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**D E C I S I O N**  
of 11 July 1996

**Case Number:** T 0687/93 - 3.4.2  
**Application Number:** 87113999.4  
**Publication Number:** 0263366  
**IPC:** G03F 7/004, G03C 1/72

**Language of the proceedings:** EN

**Title of invention:**

A photoresin printing plate for use in printing a corrugated board

**Patentee:**

Asahi Kasei Kogyo Kabushiki Kaisha

**Opponent:**

W. R. Grace & Co.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 56, 83, 108

**Keyword:**

"Admissibility - yes"  
"Sufficiency of disclosure - yes"  
"Inventive step - no"

**Decisions cited:**

T 0123/85, G 0003/89

**Catchword:**

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Case Number: T 0687/93 - 3.4.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.4.2  
of 11 July 1996

**Appellant:**  
(Proprietor of the patent) Asahi Kasei Kogyo Kabushiki Kaisha  
2-6, Dojimahama 1-chome  
Kita-ku  
Osaka-shi  
Osaka 530 (JP)

**Representative:** Strehl Schübel-Hopf Groening & Partner  
Maximilianstrasse 54  
80538 München (DE)

**Respondent:**  
(Opponent) W. R. Grace & Co.  
Grace Plaza, 1114 Avenue of the Americas  
New York, New York 10036 (US)

**Representative:** UEXKÜLL & STOLBERG  
Patentanwälte  
Beselerstrasse 4  
22607 Hamburg (DE)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 23 April 1993  
revoking European patent No. 0 263 366 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** E. Turrini  
**Members:** C. Black  
L. C. Mancini

## Summary of Facts and Submissions

I. European patent No. 0 263 366 (application No. 87 113 999.4) was revoked by a decision of the Opposition Division on the ground that the subject-matter of claim 1 then under consideration was not novel having regard to the content of documents filed by the opponent as attachments 1 to 14, which documents substantiated the prior use alleged by the opponent. Other documents D1, D2 and D3 submitted by the opponent were not considered in the decision.

II. The present appeal lies against this decision. In the course of the appeal proceedings further attachments 15 to 17 were submitted by the respondent (opponent), as well as further documents D4 to D7. The identification of attachments 1 to 17 and documents D1 to D7 as follows:

A1: attachment 1, with the title Flexo 40 dated 8 September 1983.

A2. attachment 2, with the title "Letterflex Polymer record", dated 8 September 1983.

A3: attachment 3, "Technical Bulletin No. 34" dated 23 April 1984.

A4: attachment 4, with the title "Flexo Type" dated 6 November 1986.

A5: attachment 5, "Technical Bulletin No. 36" dated 31 January 1986.

A6: attachment 6, letter to Ludlow Industries, dated 21 May 1986.

- A7: attachment 7, Test report, 4 pages without any date.
- A8: attachment 8, with the title "Manufacturing Procedure... Flexo 40..." (without any date).
- A9: attachment 9, with the title "Manufacturing Procedure... Flexo 40 A1..." (without any date).
- A10: attachment 10, with the title "Inventory Movement and Status..." (issued on 24 December 1983).
- A11: attachment 11, affidavit dated 8 October 1992.
- A12: attachment 12, "Test Report I" (25 April 1983).
- A13: attachment 13, "Test Report II" (without date).
- A14: attachment 14, "Polidene 33-001" dated January 1978.
- A15: attachment 15, a product data sheet from Olin Urethane Chemicals relating to poly-G 55-56 polyol (1976).
- A16: attachment 16, a product bulletin of Lankro Chemicals Limited, and of Harcros Chemicals UK Limited, both relating to Propylan polyether polyols (the date 21 March 1994 is indicated on a "Certificate of Analysis).
- A17: attachment 17, a test report EP263366 accompanied by an extract from NR Technology 1971, No. 10.
- D1: JP-A-5335/481 (English Translation)
- D2: US-A-3 960 572

D3: US-A-4 202 696

D4: EP-A-0 154 994

D5: US-A-3 782 961

D6: Du Pont brochure "Terathane polyether glycol" of  
3/85

D7: Du Pont brochure "Teracol polyether glycol" of  
10/82

III. After an exchange of communications between the parties and the Board, oral proceedings were held. At the end of the oral proceedings the appellant (patent proprietor) requested that the decision under appeal be set aside and the patent maintained in amended form on the basis of claims according to a main or auxiliary request as filed with the letter dated 24 April 1995. The respondent requested that the appeal be dismissed.

