently, the invention as claimed in the main request was sufficiently disclosed.

VII. The respondent's arguments, where relevant to the decision, may be summarised as follows.

Document D22 should not be admitted into the proceedings as the objections regarding the skilled person's inability to determine the features "internal structure" and "surface structure" had already been raised in the opposition statement.

The subject-matter of claim 11 as granted was not directly and unambiguously derivable from the application as filed.

As to sufficiency of disclosure, the patent provided no teaching on how to reduce the subject-matter of the claims to practice. The single example of the patent could not be reworked. There was plausible suspicion that, due to the absence of essential information in the patent, the claimed subject-matter could not be carried out. It was not clear whether a particular type of nanoparticles and a particular pre-treatment of the cellulosic fibres were required to achieve the required alleged absorption of the nanoparticles to the MFC. Moreover, no information was provided in the patent on how the particle size of the nanoparticles should be determined and which type of particles should be considered nanoparticles. There was also insufficient information on how to determine if the required absorption had occurred. It was not clear whether a particular "mechanical disintegration" was required

when treating the slurry either. The burden of proof that the claimed subject-matter was sufficiently disclosed was thus on the appellant.

The case should be remitted to the department of first instance if the board concluded that any of the requests submitted by the appellant was sufficiently disclosed and did not contain added matter (Article 111(1) EPC and Article 11 RPBA 2020).

VIII. Final requests

The appellant requested that the decision under appeal be set aside and that the opposition be rejected (i.e. that the patent be maintained on the basis of the main request, i.e. the patent as granted) or that the patent be maintained on the basis of one of auxiliary requests 1 to 6 filed with the statement of grounds of appeal.

The respondent requested that the appeal be dismissed.

Reasons for the Decision

1. Admissibility of document D22 (Article 12(4) RPBA 2007)

The respondent's request that document D22 not be admitted was based on the argument that the document could have been submitted in the opposition proceedings.

However, given the opposition division's favourable preliminary opinion, the filing of document D22 with the statement of grounds of appeal cannot be considered belated but made in due time. In the preliminary opinion, it was held that the issues relating to the

meaning of the term "nanoparticles" did not prevent the maintenance of the patent under Article 100(b) EPC. Hence, realistically, the appellant has observed a fair degree of procedural vigilance in the case at hand. Likewise, document D22 relates to the case and is relevant given its definition of the term "nanomaterial". As the filing of D22 was a legitimate reaction to the impugned decision, the board takes this document into account (Article 12(4) RPBA 2007).

Main Request

2. Amendments (Article 100(c) EPC)

The opponent/respondent argued that claim 11 of the opposed patent was directed to the use of the dispersion according to claims 9 or 10 for coating a paper or paperboard product, while there was no support in the application as filed for this use claim. This was because page 9, lines 4 to 7 of the application as filed only referred to the "use of the dispersion in a coating color". Claim 11, however, was not limited to the use in coating colours.

The board concurs with the appellant that the subject-matter of claim 11 as granted finds its basis in claim 14 as originally filed. Claim 14 as filed reads:
"A paper or board product comprising a coating layer comprising the dispersion according to any one of the claims 10-13."

The subject-matter of claims 9 and 10 as granted, referred to in claim 11 of the patent, finds its base in claims 10 to 12 as originally filed. It has thus to be assessed whether each and every dispersion as

specified in claims 10 to 12 as filed is intended for use as a coating material on paper or paperboard.

The passage on page 9, lines 5 to 7 of the description as filed (in the following, the WO publication of the application is referred to) may suggest that the dispersion is used in a "coating color". However, in the preceding sentence, "the dispersion according to the invention" is referred to in general, without referring to a coating colour. Page 4, lines 13 to 16 of the description as filed also sets out that the substrates (paper or paperboard) can be coated with the "mentioned dispersion" (described in the preceding text of the description). Hence, the board concludes that the coating layer of claim 14 as filed optionally only comprises the dispersion of claims 10 to 13, characterised by its essential components, without any further ingredients (such as colouring agents).

Therefore, the ground for opposition under Article 100(c) EPC does not prejudice the maintenance of the patent.

3. *Sufficiency of disclosure (Article 100(b) EPC)*

3.1 The meaning of "pre-treated cellulosic fibers"

3.1.1 The term "pre-treated cellulosic fibers" in claim 1 has been objected to in the context of sufficiency of disclosure. According to the respondent, no information was provided in the patent on what was required by "pre-treated by mechanical treatment".

