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Datasheet for the decision of 6 August 2025

Case Number: T 1095/23 - 3.3.09

Application Number: 18198143.2

Publication Number: 3461634

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Language of the proceedings: EN

Title of invention:
MULTILAYER CLING FILM

Patent Proprietor:
Flexopack S.A.

Opponent:
Cryovac, LLC

Headword:
Multilayer cling film/FLEXOPACK

Relevant legal provisions:
EPC Art. 10(2)(a), 52, 54(1), 56, 100(a), 106(2), 113(1), 116(1)

Keyword:
Novelty - (no) - main request and auxiliary requests 4-7,12,13 (no)
Inventive step - (no) - auxiliary requests 1-3,8-11,11a,14,15 (no)
Appeal proceedings not a forum for general considerations, e.g. on the compliance with the EPC of the first instance's practice concerning the format of oral proceedings, unless related to a specific request

Decisions cited:
G 0001/21

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Case Number: T 1095/23 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 6 August 2025

Appellant: (Patent Proprietor)	Flexopack S.A. Thessi Tzima 194 00 Koropi (GR)
Representative:	Isarpatent Patent- und Rechtsanwälte Barth Charles Hassa Peckmann & Partner mbB Friedrichstrasse 31 80801 München (DE)
Respondent: (Opponent)	Cryovac, LLC 2415 Cascade Pointe Blvd. Charlotte, NC 28208 (US)
Representative:	Eisenführ Speiser Patentanwälte Rechtsanwälte PartGmbB Johannes-Brahms-Platz 1 20355 Hamburg (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 4 April 2023 revoking European patent No. 3461634 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	A. Haderlein
Members:	C. Meiners
	G. Decker

Summary of Facts and Submissions

I. The appeal was filed by the patent proprietor (appellant) against the opposition division's decision to revoke the patent.

II. In its notice of opposition, the opponent had requested revocation of the patent in its entirety based on the grounds for opposition under Article 100(a) EPC (lack of novelty and of inventive step).

III. The following documents are relevant to the present decision:

D1 EP 0 987 103 A1
D3 US 4,755,419 A
D6 EP 0 333 508 A2

IV. In the decision under appeal, the opposition division decided *inter alia* that the ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC (lack of novelty) prejudiced maintenance of the patent. The subject-matter of claim 1 as granted lacked novelty in view of, among other things, both documents D1 and D3. In addition, auxiliary requests 1 to 7 filed on 11 June 2021, auxiliary requests 8 to 11 and 11a filed on 11 March 2022, auxiliary requests 12 and 13 filed on 11 June 2021 and auxiliary requests 14 and 15 filed on 11 March 2022 did not meet the requirements of the Convention. The subject-matter of claim 1 of each of auxiliary requests 4 to 7, 12 and 13 lacked novelty. Moreover, the subject-matter of claim 1 of each of auxiliary requests 1 to 3, 8 to 11, 11a, 14 and 15 lacked an inventive step.

V. After the opposition division had summoned the parties to oral proceedings to be held as a videoconference, the patent proprietor requested that oral proceedings be held at the premises of the EPO (in person). Moreover, it requested that an appealable decision on that request be delivered so that a separate appeal pursuant to Article 106(2) EPC against a decision refusing that request could be filed. Both requests were refused by the opposition division, referring to Article 1(2) of the Decision of the President of the EPO dated 22 November 2022 (OJ EPO 2022, A103). Oral proceedings before the opposition division were conducted as a videoconference.

VI. Wording of the relevant claims

Claim 1 of the **main request** (as granted) reads:

"*A film with thickness of less than 25 microns comprising*
a barrier layer,
an inner adhesive layer, and
an outer release layer, where
the barrier layer comprises EVOH,
the inner adhesive layer comprises ethylene vinyl acetate copolymer, and
the outer release layer comprises polyolefin homopolymer or copolymer."

Claim 1 of **auxiliary request 1** differs from claim 1 as granted in the additional limitation "wherein the vinyl acetate weight ratio is at least 20%" for the ethylene vinyl acetate copolymer. The vinyl acetate weight ratio is defined as "at least 25%" and "at least 40%" in **auxiliary requests 2 and 3**, respectively.

