

EUROPEAN QUALIFYING EXAMINATION 2007

PAPER D - PART II

This paper comprises:

- * Client's letter followed by five (5) questions 2007/DII/e/1 - 6

- * Annex: Calendars for 2006 and 2007 with indication of the days on which at least one of the EPO filing offices is not open for the receipt of documents 2007/DII/e/7 - 8

40% of the marks available for paper D are awarded for part I,
60% for part II.

You are a professional representative and today, 6 March 2007, you receive the following letter from a new client, Caledonian Sportswear Ltd.

We are a UK based company manufacturing textiles and sportswear and control a small group of financially connected but legally independent companies that includes company Sean Insulation Ltd, a manufacturer of insulating panels for the automotive and aircraft industries. Please advise us on the following pending matters to be dealt with in the near future.

1. Two years ago, while searching for new fibres for warm sportswear we developed a new polymer composition (composition B + A). This composition is a mix of known polymers B and A and with it we produced thick and rigid foamed sheets having very good insulation properties. Since these foamed sheets were relevant to the technology of our subsidiary Sean Insulation Ltd, we transferred the technology and all relevant rights to them. On 16 September 2005 they filed a UK application (UK-1) disclosing and claiming composition B + A and insulating rigid foamed sheets made of composition B + A.

Early last year we developed a new way of processing polymer composition B + A. With this process, thin and flexible foamed sheets can be obtained from composition B + A. Such thin sheets are suitable for scuba-diving suits and for swimming and surf costumes and are superior to known thick materials.

On 18 March 2006 we filed an EP application (EP-1) as first filing. EP-1 discloses and claims the polymer composition B + A, the new foaming process of manufacturing the thin sheets and the thin sheets thus obtained. The description also discloses examples of scuba diving suits and swimming and surf costumes made of foamed composition B + A, as well as one example of a suit made of a new sheet of foamed polymer B alone. In addition, one comparative example of a known suit made of foamed polymer A is given.

We usually pay the filing and search fees on the very last day but in the case of EP-1 we forgot to pay in time and in May 2006 we received a communication from the EPO pointing out that the fees could still be paid with a surcharge.

Rather than paying the surcharge, we did not respond and on 19 June 2006 we filed another EP Application (EP-2) claiming priority of UK-1. All the fees for EP-2 were paid.

EP-2 has identical claims to EP-1, the description of EP-2 corresponds to the description of EP-1 with the exception that we removed the example and all references to polymer B alone and we added examples of thin foamed sheets obtained from compositions of polymer B with other known foamable polymers C, D and E. Polymers C, D and E are known to be similar to polymer A and are part of a class of polymers (class Z) which comprises, among others, polymers A, C, D and E.

In the meantime we have found that foamed sheets made only of polymer B could be thin enough to become commercially very interesting.

We have received the search report for EP-2 from the EPO. The search report cited just one prior document:

- US-Spectre published in May 2005 discloses polymer A and its use for making foamed sheets for scuba diving; these sheets are as thick as the traditional, known sheets.

We recently found that the June 2006 issue of "American Journal of Surf and Scuba" (AJSS) contains a scientific article that discusses patent US-Spectre. The article suggests using polymer B alone or in combination with A or other similar polymers such as polymers C and D, to reduce the thickness of foamed sheets for scuba-diving suits and surf costumes. The date printed on this publication is 16 June 2006.

We also developed a new extrusion process for transforming the polymer compositions of polymer B + polymers of class Z (such as A or C, D, E) into fibres and yarns with which textiles are produced. Before our new process, only foams could be obtained from the compositions B + polymers of class Z.

The textiles have the same thermal insulation properties as the foamed sheets obtained from the same polymer compositions B + polymers of class Z. Woven textiles are very good for scuba-diving suits and for surf costumes, while non-woven are very good as insulating liners for rigid insulating panels.

On 7 July 2006 we filed patent application EP-3 (no priority was claimed), that discloses and claims the extrusion process, the polymer compositions B + polymers of class Z and textiles obtainable therefrom, i.e. woven and non-woven textiles.

Composition B + A, the extrusion process for producing yarns and fibres made of it and the textiles were disclosed at a press release in August 2006.

The new compositions of polymer B + polymers of class Z , the fibres, the textiles and the thin foamed sheets of polymer B alone and of polymer B + polymers of class Z will be produced in a new factory that we are building in Australia. A world-wide protection for all the features disclosed in our applications is essential for our company to protect the huge investments we made in research. We intend to sell Sean Insulation Ltd and all its assets, to finance the construction of the Australian factory. Sean Insulation's patent portfolio comprises only application UK-1 and an international application Sean PCT, which was filed by them on 2 September 2006, claims priority of UK-1 and has the same description and claims as UK-1.

2. Our former employee Ms Money Penny was involved in the study of how to process the new polymer composition polymer B + polymers of class Z into textiles. During this work Ms Money Penny devised the extrusion process that is claimed in EP-3. She also devised a new weaving process (process ALFA) specially designed for and requiring the yarns of polymeric composition B + A. Process ALFA reduces the time required for obtaining a square meter of woven fabric by 25%. Because at that time we were not interested in this weaving process we did not file an application. Ms Money Penny resigned from our company in May 2006 to start her own business.