3.1.2 The proprietor was of the opinion that pulp preparation could not be considered "pre-treatment" of cellulosic fibres by mechanical treatment according to claim 1 as

granted. The cellulosic fibres were prepared by mechanical treatment in the pulping process and thus were separated from the other constituents of wood in this process. They were thus only obtained in the pulping process and not pre-treated by mechanical treatment.

- 3.1.3 The board is of the opinion that even pulp preparation and refining can be considered "mechanical treatment" when giving the wording of claim 1 its broadest technically sensible meaning. In pulp preparation, cellulose fibres are exposed to mechanical treatment. They are thus "pre-treated" by mechanical treatment. No clear structural limitations are evident which could be causally ascribable to the feature that the cellulose fibres in claim 1 should have been "mechanically pre-treated". Instead, the salient point appears to be, according to the patent, that a suitable mechanical disintegration of the cellulose fibres leads to microfibrillated cellulose (MFC) being formed (see paragraph [0023] of the patent in suit).

Paragraph [0027] of the patent sets out that pre-treated cellulosic fibres may also comprise cellulosic fibrils.

Hence, the board sees no insufficiency of disclosure arising from the feature "pre-treated cellulosic fibers" as further specified in claim 1.

- 3.2 The meaning of the term "nanoparticles" and its implications on sufficiency of disclosure
- 3.2.1 The board observes that the terms of a claim should be given their normal meaning in the relevant art. The expression "nanoparticle" is interpreted by a skilled

person as referring to the external dimensions of the particles (i.e. having external dimensions in the nanoscale regime). Thus, the term "nanoparticle" has an established meaning in the art. In the broadest technically meaningful sense, the term "nanoparticles" stands for particles having at least one external dimension in the nanoscale, i.e. from 1 to 100 nanometres. The term should be interpreted as it would be understood by the skilled person, ruling out illogical interpretations. Such an illogical interpretation would include a scenario in which particles merely having an internal dimension in the nanoscale (which could only be classified as "nanomaterial" and not "nanoparticles") would be taken as nanoparticles (see, for instance, point 33 of the Reasons for decision T 2221/10: "In case of a discrepancy between the claims and the description, the unambiguous claim wording must be interpreted as it would be understood by the person skilled in the art without the help of the description.").

- 3.2.2 As outlined by the respondent, the definition of the term "nanoparticles" in paragraph [0026] of the patent as recited in D22 is a definition of the term "nanomaterials" and not "nanoparticles". The respondent mentioned that the language used in paragraph [0026] of the opposed patent is not language that a skilled person would understand to be relevant to "nanoparticles".

The board takes the view that a skilled person would infer that the part in paragraph [0026] relating to the definition of "nanoparticles" which refers to the expression "or having internal structure or surface structure in the nanoscale" is unusual and not employed in the art in the context of "nanoparticles".

Both parties agreed that the part of the definition of nanoparticles in paragraph [0026] relating to "or having internal structure or surface structure in the nanoscale" was illogical and would have been ruled out by a skilled person confronted with the term "nanoparticles". Ruling out the illogical part in the definition of the term "nanoparticles" provided in paragraph [0026], "having any external dimension in the nanoscale" remains.

This is, in the view of the board, in line with the broadest technically sensible interpretation of the term "nanoparticle" as set out above, i.e. a particle having at least one dimension in the nanoscale. The appellant expressly agreed with this interpretation in the oral proceedings before the board. Nanoparticles within the meaning of the patent include, as outlined by the respondent, carbon nanotubes. Such particles have less than three/all dimensions in the nanoscale. Consequently, the argument of the respondent that "any dimension in the nanoscale" was ambiguous and could also mean that all dimensions of the particles had to be in the nanoscale does not hold.

- 3.2.3 In analogy to the findings of decision T 1414/08 (see points 2, 3 and 8 of the Reasons), the board takes the view that in the current case the question of whether a skilled person can determine if they are working within the scope of the claim has to be subsumed under the provisions of Article 84 EPC rather than the provisions governing sufficiency of disclosure (Article 100(b) and Article 83 EPC). Various methods for the determination of particle sizes of nanoparticles were known to the skilled person at the priority date of the patent. Moreover, it has not been demonstrated that the exact

determination of the upper limit of the particle size is crucial for carrying out the invention as described in the patent (see point 5.4 of the Reasons of T 378/11, in the context of the ambiguous definition of the particle size of micrometre-sized particles). In the case at issue, this would be the provision of stable dispersions of nanoparticles stabilised by microfibrillar cellulose.