Claim 1 of **auxiliary request 4** is distinguished from claim 1 as granted by stipulating that the outer release layer comprises ethylene alpha olefin copolymer (instead of the generic indication "polyolefin homopolymer or copolymer").

Claim 1 of **auxiliary requests 5 to 7** differs from granted claim 1 in that the film thickness is limited to less than 20, 18 and 15 microns, respectively.

Claim 1 of **auxiliary request 8** reads as follows:

"*Use of a film as a kitchen wrap, wherein the film has a thickness of less than 25 microns comprising*
a barrier layer,
an inner adhesive layer, and
an outer release layer, where
the barrier layer comprises EVOH,
the inner adhesive layer comprises ethylene vinyl acetate copolymer, and
the outer release layer comprises polyolefin homopolymer or copolymer."

Compared with claim 1 of auxiliary request 8, claim 1 of **auxiliary requests 9 to 11** comprises a limitation of the vinyl acetate weight ratio in the ethylene vinyl acetate copolymer to at least 20%, at least 25% and at least 40%, respectively.

Compared with claim 1 of auxiliary request 11, claim 1 of **auxiliary request 11a** comprises the further feature "[,] where between the adhesive and barrier layer there is at least one tie layer", inserted at the end of the claim.

Claim 1 of **auxiliary request 12** is distinguished from claim 1 as granted by the additional feature "*[,] wherein the outer layer further comprises a substantially non resilient material, wherein substantially non resilient material refers to materials or material compounds comprising at least 40% per weight inorganics*" (emphasis by the board), inserted at the end of the claim.

Compared with claim 1 as granted, claim 1 of **auxiliary request 13** comprises the additional limitation "*[,] wherein the inner layer further comprises a substantially non resilient material, wherein substantially non resilient material refers to materials or material compounds comprising at least 40% per weight inorganics*" (emphasis by the board), inserted at the end of the claim.

Claim 1 of **auxiliary request 14** essentially results from claim 1 of auxiliary request 12 by limiting the claimed subject-matter to the use of said films as a kitchen wrap. Finally, compared with claim 1 of auxiliary request 14, the additional insertion of the aforementioned limitation of the vinyl acetate weight ratio to at least 40% and the presence of at least one tie layer between the adhesive and the barrier layer lead to the subject-matter of claim 1 of **auxiliary request 15**.

VII. The parties' arguments, where relevant to the present decision, are reproduced below in the reasons for the decision.

VIII. The appellant (patent proprietor) requested that the decision under appeal be set aside and as a main request that the opposition be rejected, i.e. that the

patent be maintained as granted. Alternatively, it requested that the patent be maintained on the basis of one of auxiliary requests 1 to 11, 11a or 12 to 15 on which the decision under appeal is based.

The respondent (opponent) requested that the appeal be dismissed.

Reasons for the Decision

Main request

1. *Patent*

The patent is directed towards thin multilayer plastic films for food packaging such as "cling films" or "kitchen wrap" films. The films comprise a barrier layer that impedes the passage of odorous gases across the films, an outer release layer and an inner adhesive layer, see paragraph [0007] of the patent.

2. *Novelty*

2.1 Document D1

D1 is directed towards oriented and heat-shrinkable, multilayer thermoplastic films that can be used as a packaging material. The five-layer films of Examples 1 and 3 differ only in terms of composition in the nature of internal layers C/C'' and comprise two outer layers A, adjacent to a tie layer B. The complete layer structure is A/B/C/B/A in Example 1 and A/B/C''/B/A in Example 3. While there is agreement that Example 3 of D1 discloses all the features of claim 1 apart from the thickness of the five-layer film, according to the

appellant this latter feature is neither explicitly nor implicitly disclosed in this example.

The board concurs with the appellant in the respect that it cannot be concluded from the information given for Example 3 of D1 alone that the film thickness of the film obtained in Example 3 corresponds to that of Example 1. Likewise, the film thickness obtained in the final film hinges on the very nature of the materials employed (such as the mechanical strength of the individual layers and the film's shrinking behaviour) and the number of layers in the film.

