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**Datasheet for the decision  
of 9 May 2022**

**Case Number:** T 0461/18 - 3.2.05

**Application Number:** 10799121.8

**Publication Number:** 2454065

**IPC:** B29B11/16, D21F9/00, D21H13/50,  
F16D69/02, C04B35/80,  
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C04B35/634, F41H5/04

**Language of the proceedings:** EN

**Title of invention:**  
A fibre matrix and a method of making a fibre matrix

**Patent Proprietor:**  
Carbon Fibre Preforms Ltd

**Opponent:**  
ELG Carbon Fibre International GmbH

**Relevant legal provisions:**  
EPC R. 112(2) sentence 1, 103(1) (a)  
EPC Art. 113(1), 111(1) sentence 2  
RPBA 2020 Art. 11

**Keyword:**

Substantial procedural violation - appealed decision  
sufficiently reasoned (no)

Remittal - fundamental deficiency in first instance  
proceedings (yes)

Reimbursement of appeal fee - equitable by reason of a  
substantial procedural violation (yes)

**Decisions cited:**

R 0008/15, T 0278/00, T 1366/05, T 0534/08, T 0942/18



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Case Number: T 0461/18 - 3.2.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.05**  
**of 9 May 2022**

**Appellant:** ELG Carbon Fibre International GmbH  
(Opponent) Kremerskamp 16  
47138 Duisburg (DE)

**Representative:** Von Rohr Patentanwälte Partnerschaft mbB  
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**Respondent:** Carbon Fibre Preforms Ltd  
(Patent Proprietor) Wootton Mead  
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**Representative:** Barker Brettell LLP  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
23 January 2018 concerning maintenance of the  
European Patent No. 2454065 in amended form.**

**Composition of the Board:**

**Chairman** P. Lanz  
**Members:** M. Holz  
A. Bacchin

## Summary of Facts and Submissions

I. The opponent appealed against the opposition division's interlocutory decision finding that, account being taken of the amendments according to the main request made by the patent proprietor during the opposition proceedings, European patent No. 2 454 065 (hereinafter: the "patent") and the invention to which it related met the requirements of the EPC.

II. Besides its submissions regarding the substantive issues, the appellant asserted in its statement of grounds of appeal that there had been a procedural defect as the grounds for the decision under appeal did not contain any specific reasons for the decision. According to the appellant, the opposition division had merely repeated the parties' arguments regarding the opponent's objections and then stated, in general terms and without giving any specific reasons, that it concurred with the patent proprietor's arguments. The grounds for the decision thus did not make it clear why the objections raised by the opponent against the patent proprietor's main request had not been found convincing.

The respondent did not submit any comments as to the issue of a possible lack of reasoning in the decision under appeal.

III. In a communication pursuant to Rule 100(2) EPC issued on 29 November 2021, the board, *inter alia*, expressed its preliminary opinion, as follows.  
- The decision under appeal was insufficiently reasoned, in violation of Rule 111(2) EPC.

- The opponent's right to be heard pursuant to Article 113(1) EPC had thus not been respected in the decision under appeal.
- The decision under appeal should therefore be set aside and the case remitted to the opposition division for further prosecution under Article 11 of the Rules of Procedure of the Boards of Appeal of the European Patent Office as applicable as from 1 January 2020 (RPBA 2020; see OJ EPO 2021, A35).
- Reimbursement of the appeal fee is equitable under the circumstances in hand pursuant to Rule 103(1)(a) EPC.

- IV. By submission of 3 December 2021, the appellant withdrew its request for oral proceedings and did not object to the envisaged remittal of the case to the opposition division.
- V. On 28 February 2022, the respondent withdrew its request for oral proceedings on the condition that the board decided to remit the case to the opposition division as the next step.
- VI. The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed (main request). As an auxiliary measure, the respondent requested that the decision under appeal be set aside and the patent be maintained as amended on the basis of the claims according to one of auxiliary requests 1 to 15 filed together with the reply to the appeal.

## **Reasons for the Decision**

### 1. Procedural defect

The decision under appeal is insufficiently reasoned, in violation of Rule 111(2) EPC, so the opponent's right to be heard pursuant to Article 113(1) EPC has not been respected.

Under Rule 111(2) EPC, decisions which are open to appeal must be reasoned. For parties adversely affected by a decision to be able to judge whether or not the decision was justified and thus base their grounds of appeal on relevant issues, that decision must be adequately reasoned in relation to crucial points in dispute. It is established case law of the boards of appeal that, in order for a decision to be reasoned, it must contain, in logical sequence, those arguments which justify the decision. The conclusion drawn from the facts and evidence must be made clear, meaning that all the facts, evidence and arguments which are essential to the decision must be discussed in detail (see T 278/00, reasons 2). The provision that decisions must be reasoned expresses one aspect of the right to be heard covered by Article 113(1) EPC. A deciding body must not only allow the parties to present their comments but must also duly consider their submissions and adequately address those that, in its view, are relevant for the decision (see R 8/15, reasons 2.2.2, and "Case Law of the Boards of Appeal of the European Patent Office", 9th Edition, 2019 (hereinafter: "Case Law"), III.K.3.4.2 and III.K.3.4.4(b)). A deciding body must therefore demonstrably hear and consider the

parties' comments (see Case Law, III.B.2.4.2). Merely summarising the parties' submissions is not *per se* a reasoning proper to the deciding body (see also T 1366/05, reasons 5).