IV. Claim 1 on which the decision of the Opposition Division was based read as follows:

"A photoresin printing plate for use in printing corrugated board, having a Shore A hardness at 20°C of 25 to 60, an impact resilience at 20°C of 35% or more as measured by a falling ball method and a surface tack at 20°C of 40g/cm or less, said printing plate being prepared by providing a photosensitive resin layer of a liquid photosensitive resin composition on a substrate and subjecting the layer to imagewise exposure to actinic radiation, followed by the development thereof, wherein said liquid photosensitive resin composition comprises (A) an unsaturated polyurethane prepolymer, (B) an ethylenically unsaturated compound and (C) a photo polymerization initiator".

Claim 1 according to the main request differs in that there is added at the end the disclaimer "with the exception of a photoresin printing plate having been subjected to a detack treatment with a PVDC latex solution".

Claim 1 according to the auxiliary request differs in that there is added at the end the wording:

"wherein said unsaturated polyurethane prepolymer (A) is obtained by the reaction between a diol, a compound having at least two isocyanate groups and a compound containing in the molecule thereof at least one functional group having an active hydrogen atom and at least one ethylenically unsaturated double bond, and wherein said diol is a polyether diol or a mixture of a polyester diol and at least 25% by weight, based on the weight of said polyester diol, of a polyether diol, said polyether diol comprising at least 20% by weight, based on the weight of the polyether diol, of polytetramethylene glycol."

- V. The appellant's argumentation in support of the request may be summarised as follows.

The Opposition Division was wrong in finding that prior public use had been established. A1 and A2 do not identify the starting materials used in preparing Flexo 40 etc. with sufficient precision, since only code numbers and/or trade names are specified. A8 cannot be used as evidence of what the said starting materials were, since it is not a prior published document. A7 and A12, describing how to prepare printing plates from photosensitive resin compositions purporting to be reproductions after the priority date of the patent in suit of Flexo 40 and Flexo 40 A1, do not specify the starting materials used in preparing the said reproductions. Nor could Flexo 40 or Flexo 40 A1 have

been analysed to determine the starting materials with sufficient accuracy. In any case A4, the only document indicating the starting materials for Flexo 40 A1, has the date 6 November 1986, that is, after the priority date of the patent in suit, so that any information concerning Flexo 40 A1 should not be taken into consideration. Nevertheless, in order to distinguish further the subject-matter of claim 1 from the alleged prior use, the disclaimer relating to the detack treatment has been incorporated according to the main request.

The claimed printing plate solves the problem set out in page 2, lines 34 to 40 (adherence of paper dust present on the surface of the corrugated board to the surface of the printing plate) by the particular combination of ranges of Shore A hardness, impact resilience and surface tack. Of the cited documents D1 to D5, D3 and D4 mention the problem, but seek to solve it only by reducing surface tack. Only in the patent in suit is it recognised that all three parameters have a role to play. D1, D2 and D5 are concerned with different problems and none of these therefore provide a starting point from which the skilled person would arrive at the claimed subject-matter. In particular the combination of the teaching of D1 and D3 made by the respondent requires the non-purposive selection of Example 7 from the eighteen examples in D1 for combination with the teaching of D3 and therefore is a typical example of *ex post facto* reasoning.

The printing plate according to claim 1 of the auxiliary request differs further from that of the alleged prior use particularly in requiring that the prepolymer (A) is obtained by a reaction involving a diol comprising at least 20 per cent polytetramethylene glycol. This results in the advantages set out in the paragraph bridging pages 4 and 5 of the patent in suit.

VI. The respondent's counter-argumentation may be summarised as follows:

With the grounds of appeal the appellants submitted a restricted main claim and in doing so defined the scope of the appeal proceedings. Subsequently an amended main request was filed based on a claim 1 of much wider scope and this amended main request should be rejected as inadmissible.

The opposed patent does not disclose the claimed invention in a manner sufficiently clear to be carried out by a person skilled in the art. The method of measuring surface tack, which is a critical feature of claim 1, as given on page 4, lines 3 to 14 contains obvious errors, and it cannot be established by the skilled person how these should be corrected.

The disclaimer introduced into claim 1 according to the main request does not render its subject-matter novel over the printing plate of the prior use correctly found by the Opposition Division to be established. The subject-matter of said claim is further not inventive having regard to a combination of the teachings of D1 (plate manufactured according to Example 7) and D3 (method of removing surface tack).