As regards the *general teaching* of D1, the appellant submitted that a broad range for the film thickness of from about 8 to about 120 micrometres and a preferred range from about 10 to about 90 micrometres was disclosed in paragraph [0021]. The teaching in paragraph [0060], however, in the light of paragraph [0059] was directed to symmetrical films to be used in a specific application. A skilled person would thus not infer that they should apply the teaching of paragraph [0060] to Example 3. They would not seriously contemplate working in said range disclosed in paragraph [0060]. A film thickness as required in claim 1 was thus not directly and unambiguously derivable from D1 in combination with the other features of claim 1.

The appellant's arguments, however, are not persuasive for the following reasons. Example 3 describes the preparation of a five-layer film as in Example 1. While a film thickness is not indicated in Example 3, it must be chosen when reducing this example to practice. The film is said to be prepared by following "essentially the same procedure as in Example 1". It can thus be

expected that a similar film thickness to that in Example 1 would be obtained when essentially adhering to the preparation procedure applied in Example 1.

Similarly, the respondent submitted that, in the absence of any indication in Example 3, a skilled person would infer that the teachings of Examples 1 and 3 were the same - except for the use of composition C'' instead of C in the inner layer. Identical film thicknesses could thus be expected in both examples.

A skilled person wishing to implement Example 3, also in terms of the layer thickness, would turn to the general teaching of D1, including the corresponding indications in e.g. paragraph [0021], and choose from within the disclosed range. They would consider working in a range between 8 and 20 micrometres, hinted at e.g. in Example 1 and also in paragraph [0060]. In that text section, this range of film thickness values is disclosed for *(symmetrical) thin films – as prepared in Examples 1 to 3*. Consequently, the teachings of the examples and of the description are directly compatible in this regard. A film thickness of e.g. 20 micrometres, as disclosed in Example 1 and as disclosed in e.g. paragraph [0060] for symmetrical thin films, would thus be considered by a person skilled in the art wishing to implement Example 3. That paragraph [0060] describes a specific application area for the thin films referred to therein is not at odds with this conclusion.

Hence the subject-matter of claim 1 lacks novelty in view of D1, and the ground for opposition under Articles 100(a) and 54(1) EPC prejudices maintenance of the patent as granted.

2.2 Document D3

It is contentious between the parties whether D3 discloses the feature combination of a total layer thickness as required in claim 1 with an outer layer comprising an EVA (ethylene vinyl acetate copolymer).

D3 is concerned with a biaxially oriented coextruded film having at least seven layers that are arranged symmetrically. The core layer comprises an EVOH (ethylene vinyl alcohol copolymer). The outer layers each comprise a polyolefin homo- or copolymer, see options i) and ii) of claim 1.

In the decision under appeal, a novelty-destroying embodiment is acknowledged starting from option i) of claim 1 of document D3, the total layer thickness being from about 0.5 mils (about 12.7 micrometres) to about 2 mils (about 50.8 micrometres). An outer layer in accordance with option i) encompasses "*a blend of a linear low density polyethylene, a linear medium density polyethylene, and an ethylene vinyl acetate copolymer*".

This option i) is disclosed in claim 5 of D3 without any further alternative embodiments.

Thus no second selection from a list containing only two members is necessary to arrive at a film having the composition of claim 5 and the range of total thicknesses of claim 1 of D3.

In D3, the lower end point for the range of the total film thickness of 0.5 mils (12.7 micrometres) is marked as a preferred feature and also comes close to the

values of 1.06 and 1.3 mils as disclosed in Examples 1 and 2.

The appellant disagreed with this conclusion of the board. While claim 9 disclosed a range for the total film thickness from 0.5 to 1.5 mils (12.7 to 38.1 micrometres), Examples 1 and 2 disclosed total film thickness values of 1.3 and 1.06 mils (approximately 33 and 27 micrometres), respectively. Likewise, a value of 1 mil was disclosed in claim 10. Within the broad range from 0.5 to 1.5 mils, a skilled person would thus seriously contemplate working more closely to 1 mil (corresponding to 25.4 micrometres) instead of implementing film thickness values lower than 25 micrometres, and thus would not contemplate working in the claimed range although it was covered by claims 1 and 5 of D3.

The board disagrees. That the examples and claim 10 feature embodiments having total film thickness values above 25 micrometres does not mean that the lower part of the aforementioned range constituting the range of overlap would be excluded by a skilled person when considering the implementation of the teaching of D3.