In the case in hand, it is not evident from the section "II. Grounds" in the decision under appeal that the opposition division has adequately taken account of the opponent's core arguments when reaching its conclusions concerning the opponent's objections. At the end of each sub-section of section "II. Grounds", the opposition division merely indicates its decision. However, simply stating the conclusion reached clearly does not constitute reasoning within the meaning of Rule 111(2) EPC (see also T 1366/05, reasons 4, and T 534/08, reasons 3.3). In this regard, the board makes particular reference to the following parts of section "II. Grounds" of the opposition division's decision.

1.1 *Reasoning regarding Article 123(2) EPC*

Regarding Article 123(2) EPC, in point 2 of the reasons for the decision, the opposition division first summarises arguments apparently provided by the opponent and the patent proprietor and then merely states:

*"The division decided that the main request fulfills the requirements of Article 123(2) EPC because claims 1-18 of the main request find basis in the passages cited by the proprietor."*

In the board's view, in some instances it may be acceptable for an opposition division to refer to a party's arguments if it finds them convincing. In this case, however, the patent proprietor's assertions did

not address some of the core arguments provided by the opponent (and summarised in the reasons for the decision), at least as far as indicated in the reasons for the decision. As a consequence, it is not apparent which of the proprietor's arguments the opposition division found convincing.

In particular, the opponent argued that the subject-matter of claim 1 was the result of an intermediate generalisation in several regards. For example, according to the opposition division's summary of the opponent's arguments, the *"formation of the stochastic three dimensional fibre matrix"* and the *"creation of a chaotic flow of starting material over the substrate and applying a vacuum force to the fibres on the substrate"* in claim 1 of the main request were only disclosed in combination with *"multiple flows"* and *"countercurrents"*.

In the reasons for the decision, the opposition division does not give any reasons why this argument was not found convincing. The only argument given by the patent proprietor reflected in the reasons for the decision in this regard is the following:

*"- the 'stochastic three dimensional fibre matrix, wherein the fibre matrix has fibres arranged in the x, y and z directions, and these fibres are randomly oriented' of claim 1 of the main request is disclosed in combination with the features from paragraphs [0050], [0063], [0065] as originally filed, i.e. in combination with there being a chaotic flow and multiple flows of the carrier material."*



However, this argument does not address the additional mention of "*countercurrents*" in this context in the application as filed (see, for example, paragraph [0065], as pointed out by the opponent). Consequently, it cannot be discerned whether the opposition division has taken any account whatsoever of the above argument submitted by the opponent.

The same applies to further assertions by the opponent indicated in the reasons for the decision regarding an alleged unallowable intermediate generalisation, for example, in view of the feature "*applying a pressure of from 100 kPa to 50 000 kPa*" in claim 1 being allegedly disclosed only in combination with an additional "*compression step*", and the feature "*wherein the pressure is applied to the fibrous matrix while the matrix contains moisture and with a fibre to liquid ratio of from 1:2 to 1:14*" in claim 1 being allegedly disclosed only in combination with a drying step.

Moreover, the opponent's argument that an eightfold selection from the original application would have been required to arrive at the subject-matter of claim 1 is not addressed in the reasons for the decision.

Applying the principles set forth in the case law cited above, the board notes that merely summarising the opponent's submissions in the reasons for the decision does not constitute sufficient reasoning and is insufficient for ensuring that the opponent's right to be heard has been respected. The reasons for the decision should make it clear that the opposition division addressed the opponent's core arguments before arriving at the decision. However, it cannot be ascertained how the opposition division came to its conclusion and whether or not the opponent's core

arguments regarding Article 123(2) EPC were taken into account. Under these circumstances, the reasoning concerning Article 123 EPC in the decision under appeal cannot be deemed sufficient.

1.2 *Reasoning regarding Article 84 EPC*

Regarding Article 84 EPC, in point 3 of the reasons for the decision, the opposition division first summarises arguments by the opponent and the patent proprietor and then merely states:

*"The division decided that the main request fulfils the requirements of Article 84 EPC for the reasons given by the proprietor."*

However, it is not apparent precisely to which "reasons given by the patent proprietor" the opposition division is referring, nor can it be deduced why the opponent's reasons were not found convincing.