The subject-matter of claim 1 according to the auxiliary request is also not inventive because the main added feature, that is use of polytetraethylene glycol as a starting material for component (A) has long been known - see D5 - and its advantageous properties are stated in D6 and D7.



## Reasons for the Decision

### 1. *Admissibility*

The Board cannot agree with the respondent's opinion that the appellant's main request should be rejected as formally inadmissible. In the first place the appellant requested that the decision (of the Opposition Division) be set aside and the patent maintained, apparently as granted. It is true that with the grounds of the appeal the appellant submitted a more restricted claim 1 as basis for the only request. Nevertheless in paragraph III of the grounds of appeal the appellant explained with reasons why it was considered that the Opposition Division was wrong in finding that public prior use had been established. In the circumstances the restriction incorporated into claim 1 can be seen as seeking to narrow the issues to be decided. The appellant's present main request, according to which claim 1 as granted is restricted in a different way, can reasonably be said to result from the respondent's counter-argumentation in paragraph IV of the response dated 11 May 1994. Moreover the Board sees no abuse of the procedure in the submission of the said amended claim.

The foregoing is consistent with the decision in the case T 123/85 (OJ 1989, 336), see points 3.1.1 and 3.1.2 of the Reasons for the Decision. The appeal is therefore admissible.

### 2. *Articles 84 and 123 EPC*

Claim 1 according to the main request differs from the granted claim in that it disclaims a photoresin printing plate having been subjected to a detach

treatment with a PVDC latex solution, thus seeking to distinguish the claimed printing plate from that of the alleged prior use (see in particular the discussion of A3, A7 and A12 below). The disclaimer, in a product claim, is in the form of a process feature, but the Board finds the claim sufficiently clear in this respect, because modern analytical techniques will establish whether or not a plate has been subjected to the disclaimed detack treatment.

The restriction in claim 1 according to the auxiliary request has a basis on page 4, lines 43 to 50 and page 4, line 60 to page 5, line 4.

The amended claim 1 according to both requests therefore meets the requirements of Articles 84 and 123 EPC.

3. *Sufficiency of disclosure (both requests)*

The respondent's objection in this respect relates to the passage on page 4, lines 3 to 14, purporting to describe the method by which surface tack is measured, a surface tack at 20°C of 40g/cm or less being an essential feature of the claimed subject-matter. The said passage refers to the use of an aluminium wheel 50 cm in diameter and according to the appellant this ought to be 50 mm in radius, as evidenced by the corresponding part of the Japanese priority document and also JP-A-60/191237.

It is true that for the skilled person the dimension stated for the wheel "50 cm in diameter" is obviously incorrect, because the weight of the wheel (6.9 kg) is out of all proportion to the load (500 g) to be applied to it to measure the tack. The skilled person would rather assume that the weight of the wheel should be negligible in comparison with the said load so that it

could be argued that by 50 cm was intended 50 mm. However it is not obvious that diameter is incorrect and in fact seems more likely to be correct that radius, because a wheel of 50 mm radius would weigh 275 g.

Accordingly a correction under Rule 88 EPC would not have been allowable because it is not immediately evident that nothing else would have been intended than what would have been offered as the correction. Further, having regard to the opinion of the Enlarged Board of Appeal in the case G 3/89 (OJ 1993, 117) the priority documents may not be used to substantiate such a correction, nor may JP-A-60/191237 since this document cannot be said to reflect common general knowledge in the art.

Nevertheless the Board is of the opinion that for the following reasons the description can be considered to be sufficiently complete. If the skilled person prepares a plate following the teaching of the patent in suit and finds that paper dust is not readily released in use (this being, according to the description, page 2, lines 33 to 40, an object of the invention) he knows from a general reading of the patent in suit that he has either to reduce surface tack or increase impact resilience or both and the description gives sufficient guidance how to do this.

#### 4. *Novelty and inventive step*

##### 4.1 Main request

The question to be answered is whether the Opposition Division was correct in finding that prior use had been established, and, if so, whether the amendment made to claim 1 introduces novelty and inventivity.

4.1.1 Claim 1 forming the basis of the Opposition Division's decision requires that the liquid photosensitive resin composition comprises (A) an unsaturated polyurethane prepolymer, (B) an ethylenically unsaturated compound and (C) a photo polymerization initiator.