A skilled person would thus seriously contemplate working in the range of overlap, disclosing a value of 0.5 mils (12.7 micrometres). That the most preferred film thickness is 1 mil - as argued by the appellant - is not at odds with this conclusion. The subject-matter of claim 1 as granted thus also lacks novelty in view of document D3 and does not meet the requirement of Article 54(1) EPC. Consequently, for this reason too the ground for opposition under Article 100(a) EPC prejudices maintenance of the patent as granted.

Auxiliary requests

3. Auxiliary request 1 - inventive step

3.1 Closest prior art

In the decision under appeal, both documents D3 and D6 were taken as suitable starting points for assessing inventive step. As both documents describe multilayer films suitable for food packaging, as does the patent in suit, the board sees no reason to deviate from this conclusion.

In the following, the board starts from document D6 as the closest prior art. This document is also concerned with the provision of cling films, and thus addresses the same purpose as referred to in paragraph [0001] of the patent. The film of Example 2 of D6 has the structure A-B-A and a thickness of 16 micrometres. Layers A are made from a polymer blend of EVA (containing 8.5% vinyl acetate in polymerised form), LLDPE (linear low density polyethylene) and polyisobutylene. Layer B is prepared from a blend of EVA, LLDPE and LDPE. The films of D6 can have a total thickness of from 10 to 30 micrometres, see claim 2.

3.2 Distinguishing technical features

It is common ground that the film in accordance with claim 1 differs from that of Example 2 of D6 in that
i) the barrier layer comprises EVOH, and
ii) the EVA copolymer in the inner adhesive layer has a vinyl acetate weight ratio of at least 20%.

3.3 Technical effect and resulting objective technical problem

3.3.1 As to i), the parties unanimously agree that the resulting effect is that the odour barrier properties of the film are improved. The resulting partial objective technical problem is thus the provision of a cling film which exhibits a low permeability for odiferous substances.

3.3.2 As to ii), it is common ground between the parties that no particular technical effect is achieved by that feature. The resulting second partial objective technical problem is thus to provide an alternative cling film.

3.4 Obviousness

3.4.1 It was known from the prior art that the incorporation of a layer comprising EVOH imparts odour barrier properties to plastic films. Document D3 discloses this missing link. The respondent pointed amongst other things to column 1, line 25 ff, column 3 mentioning "EVOH"/ethylene vinyl alcohol copolymer, and the examples of D3 teaching EVOH barrier layers.

3.4.2 While it is correct that D3 is not directed towards cling films, its teaching is nevertheless compatible with that of D6: both documents deal with packaging applications of multilayer plastic films. D6 teaches films with cling characteristics for wrapping, for example, fresh food. The films may be used for manual wrapping but may be especially suited for automated wrapping (see page 2, lines 5 to 8).

D3 also deals with wrap films suitable for food packaging. The films show good oxygen barrier characteristics owing to an EVOH barrier layer. This material also imparts odour barrier properties (see column 1, lines 21 to 31).

3.4.3 The appellant submitted that the skilled person would have refrained from modifying the composition of the inner layer B in Example 2 of D6 by incorporating EVOH in the layer material, as this would not have optimised the material properties of the resulting film. Likewise, the skilled person could not expect that the insertion of a layer comprising EVOH into the film of Example 2 would (in view of non-matched material properties of the materials used in the layers) achieve a film that could be easily produced.

This line of argument is not persuasive. D6 does not teach against inserting further layers into the multilayer film or substituting the middle layer material in a three-layer structure (see page 3, lines 49 to 50 and e.g. claim 1). In this regard, it can be expected that the integration of an internal EVOH barrier layer would not change the cling properties of the film.

The appellant argued that such a film would not be "optimised" in terms of its property profile. The skilled person was therefore taught away from a corresponding modification. However, the board holds that the question of optimisation is irrelevant. In this context, the respondent persuasively submitted that the film compositions of D3 and D6 were mutually compatible, in particular the materials used in the outer layers. There was thus no teaching away in this

regard that would dissuade the skilled person from applying the teaching of D3 to D6.

3.4.4 Hence a skilled person would have been motivated to either incorporate an interior EVOH barrier layer into the films of D6 as an additional layer or to replace the intermediate layer in D6 by such an EVOH layer with a reasonable expectation of success, in order to achieve odour barrier properties whilst maintaining cling film properties, both alternatives leading to subject-matter covered by claim 1.