In particular, according to the opposition division's summary of the patent proprietor's arguments:

*"The proprietor was of the opinion that since claim 1 of the main request finds basis in the dependent claims as granted, there are no grounds for considering the clarity of the claims (case law G 3/14)."*

However, if the opposition division had indeed agreed with that view, then in line with the catchword of the cited decision G 3/14 it should not have even examined claim 1 for compliance with the requirements of Article 84 EPC.

Again, the board finds the reasoning provided by the opposition division to be insufficient.

1.3 *Reasoning regarding Article 83 EPC*

In point 4 of the reasons for the decision, after summarising arguments provided by the opponent and the patent proprietor, the opposition division simply states:

*"The division decided that there was sufficient information in the patent as granted for the skilled person - potentially in combination with common general knowledge in the field - to bring the invention into practice. The method of claim 1 of the main request was straightforward and the patent as granted comprised at least one example where the method of claim 1 of the main request was executed. All technical features of the method of claim 1 of the main request were either discussed in the patent as granted or well known to the person skilled in the art. The invention was sufficiently disclosed in the sense of Article 83 EPC."*

This general statement does not refer to any of the arguments provided by the parties and indicated in the preceding paragraphs of point 4 of the reasons for the decision. For instance, it is not specified which examples in the patent actually executed the method of claim 1 or which technical features of claim 1 were discussed in the patent and which were known to the person skilled in the art. In particular, this statement does not adequately address any of the opponent's objections and submissions. Consequently,

neither the board nor the appellant can discern whether the opposition division has taken them into account.

1.4 *Reasoning regarding Articles 54(2) and 56 EPC*

After summarising arguments provided by both the opponent and the patent proprietor, in point 6 of the reasons for the decision the opposition division merely states:

*"Claims 1-18 of the main request were found to be novel over D1-D9, D22-D25 because - as argued by the proprietor - none of said documents disclose a stochastic fibre matrix/preform, nor a method for making such a matrix. The main request is allowable under Article 54(2) EPC."*

Again, this statement does not show whether the opposition division had considered any submission by the opponent relating to "a stochastic fibre matrix/preform" or "a method for making such a matrix" or, if it had considered them, why it did not find them convincing.

For example, according to the first paragraph of point 6 of the reasons for the decision, "[t]he opponent was of the opinion that every fibre matrix showing the slightest difference in degree of orientation of its fibres in the x, y and z directions must be regarded as a 'stochastic' three dimensional matrix and that every non-lamellar flow must be regarded as a 'chaotic flow'". However, the opposition division does not indicate whether it concurred with the opponent's interpretation or how that influenced its assessment of the opponent's novelty objection in view of each of documents D1 to D9 and D22 to D25.

Point 7 of the reasons for the decision addresses objections regarding an alleged lack of inventive step in view of documents D1 and D22. Again, the opposition division merely states that "*[t]he division decided that the main request fulfills the requirements of Article 56 EPC for the reasons provided by the proprietor*", without so much as indicating that it had taken account of the opponent's arguments in this regard or explaining why it had considered them incorrect or unconvincing.

It is further noted that the summary of the patent proprietor's arguments regarding an alleged inventive step in view of document D22 ends with the formulation of a technical effect ("*The technical effect associated with these differences is the the matrix of claims 1, 9 has a better shearing and compression resistance without any needling or stitching [sic].*"). Yet even if this were accepted as the correct formulation of the technical effect, it is not apparent from the reasons for the decision why the skilled person would not have arrived at the claimed subject-matter in an obvious manner in view of that technical effect. The reasons for the decision are incomplete and deficient in this regard too.

#### 1.5 *Conclusions regarding procedural defect*

In view of the above, it cannot be ascertained how the opposition division came to its conclusions in the decision under appeal and whether it had duly considered the core arguments provided by the opponent. The failure to provide a reasoned decision amounts to a substantial procedural violation (see Case Law, V.A. 9.5.9).

2. Remittal to the opposition division

Since the decision under appeal is tainted by a substantial procedural violation, the board considers it appropriate to set aside the decision under appeal and finds that there are special circumstances justifying remittal of the case to the opposition division for further prosecution as per Article 11 RPBA 2020 (see also e.g. T 942/18, reasons 7, and, more generally, Case Law, V.A.7.7.2). It is noted that the parties did not object to the case being remitted to the opposition division.

3. Reimbursement of the appeal fee

As a further consequence of the above substantial procedural violation, reimbursement of the appeal fee is equitable under these circumstances pursuant to Rule 103(1)(a) EPC since the appellant had to appeal in order to obtain a fully reasoned decision (see also Case Law, V.A.9.5.9 and 9.7.1).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.
3. The appeal fee is reimbursed in full.

The Registrar:

The Chairman:



A. Pinna

P. Lanz

Decision electronically authenticated