According to pages 4 and 5 of the description as amended, the unsaturated polyurethane prepolymer (A) is obtained by the reaction of

- (a<sup>1</sup>) a compound having at least two groups having an active hydrogen, i.e. a diol,
- (a<sup>2</sup>) a compound having at least two isocyanate groups (NCO), and
- (a<sup>3</sup>) a compound containing both at least one functional group having an active hydrogen atom **and** at least one ethylenically unsaturated double bond.

(The sub-divisions (a<sup>1</sup>), (a<sup>2</sup>) and (a<sup>3</sup>) have been introduced by the Board).

Examples of (a<sup>1</sup>) are polyether diol, e.g. polyethylene glycol (PEG), polypropylene glycol (PPG), polytetramethylene glycol (PTMG), polyester diol obtained by reaction of a polyether diol as above with adipic or succinic acid; polybutadiene or styrene-butadiene with hydroxyl groups at both terminals. Page 4, middle to page 5 top amplifies this.

Examples of (a<sup>2</sup>) are the diisocyanates TDI, XDI, HMDI and TMHDI (page 5, lines 11 to 13). These abbreviations are well understood in the art.

Examples of (a<sup>3</sup>) are listed on page 5, lines 14 to 17 and include propylene glycol monomethacrylate (PPG MMA).

Examples of (B) are given on page 6, lines 12 et seq and include trimethylolpropane trimethacrylate (TMPTMA) and PPGMMA.

(C) may be any customary photopolymerisation initiator (page 6, lines 36 to 41).

4.1.2 The content and relevance of the attachments A1 to A14 submitted during the opposition proceedings may be summarised as follows.

A1 is a production record for FLEXO 40, a photosensitive resin composition which when processed conventionally, in the opinion of the respondent, will result in a plate according to claim 1. For the uninitiated, A1 gives little in the way of process details. It consists of a standard form for completion by the production chemist, wherein the amounts of materials usual in polyurethane manufacture in a standard process are filled in. A1 is explained in A8 and in the Board's opinion A8 describes how the skilled polyurethane chemist would interpret A1.

According to A8, in the manufacturing procedure, steps (a) and (b), Poly G 55/56 and PPG 3002 (both (a<sup>1</sup>)) are mixed and dried. In step (c) TDI (a<sup>2</sup>) is added together with triphenyl phosphate (TPPO), a conventional stabiliser, also used in the patent in suit (see page 6, line 44). In step (d) the urethane reaction is started using dibutyl tin dilaurate (DBTDL), just as in Example 1 of patent in suit. In step (e) a check is made on the progress of the reaction (not apparently done in patent in suit), then hydroquinone and PPGMMA(a<sup>3</sup>) are added and the reaction allowed to proceed to completion as evidenced by absence of NCO groups. The role of hydroquinone is not stated but it is a known polymerisation inhibitor.

At this stage we have the polyurethane prepolymer A (from  $a^1 + a^2 + a^3$ ) to which is then added PPGMMA, TPGDA (tripropylene glycol diacrylate) and TMPTMA (all B), MEHQ (presumably also a polymerisation inhibitor,) and Irgacure 651, a photo polymerisation initiator, therefore C. Further Poly G 55/56 and PPG 3002 have molecular weights falling within the ranges stated to be critical on page 4, lines 33, 34 and 39 to 42 (see respondent's second letter dated 13 May 1996, page 4, first and second paragraphs). The respondent confirmed this by submitting A15 and A16, which demonstrate that Poly G 55/56 is a 2000 MW polyether polyol of Olin Corp. and PPG 3002 (or Propylan® 3002) is a polyoxypropylene diol (polypropylene glycol) of average molecular weight 3000 of Lankro/Harcros.

Similar considerations apply to A4 as explained in A9, but these are of less interest because A4 bears the date 6 November 1986, that is, after the properly claimed priority date (2 October 1986) of the patent in suit.

As regards the other attachments:

A2 indicates that Flexo 40, batch FFO 954 (as in A1) was supplied (8 September 1983) to various companies including Reeds, which according to A6 is Reeds Corrugated Cases Limited.

A3 is Technical Bulletin No. 34 (of the Respondent) giving instructions for processing Flexo 40 and Flexo 55 (dated 23 April 1984). It appears to require 10% by volume of a Detack agent (page 2).

A5 is Technical Bulletin No. 36 dated 31 January 1986 describing how to produce a tack-free plate from "the newly developed Flexo 40A1, 40S1, 40L1, 55L1". If using chemical lamps only, sodium sulphite is necessary in the post expose unit to produce a tack free plate (section 5a). Using germicidal and chemical lamps (5b), sodium sulphite treatment appears not to be necessary.