- 3.3 No example according to the invention and general lack of technical guidance
- 3.3.1 According to the patent in suit, absorption of pigment or filler particles to microfibrillated cellulosic fibres takes place during homogenisation under the influence of high mechanical shear forces (see paragraphs [0023] and [0025] of the patent). The patent in suit also teaches that the cellulose microfibrils should be very thin (about 20 nm) and have a length of up to 2000 micrometres (see paragraph [0028] of the patent).
- 3.3.2 Furthermore, paragraph [0030] of the patent mentions that unabsorbed nanoparticles can be removed from the dispersion by washing the dispersion after the treatment by mechanical disintegration with water, by centrifugation of the dispersion followed by removal of the part comprising the free nanoparticles or by electro-osmosis. The removed nanoparticles can be reintroduced in the process.
- 3.3.3 It is thus plausible that nanoparticles are adsorbed on MFC fibres having a fibril thickness of about 20 nm, as proposed in the patent.

3.3.4 The board also holds it plausible that it can be determined by microscopic examination of the fibres after the mechanical disintegration step whether nanoparticles are adsorbed onto or into the surface of the fibres, as argued by the proprietor in the oral proceedings before the opposition division (see the first two paragraphs on page 6 of the appealed decision).

In the statement setting out the grounds of appeal, the appellant mentioned SEM (scanning electron microscopy) as a microscopic method for elucidating the surface of the MFC produced.

3.3.5 The respondent countered on this point in the oral proceedings before the board putting forward that SEM required that the samples be dry. A skilled person could thus not rule out whether nanoparticles were only adsorbed to the MFC due to sample preparation. This led to insufficiency of disclosure of the invention according to claim 1.

To the board, it is not plausible that a skilled person could not distinguish whether the adsorption/absorption of nanoparticles to the fibres is causally ascribable to sample preparation or whether the nanoparticles have already been adsorbed/absorbed to the MFC in the dispersions obtained after the mechanical disintegration step. As outlined above, the patent describes various methods for removing free/separate nanoparticles from the dispersions in paragraph [0030], such as electro-osmosis and centrifugation. It is not apparent to the board that it was thus not possible to visualise the absorbed/adsorbed nanoparticles (separated from free nanoparticles in the dispersion beforehand by the mentioned separation techniques).

Even assuming that non-adsorbed nanoparticles could still be present in the dispersions after removal of non-adsorbed nanoparticles by separation, there is no information at hand that it would be impossible to determine with certainty whether composite fibres of MFC with adsorbed nanoparticles are "artefacts", i.e. formed only during sample preparation for SEM. It is not plausible that the formation of such artefacts could not be avoided by pertinent sample preparation, such as the dilution of the dispersion/suspension to be applied on the SEM carrier substrate.

Consequently, the board does not accede to the objection of the respondent, which has not been substantiated by pertinent evidence or plausible considerations.

- 3.3.6 According to the patent, the stability of the dispersion produced in the example was visually checked. After four weeks, the dispersion was still stable compared to a dispersion only comprising bentonite nanoparticles, which tend to sediment. The board consequently notes that the MFC fibres thus appear to stabilise the dispersed particles and act as a dispersant.
- 3.3.7 The respondent argued that the first step of claim 1 was missing from the example in the patent. The example only referred to a slurry comprising a mixture of pre-treated fibres and bentonite nanoparticles; a slurry comprising only pre-treated cellulosic fibres and the step of adding the nanoparticles were not mentioned. As the first step of the process of claim 1 was missing from the example, this example was not in accordance with claim 1.

It is not apparent to the board that the fact that the addition of nanoparticles to the slurry is not mentioned in the example would be a bar to providing a slurry comprising the fibres and adding nanoparticles to arrive at a slurry in accordance with paragraph [0037] of the patent.