3.4.5 The solution to the first partial objective technical problem referred to in point 3.3.1 above is thus obvious to a person skilled in the art.

3.4.6 As to the obviousness of the second partial technical problem as specified in section 3.3.2, the appellant submitted that D6 disclosed vinyl acetate (VA) levels in the examples of 8.5%, and from 5 to 15% in claim 7. These were below the minimum level called for in claim 1, namely 20%. D6 thus clearly taught away from VA levels as required in claim 1. Likewise, document D3 taught preferred VA levels of from 3.5 to 9%, and Example 1 disclosed a VA level of 3.6%. Hence D3 also taught away from VA weight ratios required in claim 1. By contrast, the general definition of EVA in column 4 of D3 did not apply to films in accordance with the invention as taught in D3. This also rendered the solution to the aforementioned second partial problem non-obvious.

3.4.7 The board is not convinced by this line of argument. D6 explicitly proposes vinyl acetate levels in the EVA of up to 15%. The nature of the copolymer of ethylene and an ethylenically unsaturated ester is not limited in

claim 1 of D6 at all. Hence a skilled person wishing to provide cling films having an *alternative* outer layer composition would have considered working in a neighbouring range of vinyl acetate content which is greater than 15%.

Moreover, unlike what was submitted by the appellant, the EVA comprised in the outer layers of the films of D3 can contain up to 40 wt.% vinyl acetate in polymerised form. This can be inferred from the aforementioned general definition of EVA in column 4, lines 28 to 31 of D3. The contention that this definition would not apply to the films in accordance with the invention of D3 is not derivable from that document. This was also the position of the respondent, arguing that the passage in column 4, lines 23 to 31 related to the invention as set out in D3. Likewise, that a lower vinyl acetate content of between 3.5 and 9 wt.% is preferred in D3 does not speak against using higher levels of this monomer either when wishing to prepare alternatives.

3.4.8 Consequently, the solution to the aforementioned second partial technical problem is also obvious to a person skilled in the art.

3.4.9 To sum up, the subject-matter of claim 1 does not involve an inventive step and thus does not meet the requirement of Article 56 EPC.

4. Auxiliary requests 2 and 3 - inventive step

The remarks made above as to lack of inventive step for auxiliary request 1 apply equally to the subject-matter of claim 1 of auxiliary requests 2 and 3. As outlined above in point 3.4.7, document D3 discloses the use of

an EVA copolymer comprising up to 40 wt.% vinyl acetate. Consequently, the subject-matter of each claim 1 of auxiliary requests 2 and 3 is obvious to a person skilled in the art for the reasons indicated above.

5. *Auxiliary request 4 - novelty*

Document D1 discloses the additional limitation in claim 1 over claim 1 as granted that the outer layer comprises an ethylene alpha olefin copolymer. The board concurs with the respondent's correct submission that LLDPE in the outer layer of the film qualifies as an ethylene alpha olefin copolymer within the meaning of the corresponding definition provided on page 3, lines 26 to 28 of the patent. Thus the subject-matter of claim 1 lacks novelty over D1.

6. *Auxiliary requests 5 to 7 - novelty*

The subject-matter of each claim 1 of auxiliary requests 5 to 7 lacks novelty over document D3 for the reasons indicated above in point 2.2.

7. *Auxiliary request 8 - inventive step*

The subject-matter of claim 1 differs from that of document D6 as the closest prior art in that the barrier layer comprises EVOH. The technical effect and objective technical problem associated with this feature are outlined above. Consequently, the corresponding reasoning provided under points 3.1 to 3.4 applies equally. Thus the subject-matter of claim 1 is obvious in view of D6 in combination with document D3 as a secondary information source.

8. Auxiliary requests 9 to 11 - inventive step

The remarks made in points 3.1 to 3.4 above apply equally. The distinguishing technical features over D6, considered to represent the closest prior art, are i) that the barrier layer comprises EVOH and ii) that the EVA copolymer in the inner adhesive layer has a vinyl acetate weight ratio of at least 20%, at least 25% or at least 40%, respectively.