To our astonishment, we have recently received a warning letter from our competitors Goldfinger Ltd, an Irish Company, informing us of their European patent application EP-Gold. A copy of the EP-Gold filing documents was enclosed with the letter. EP-Gold was filed as a first application on 13 July 2006 and it claims weaving process ALFA. Application EP-Gold also claims the woven fabric.

No mention is made of the extrusion process or of the yarns required for the weaving process.

In their letter, Goldfinger Ltd warn us against using weaving process ALFA and against selling any woven fabric obtained from composition B + A unless we pay them huge royalties.

We immediately contacted Ms Money Penny who informed us, Caledonian Sportswear Ltd, of the following facts:

- She orally disclosed, under a written secrecy agreement, process ALFA to Goldfinger Ltd in June 2006. She told them that it is her invention and, by contract between her and us, we are the rightful owner of this invention. She further told Goldfinger Ltd that, in her view, we were not interested in weaving process ALFA.
- She did not disclose to Goldfinger the process of making fibres.
- On 20 December 2006 she filed a national application (UK-Penny). This application refers to the press release, discloses process ALFA, and discloses and claims an improvement of process ALFA, called weaving process BETA. This improvement consists of an additional feature Y by which all kinds of yarns, i.e. also yarns obtained from B + any of the polymers of class Z, can be treated at the same high speed by the weaving process BETA. Claim 1 of UK-Penny corresponds to claim 1 of EP-Gold plus the additional feature Y.

Ms Money Penny proposed closely cooperating with Caledonian to develop, protect and exploit new universal weaving process BETA.

We are very interested in the new process of Ms Money Penny and are willing to resume cooperation with her.

On the basis of Ms Money Penny's information we replied to the warning letter of Goldfinger telling them that we are the owners of any right to process ALFA. Goldfinger answered that they had devised and developed process ALFA independently, on the basis of the information given in the above-mentioned article in AJSS.

The woven textiles are now intensively advertised and sales have been constantly growing since the first sale in January 2007. Therefore we want to avoid any problem in commercializing our woven textiles and the high speed weaving process BETA, as well as in providing other companies with yarns of any of our polymer compositions.

Please give us your analysis of the following points:

1. the scope and legal situation of our patent applications EP-1, EP-2, EP-3 and Sean - PCT;
2. the actions to be taken in order to obtain world-wide protection for our products and processes and to keep costs as low as possible over the coming year, while at the same time maximizing the value of the insulating panels patent portfolio of Sean Insulation Ltd in view of the future sale of this company;
3. the scope and legal situation of EP-Gold and UK-Penny;
4. the effects that EP-Gold may have on our business; and
5. ways of resolving the conflict with Goldfinger concerning the process for weaving textiles. For financial reasons, we do not want to start litigation for ownership of EP - Gold.

Annex 1

2006

INFORMATION FROM THE EUROPEAN PATENT OFFICE

**Notice from the President of the
European Patent Office dated
14 October 2005 concerning the
days on which EPO filing offices are
closed in 2006**

1. Under Rule 85(1) EPC time limits
expiring on a day on which at least
one of the filing offices of the EPO
is not open for receipt of documents
(closing days) are extended until the
first day thereafter on which **all** the
filing offices are open for receipt of
documents and on which ordinary
mail is delivered.

2. The EPO's filing offices in
Munich, The Hague and Berlin will
be closed for the receipt of
documents on every Saturday and
Sunday. The other closing days in
2006 are listed below.

JANUARY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	FEBRUARY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	MARCH S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
APRIL S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	MAY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	JUNE S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
JULY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	AUGUST S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	SEPTEMBER S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
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Tage/Days/Jours 2006		München Munich	Den Haag The Hague La Haye	Berlin
Heilige Drei Könige - Epiphany - Epiphanie	06.01.06	x		
Karfreitag - Good Friday - Vendredi Saint	14.04.06	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	17.04.06	x	x	x
Maifeiertag - May Day - Fête du Travail	01.05.06	x	x	x
Nationalfeiertag - National Holiday - Fête Nationale	05.05.06		x	
Christi Himmelfahrt - Ascension Day - Ascension	25.05.06	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	05.06.06	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	15.06.06	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.06	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.06	x		x
Allerheiligen - All Saints' Day - Toussaint	01.11.06	x		
1. Weihnachtstag - Christmas Day - Noël	25.12.06	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.06	x	x	x

Annex 2

2007

INFORMATION FROM THE EUROPEAN PATENT OFFICE

**Notice from the President of the
European Patent Office dated
14 July 2006 concerning the
days on which EPO filing offices are
closed in 2007**

1. Under Rule 85(1) EPC time limits
expiring on a day on which at least
one of the filing offices of the EPO
is not open for receipt of documents
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documents and on which ordinary
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2. The EPO's filing offices in
Munich, The Hague and Berlin will
be closed for the receipt of
documents on every Saturday and
Sunday. The other closing days in
2007 are listed below.

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Tage/Days/Jours 2007		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.07	x	x	x
Karfreitag - Good Friday - Vendredi Saint	06.04.07	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	09.04.07	x	x	x
Nationalfeiertag - National Holiday - Fête nationale	30.04.07		x	
Maifeiertag - May Day - Fête du Travail	01.05.07	x	x	x
Christi Himmelfahrt - Ascension Day - Ascension	17.05.07	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	28.05.07	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	07.06.07	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.07	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.07	x		x
Allerheiligen - All Saints' Day - Toussaint	01.11.07	x		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.07	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.07	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.07	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.07	x	x	x