- 3.3.8 Likewise, it is true that the exact nature of the bentonite nanoparticles and the type of pre-treatment of the cellulosic fibres is not disclosed in the example provided in the patent. While the example thus cannot be repeated exactly, the respondent has not demonstrated that these missing pieces of information would be necessary for carrying out the claimed invention or preparing embodiments in accordance with the example.

The example mentions the concentration of the components. Likewise, the pressure in the microfluidiser is disclosed (see also the corresponding indications in paragraph [0025] of the patent).

The respondent has thus not corroborated that a skilled person wishing to rework the example of the patent would be faced with an undue burden when varying the duration of the mechanical disintegration step to obtain a stable dispersion.

The board also observes that the salient point for the assessment of sufficiency of disclosure is not whether an example can be exactly reworked but whether the invention as claimed can essentially be reduced to practice over the full scope of the claims without imposing an undue burden.

3.3.9 The respondent also mentioned that a skilled person would not know what was required by the "mechanical disintegration step" or even whether this step was essential to obtaining the required absorption of nanoparticles.

As to the latter point, the board observes that since this feature forms part of the features of claim 1, it is irrelevant whether the feature of mechanical disintegration is essential to effect adsorption of the nanoparticles.

3.3.10 Regarding the objection that it was not clear what was required by "mechanical disintegration", the board observes as follows. Claim 1 as granted sets out that by mechanical disintegration a dispersion comprising MFC is formed. As argued by the appellant, paragraph [0023] of the impugned patent mentions that by mechanical disintegration MFC "with a high amount of open surface is formed". Thus, absorption of the nanoparticles to the open surface of the MFC is effected, and the formation of nanoparticle aggregates is prevented.

The appellant stressed that the mechanical disintegration step was described in the patent in detail and that suitable equipment for carrying out this disintegration was commercially available.

The patent describes various devices for performing the mechanical disintegration, including refiners or grinders and pressure homogenisers. There is no plausible suspicion that these alternative devices, other than pressure homogenisators, would not bring about the formation of MFC (having a high amount of open surface) from cellulosic fibres. Hence, the board

does not see that insufficiency of disclosure could arise from this objection.

3.3.11 It also appears plausible to the board that the dispersing/stabilising action of the MFC is not limited to the kind of nanoparticles employed in the example of the patent (bentonite nanoparticles). Other exemplary nanoparticles to be used in the claimed invention are described in paragraph [0026] of the patent.

3.3.12 The respondent mentioned in the oral proceedings before the board that it was not plausible that particles having not only nano-dimensions would be suitable for adsorption to MFC. This lack of plausibility arose from the fact that such particles, including carbon nanotubes and thin sheets, had much larger other dimensions, not being in the nanoscale. Due to this fact, their adsorption to the MFC was not likely to occur.

The board concludes on this point that there is no information or plausible suspicion at hand that particles having less than all their external dimensions in the nanoscale regime would not be capable of adsorbing to MFC. Claim 1 does not require for each and every embodiment that the nanoparticles be absorbed into the MFC. Firstly, even larger particles, such as nanoplatelets or carbon nanotubes to which the respondent referred, could adsorb/absorb to surfaces of the MFC fibres. Those microfibrils have, according to paragraph [0028] of the patent in suit, a length of up to 2000 micrometres due to wide length distribution, as put forward by the respondent. Secondly, it is also plausible that the particle size of these particles could be further reduced due to the mechanical

disintegration step needed to obtain the MFC fibrils from cellulose.

- 3.3.13 The respondent also put forward in the oral proceedings before the board that MFC fibres were also nanoparticles according to the patent in suit. Consequently, the comparative dispersion featured in the example of the patent, comprising MFC and tending to "bleed" water when being stored, had to be regarded as a non-working embodiment falling within the scope of claim 1.

The board takes the view that such an interpretation of claim 1, i.e. considering that the MFC and the nanoparticles could be identical, is illogical. In claim 1, nanoparticles have to be added to the cellulosic fibres (yet to be converted into MFC by the mechanical disintegration step). The scenario to which the respondent referred does thus not fall within the scope of claim 1 for this reason alone. For the sake of completeness of argument, the board observes that claim 1 does not require a specific degree of stability of the dispersions.

- 3.3.14 The respondent also argued in the oral proceedings that MFC derived from cellulosic fibres pretreated by TEMPO oxidation had negative surface charges. The nanoparticles, however, could also be negatively charged. Thus, it was, due to the mutual repulsion of the negative charges, not credible that such a combination of MFC and nanoparticles worked.