For the reasons indicated above, document D3 teaches the use of an EVOH odour barrier layer and equally employing said vinyl acetate weight ratios. Consequently, the subject-matter of claim 1 lacks an inventive step as well.

9. Auxiliary request 11a - inventive step

Compared with claim 1 of auxiliary request 11, claim 1 stipulates the presence of at least one tie layer between the inner adhesive and the barrier layer. This feature constitutes a third distinguishing technical feature iii) over D6.

As conceded by the appellant, the distinguishing features are functionally not interdependent.

Document D3 teaches tie layers/adhesive layers which are positioned between the barrier layer and the outer layer comprising an EVA copolymer. Such tie layers are inserted to increase the interlayer adhesion between adjacent layers.

A skilled person would thus have considered integrating an EVOH barrier layer using adhesive tie layers in D6

with a reasonable expectation of success. The subject-matter of claim 1 thus lacks an inventive step as well.

10. Auxiliary requests 12 and 13 - novelty

In D1, the outer and inner layers of the film of Example 3 comprise 0.1 wt.% silica, see paragraph [0095]. Hence the subject-matter of each claim 1 of auxiliary requests 12 and 13 lacks novelty vis-à-vis D1.

11. Auxiliary request 14 - inventive step

11.1 It is common ground that the subject-matter of claim 1 differs from the disclosure of D6 as closest prior art in that i) the barrier layer comprises EVOH and ii) the outer layer comprises a substantially non resilient material, wherein substantially non resilient material refers to materials or material compounds comprising at least 40 wt.% inorganics.

11.2 The corresponding technical effects are i) improved odour barrier properties and ii) *alternative* films having a controlled amount of residual cling (see claim 1 of D6 in this regard).

11.3 As to the obviousness of providing a film having improved odour barrier properties, see points 3.1 to 3.4 above, which apply *mutatis mutandis*.

Document D3 already teaches the use of e.g. silica and other inorganic materials as an anti-block additive for use in surface layers of plastic films, see column 6, lines 3 to 8 of D3. The appellant correctly stated that this text section relates to embodiment ii) with the outer layers comprising an ethylene propylene

copolymer, polypropylene or blends thereof, rather than to embodiment i) involving the use of EVA in the outer layers. Further, this text passage discloses the use of that agent in the following context: "[t]he polypropylene may be pre-blended with about 4% by weight of silica-containing antiblock agent,[...]". According to the appellant, D3 thus taught away from adding silica-containing anti-block agent in outer film layers containing EVA (i.e. relating to embodiment i).

Nevertheless, the polymer blend comprising EVA featured in embodiment i) also typically contains small amounts of slip and anti-block additives (see column 5, lines 29 to 40 of D3, referred to by the respondent). There is thus no reason to restrict the use of silica as an anti-block agent to embodiment ii) of D3. Anti-block additives are typically present in a small amount of EVA used in the blending process in D3. A skilled person would not hesitate to add such agents (containing silica), in particular in small amounts, to the surface layer film compositions to adjust the cling properties of the films, as required in claim 1 of D6.

The appellant's argument that an anti-block agent (containing silica) did not necessarily qualify as a "substantially non resilient material" (NRM) and that an NRM was thus not directly and unambiguously disclosed in D3 does not convince either. In this regard, the respondent correctly countered that silica (an inorganic material) - that is present in the said anti-block agent - qualifies as an NRM within the meaning of claim 1 since it comprises at least 40% per weight inorganics and thus meets the structural characteristics imposed.

11.4 Thus the subject-matter of claim 1 is obvious in the light of document D6 in combination with D3.

12. Auxiliary request 15 - inventive step

12.1 It is undisputed that the subject-matter of claim 1 differs from the teaching of D6 as closest prior art in:
i) the use of a barrier layer comprising EVOH
ii) the presence of a substantially non resilient material as specified in claim 1 in the outer layer
iii) a vinyl acetate weight ratio of at least 40%
iv) the presence of at least one tie layer between the inner adhesive layer and the barrier layer

12.2 The opposition division's conclusion that each distinguishing feature addresses a different partial problem has not been challenged by the appellant.

12.3 As to the obviousness of features i) and ii), the remarks made in section 11 above apply equally. Their implementation in D6 in the light of D3 as a secondary source of information is thus obvious.

