

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [X] To Chairmen
(D) [] No distribution

**Datasheet for the decision
of 6 August 2007**

Case Number: W 0003/07 - 3.2.05

Application Number: PCT/RU 2005/000541

Publication Number: WO 2007/053051

IPC: B29G 33/64

Language of the proceedings: EN

Title of invention:

Method of processing of a thermoplastic polymeric material,
composition of thermoplastic polymeric material and lubricant

Applicant:

Kulikov, Oleg L.

Opponent:

-

Headword:

-

Relevant legal provisions:

PCT R. 13.1, 13.2, 40.2(c)

Keyword:

"Lack of unity of invention (yes)"

Decisions cited:

-

Catchword:

-



Case Number: W 0003/07 - 3.2.05

International Application No. PCT/RU 2005/000541

D E C I S I O N
of the Technical Board of Appeal
of 6 August 2007

Applicant: Oleg L. Kulikow

Representative:

Subject of this decision: Protest according to Rule 40.2(c) of the Patent Cooperation Treaty made by the applicants against the invitation (payment of additional fees) of the European Patent Office (International Searching Authority) dated 29 August 2006.

Composition of the Board:

Chairman: W. Zellhuber

Members: P. Michel

S. Hoffmann

Summary of Facts and Submissions

- I. International patent application PCT/RU 2005/000541 was filed with the Federal Service on Intellectual Property, Patents and Trademarks (Russian Federation) on 03 November 2005.
- II. On 29 August 2006, the European Patent Office (EPO), in its capacity as International Searching Authority (ISA), indicated that it considered that there are three inventions claimed in the international application, and invited the applicant to restrict the claims or to pay two additional fees.
- III. In the invitation, the ISA argued that the claims included three groups of inventions not so linked as to form a single inventive concept as required by Rule 13.1 PCT. The first group comprises independent claim 1 and dependent claims 2 to 15. The second group comprises independent claim 16 and dependent claims 17 and 18. The third group comprises independent claim 19 and dependent claims 20 and 21.
- IV. The independent claims read as follows:
- "1. A method of processing of molten thermoplastic polymeric material in fabrication equipment wherein a layer of a viscoelastic substance cured by a compound containing boron and oxygen coats at least a portion of the rigid wall which is in a contact with said thermoplast."
- "16. A composition of the thermoplastic polymeric material comprising a main thermoplastic polymer and a

processing additive in an amount selected from the range from 0.001 to 10 parts, per hundred parts of said thermoplast, wherein said thermoplast is a polyolefin resin and said processing additive is a viscoelastic product of the reaction of silanols with a curing agent based on a compound containing boron and oxygen."

"19. A lubricating composition comprising an oil or grease of lubricating viscosity based on non-polar hydrocarbons and having dispersed therein a minor amount of an antiwear or extreme pressure agent wherein said agent is a product of the reaction of silanols with a curing agent based on a boron-oxygen containing compound."

- V. The applicant paid the additional fees for the second and third inventions under protest in accordance with Rule 40.2(c) PCT on 27 September 2006. It was argued that the three groups of inventions are linked by the common inventive concept of a viscoelastic substance cured by a compound of oxygen and boron. This feature is new and inventive in view of the state of the art. All three groups of inventions are intended to solve the common problem of improving processability of thermoplastic polymeric material.

- VI. The protest fee was paid on 10 November 2006.

- VII. On 5 February 2007, a review panel indicated that the invitation to pay additional fees is justified in part and ordered the refund of one additional fee. The argument of the applicant was followed as regards the first and second groups of inventions.

Reasons for the Decision

1. The protest fee was paid in time and the protest is admissible.
2. Claims 1, 16 and 19 are directed to solutions to problems caused by adhesion of thermoplastic polymers to mould walls during moulding or extrusion.

Common to the three groups of inventions as defined in the independent claims, in addition to being directed to a common problem as defined in the preceding paragraph, is the use of a substance cured by a compound containing oxygen and boron. However, document D1 (US-A-2004/0083925) discloses a release agent for use in moulds used in processing of thermoplastics comprising a substance cured by a compound containing oxygen and boron.

Claims 1 and 16 can accordingly be regarded as being linked by the common inventive concept of using a viscoelastic product. On the other hand, claim 19 is directed to a lubricating composition comprising an oil or grease of lubricating viscosity based on non-polar hydrocarbons and having dispersed therein a minor amount of an antiwear or extreme pressure agent wherein said agent is a product of the reaction of silanols with a curing agent based on a boron-oxygen containing compound. Claim 19 is thus not restricted to a viscoelastic product and therefore does not relate to the same inventive concept.

The third group of inventions as claimed in claims 19 to 21 is thus not so linked to the first and second

groups of inventions as claimed in claims 1 to 18 as to form a single inventive concept as required by Rule 13.1 and 13.2 PCT.

Order

For these reasons it is decided that:

The protest according to Rule 40.2(c) PCT is dismissed.

The Registrar:

The Chairman:

D. Meyfarth

W. Zellhuber