A6 indicates that Flexo 55 was supplied to Ludlow Industries on 23 May 1986, and Flexo 40 to Reeds (6 May 1986) and to Grove Graphics Ltd. (18 April 1986).

A7 is a Test Report seeking to demonstrate that when processing photosensitive resin compositions manufactured in the same way as Flexo 40 (A1, A8) or Flexo 40 A1 (A4, A9) conventionally, a photoresin printing plate having the requirements of claim 1 will be obtained. Flexo 40 was submitted to a detacking treatment using PVDC latex solution, now excluded by the disclaimer in claim 1 according to the main request. Using Flexo 40 A1 the instructions of A3 and A5 were followed, i.e. detacking using sodium sulphite was optional.

A10, an inventory movement states document of the opponent from 1983 and 1992, shows that the nomenclature used in 1983 was still being used in 1992, and also that the raw materials available in 1983 remained available in 1992.

A11 is an affidavit purporting to confirm the argumentation of the respondent.

A12 seeks to clarify A7. In this case however there is no suggestion that a detacking treatment with PVDC or sodium sulphite is optional.

A13 is a test report in which the teaching of Example 7 of D1 is repeated, with a detacking treatment as disclosed in D3. Plates meeting the requirements of claim 1 of the patent in suit were obtained.

A14 is a brochure describing Polydene 33-001, a PVDC emulsion used for detacking.

- 4.1.3 The Board agrees with the Opposition Division that printing plates produced in the period from 1983 to 1986 will no longer exist, and that the properties of such printing plates can only be determined by a reproduction thereof.
- 4.1.4 The Board is also of the opinion that a manufacturer will change at least the code number identifying a product if this is modified in any way so that products bearing an unchanged code number, possibly in association with a trade name, can be assumed to be the same. Therefore the liquid photosensitive resin compositions used in the test reports A7 and A12 and manufactured according to the instructions in A1 and A4 are considered to correspond sufficiently closely to Flexo 40 and Flexo 40A1 that the printing plates prepared therefrom are sufficiently accurate reproductions of those prepared from Flexo 40 and Flexo 40A1, any doubts as to the starting materials having been removed by the information in A15 and A16.

Since however A4, describing the manufacture of Flexo 40A1, was not prior published, the Board will confine its considerations the documents relating to Flexo 40 and the reproduction thereof. The Board notes however that the information relating to Flexo 40 A1 is consistent with its findings in respect of Flexo 40.



4.1.5 A7 and A12 demonstrate that printing plates manufactured from a resin produced according to the instructions in A1 and A8 for Flexo 40 have the Shore hardness, impact resilience and surface tack falling within the ranges required by claim 1. Surface tack was measured by two methods, one of which was a reasonable attempt to reproduce the doubtful teaching of the patent in suit. Since the measured tack by both methods was zero, there seems no doubt that the reproduced plates meet the surface tack requirement.

4.1.6 From A2 and A6 it is clear that Flexo 40 was supplied to *inter alia* Reeds Corrugated Cases on a commercial basis with no suggestion of any secrecy agreement. The Board further accepts the statement by the respondent, made in the first paragraph of section IV of the grounds for the opposition, that customers would have been supplied with instructions for the use of Flexo 40 such as are contained in A3. A3 does not specify the composition of the detack solution used, but an annexe to D12, reporting a visit to a customer, shows that polidene 33-001, a PVDC (see A14) was being used for this purpose in 1984.

4.1.7 During the opposition proceedings, the opponent (respondent) stated that it was standing practice to observe and analyse the products marketed by competitors and that in the case of Flexo 40 this was very easily done by gel permeation chromatography (letter dated 20 January 1993). The appellant, while in substance agreeing that the prepolymer and monomer can be identified to an extent of about 100 per cent, argues that the molecular weight and molecular weight distribution can be determined with a precision of only 80 to 90 per cent (section III.2 of the letter dated 11 June 1996). The Board's view is that the molecular weight or molecular weight distribution of the constituents (A) and (B) (see paragraph 4.1 above) is

not a feature of claim 1 and the molecular weight ranges disclosed in the description are so wide that a precision of 80 to 90 per cent will identify the constituents sufficiently closely. The appellant further questions whether the catalyst (photopolymerisation initiator) could have been identified at all. However according to the description, page 6, lines 36 to 41, the choice of this constituent is not critical, and it may be any one customarily used in conventional photosensitive resin compositions. The Board's conclusion is that the constitution of Flexo 40 could have been identified by analysis as containing constituents (A) and (B) and that it could be assumed to contain a conventional photoinitiator.