However, the respondent has not substantiated this allegation with pertinent evidence or a convincing line of argument. In the board's view, it has not been corroborated by the respondent that such negative

charges would necessarily impede the adsorption of negatively charged nanoparticles to negatively charged MFC surfaces. For example, negatively charged segments of the MFC fibres could point away from the negative surface charges of the nanoparticles, thus evading mutual electrostatic repulsion by adsorption of the nanoparticles only on non-charged segments/sites of the MFC.

Even assuming that such a mutual repulsion would take place, a skilled person could select suitable combinations of MFC and nanoparticles in which the charge distribution for adsorption of the nanoparticles would fit.

- 3.3.15 The respondent also argued in the oral proceedings that according to the preliminary opinion of the board, the greater dispersion stability in the example of the patent was indicative of adsorption of the nanoparticles to the MFC fibres. However, for the respondent, there was no comparable example in the patent which would comprise a composition containing only a mixture of non-adsorbed nanoparticles and MFC fibres.

In the board's view, this objection cannot invalidate the conclusion of the board, having taken note of the whole information content of the patent in suit. It is firstly not clear whether "only mixing" MFC and nanoparticles would not lead to the same result of adsorption of the nanoparticles (possibly to a smaller extent). As mentioned by the appellant, paragraph [0023] of the patent sets out that by carrying out the mechanical disintegration of the slurry comprising MFC and nanoparticles, it is possible for the nanoparticles

to absorb to a larger extent to the open surface of the MFC.

It is therefore not apparent to the board that such a postulated comparative example would have been pertinent for demonstrating whether the nanoparticles and MFC fibres in the example involving mechanical disintegration merely "co-exist" without adsorption in the dispersion medium or whether MFC fibres with adsorbed nanoparticles are formed.

Secondly, the board sees no need for such a comparative example. The patent contains plausible technical teachings on the improved adsorption of nanoparticles to MFC by in-situ mechanical disintegration of slurries comprising nanoparticles and cellulosic fibres (see above).

The observation that the dispersion comprising MFC fibres and nanoparticles subjected to mechanical disintegration of the precursor slurry is still stable after four weeks is in line with the description of stabilised dispersions in the specification, such as in paragraph [0023], complementing the example.

- 3.4 Thus, the board holds that there is a strong presumption that the example and the general technical teaching of the patent sufficiently describe how the process of claim 1 could be reduced to practice by a person skilled in the art using their common general knowledge over the full breadth of the claim without undue burden.
- 3.5 As argued by the appellant, the burden of proof to demonstrate that the subject-matter of claim 1 cannot be reduced to practice by a skilled person without

undue burden - or even not be carried out at all - would consequently have been on the respondent, which, however, failed to do so given the above mentioned considerations.

- 3.6 The board concludes that the subject-matter of dependent claim 10 can also be reduced to practice without imposing an undue burden on a skilled person. By carrying out the mechanical disintegration described in the patent, the majority of the nanoparticles are apparently absorbed on or into the MFC (see paragraph [0029] of the patent).

It appears that the question of the method to be employed for determining whether the majority of the nanoparticles in the dispersion are adsorbed on the surface of or into the MFC instead concerns the clarity of claim 10 and not a potential insufficient teaching on how the claimed dispersion can be prepared.

- 3.7 Hence, the board concludes that the invention according to the claims of the main request is sufficiently disclosed. Consequently, the ground for opposition under Article 100(b) EPC does not prejudice the maintenance of the patent as granted.

4. *Remittal (Article 111(1) EPC and Article 11 RPBA)*

The impugned decision only deals with the main request in relation to the requirement of sufficiency of disclosure (Article 100(b) EPC) and the requirements of Article 100(c) EPC but not with patentability (Article 100 (a) EPC). As the primary object of the appeal proceedings is to review the impugned decision in a judicial manner (Article 12(2) RPBA 2020), it would be inappropriate for the board to deal with the novelty

and inventive-step objections. Instead, the board finds special reasons to remit the case to the opposition division for further prosecution, as requested by the respondent (Article 11 RPBA 2020).

Order

For these reasons it is decided that:

1. The appealed decision is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chair:



A. Nielsen-Hannerup

A. Haderlein

Decision electronically authenticated