Regarding distinguishing feature iii), the board agrees with the parties that no particular effect has been causally associated. Thus the objective technical problem to be solved is to provide an alternative film. This conclusion is common ground between the parties. Document D3 also proposes the use of higher levels of vinyl acetate, such as 40 wt.%, in the EVA polymers employed in the outer layers of the film (see point 3.4.7 above).

Likewise, it is undisputed that the presence of distinguishing feature iv) achieves improved adhesion/

bonding between layers. As set out above, however, this was also already known from D3 for the reasons given above in relation to auxiliary request 11a.

12.4 The appellant submitted that it could not reasonably be expected that a resulting film in which the aforementioned four distinguishing features had been implemented would have the required (material) properties.

The board, however, sides with the respondent that each partial problem to be solved has to be addressed separately in the case at hand. When the solutions to each of them are obvious, the combination of distinguishing features cannot render the claimed subject-matter inventive either.

It would have been incumbent on the appellant to substantiate why a skilled person would have refrained from implementing the aforementioned feature combination in view of the partial problems posed, for instance in respect of the influence of EVOH on the properties of the resulting film material. No such substantiation has been provided.

12.5 It follows that a skilled person would have considered solving the aforementioned aggregation of (partial) problems by implementing features i) to iv) with a reasonable expectation of success. Integration of these features is compatible with the technical teaching of D6 as set out in claim 1 thereof. The board also notes that, despite the number of partial problems posed, the skilled person would have arrived at the claimed subject-matter by combining the teachings of only two documents, i.e. D3 and D6.

12.6 Thus the subject-matter of claim 1 is obvious to a skilled person in view of D6 taken in combination with D3.

13. Patent proprietor's objections to the decision of the opposition division to conduct oral proceedings by videoconference and not to allow a separate appeal

13.1 In the last section of the statement setting out the grounds of appeal entitled "Oral Proceedings held as a video conference", the appellant raised various objections to the opposition division's decision to conduct oral proceedings by videoconference and not to allow a separate appeal within the meaning of Article 106(2) EPC. The objections were not raised in relation to a specific request of the appellant in the appeal proceedings.

13.2 These objections may be summarised as follows.

- Establishing oral proceedings by videoconference, based on Article 1(1) of the Decision of the President of the EPO dated 22 November 2022, without the consent of the parties went beyond the President's power established in Article 10(2)(a) EPC.

- In view of this consideration, the appellant essentially questioned whether the conduct of oral proceedings in the form of a videoconference was compatible with the right to be heard under Article 113(1) EPC and the right to oral proceedings under Article 116(1) EPC if not all the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference.

- Applying the reasoning underlying the Enlarged Board of Appeal's decision G 1/21, it appeared that the conduct of oral proceedings before departments of first instance in the form of a videoconference was not compatible with the EPC unless all parties had given their consent. Thus holding oral proceedings by videoconference without the consent of the parties was considered a substantial procedural violation.

- The provision under Article 1(2) of the President's Decision of 22 November 2022, according to which a refusal to hold oral proceedings on the premises of the EPO was not separately appealable, interfered with and pre-empted the department's discretionary decision. This went beyond the President's power established in Article 10(2)(a) EPC.

13.3 During the oral proceedings before the board, the appellant stated that the aim of its objections was to obtain clarification from the board regarding compatibility with the EPC of the standards laid down and practised by the EPO for the format of first-instance oral proceedings.

13.4 As pointed out by the board during the oral proceedings, the task of the Boards of Appeal is not to engage in general legal considerations on issues raised, but to decide on specific requests in appeal proceedings. In other words, the appeal proceedings are not, in principle, a forum for general considerations, e.g. on the compliance with the EPC of the practice of the departments of first instance regarding the format of oral proceedings, as sought by the patent proprietor. Such considerations should only be made if

they are related to a specific request in the appeal proceedings. However, the appellant did not submit such a request. The board therefore does not see the need to give any general considerations on the practice of the EPO regarding the format of first-instance oral proceedings.

Lastly, the board notes that the appellant itself, when asked by the chairman during the oral proceedings, acknowledged that its right to be heard had not in fact been infringed by the oral proceedings in the first instance being conducted by videoconference.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

K. Götz-Wein A. Haderlein

Decision electronically authenticated