- 4.1.8 In view of the foregoing the Board finds, in agreement with the decision of the Opposition Division, that prior public use of a printing plate falling within the scope of claim 1 on which the decision was based has been established.
- 4.1.9 As is apparent from A3, A7 and A12, the prior used plate had been subjected to a detack treatment using a PVDC latex solution. In the Board's opinion, the disclaimer therefore renders the subject-matter of claim 1 novel as compared with the prior used plate.
- 4.1.10 For the assessment of inventive step it is appropriate first of all to consider what the appellant sees as the problem underlying the patent in suit. As set out in the description, page 2, lines 34 to 40, and emphasised by the appellant in written and oral submissions (see for example letter dated 24 April 1995, page 6) this problem relates to the fact that in a printing operation paper dust or the like present on the surface of the corrugated board can adhere to the surface of the printing plate and the printing operation has

eventually to be stopped to remove accumulated dust. (It is noted that this problem will be obvious in use and in any case is known from D3, column 2, lines 10 to 17 and D4, page 4.) A printing plate having the features required by claim 1 solves this problem in that it has self-releasing properties, that is paper dust is self-released from the plate. A particular point made by the appellant is that whereas it is clear that surface tack will have a role to play in the adherence of paper dust to the printing, it is not at all obvious that impact resilience also has a role to play and this is nowhere suggested in any of the cited documents. However, as has been shown, a printing plate having the features required by claim 1 is known in the sense that it has been made available to the public by prior use, so that the problem has already been solved, even though the role of impact resilience in contributing to self-release was not recognised.

4.1.11 According to D3, the use of a PVDC latex (see reference to saran latex in column 2, line 21) is defective in that the latex layer tends to be peeled off in use so that maintenance of its effect is insufficient. Again this problem will be obvious in use. This problem is overcome in D3 by an alternative detacking process wherein the plate surface is impregnated with a carbonyl compound capable of abstracting a hydrogen atom and irradiating with active rays of wavelength of 200 to 300 nm. For the average skilled person this constitutes an alternative, indeed improved, method of reducing or removing surface tack and it is acknowledged as such in the patent in suit, page 7, lines 16 to 22. Accordingly the disclaimer does not render the subject-matter of claim 1 inventive over the established public prior use and the main request can not be granted.

## 4.2 Auxiliary request

- 4.2.1 Claim 1 according to this request differs from that on which the Opposition Division's decision was based in that there is added the wording "wherein said unsaturated polyurethane prepolymer (A)...of polytetramethylene glycol." (see paragraph above). The claim accordingly specifies the starting materials for obtaining prepolymer (A) as are labelled (a<sup>1</sup>), (a<sup>2</sup>) and (a<sup>3</sup>) in paragraph 4.1.1 above. However starting materials falling within the scope of (a<sup>1</sup>), (a<sup>2</sup>) and (a<sup>3</sup>) are used for obtaining Flexo 40 (see paragraph 4.1.2 above) so that this added feature does not introduce novelty. Optionally, up to 75 per cent of the polyether diol may be replaced by a polyester diol, but this is a known method of tailoring the properties of the eventual polymer and is disclosed for example in D4, page 39, Example 1. Finally the polyether diol should comprise at least 20 per cent by weight of polytetramethylene glycol (PTMG). As argued by the respondent, PTMG had been known before the priority date of the patent in suit as starting materials for the manufacture of polyurethane printing plates - see for example D5, column 3, lines 65, 66. Further D6 and D7 demonstrate that PTMG imparts a higher resilience than any other commercially available soft segment in many polyurethane formations, and also imparts hydrolysis resistance (page 10 of D7). It is these properties which are made use of in the patent in suit - see page 4, lines 56 to 63 and page 11, Table 3. The adoption of this measure is therefore obvious for the average skilled person and the subject-matter of claim 1 does not involve an inventive step over the printing plate made from Flexo 40.

4.3 In view of the foregoing, it was not necessary for the Board to decide on the question of lack of inventive step having regard to a combination of the teachings of D1 and D3. Nor did the Board require to take A17 into consideration.

**Order**

**for these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

E. Turrini

