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**Datasheet for the decision  
of 16 January 2025**

**Case Number:** T 1078/22 - 3.3.06

**Application Number:** 15820196.2

**Publication Number:** 3224411

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**Language of the proceedings:** EN

**Title of invention:**  
FIBER SHEETS AND STRUCTURES COMPRISING FIBER SHEETS

**Patent Proprietor:**  
Paptic Ltd

**Opponent:**  
Ahlstrom Oyj

**Headword:**  
FIBER SHEETS/Paptic

**Relevant legal provisions:**  
EPC Art. 84  
RPBA 2020 Art. 12(4)

**Keyword:**

Claims (main request) - clarity after amendment (no) - new  
ambiguity introduced  
Amendment to case (auxiliary request) - admitted (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

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Case Number: T 1078/22 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 16 January 2025**

**Appellant:**  
(Patent Proprietor)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 1 March 2022  
revoking European patent No. 3224411 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** J.-M. Schwaller  
**Members:** P. Ammendola  
C. Heath

## Summary of Facts and Submissions

- I. The patent proprietor appealed the decision of the opposition division to revoke European patent Nr. 3 224 411 on the grounds that *inter alia* the set of claims of auxiliary request 4 filed during oral proceedings contravened Articles 84 and 123(2) EPC.
- II. With the grounds of appeal the appellant *inter alia* filed two sets of amended claims labelled **main request** (identical to auxiliary request 4 mentioned above) and **auxiliary request 1**.
- III. Claim 1 of the main request (hereinafter **claim 1**) reads as follows (amendments in comparison to claim 1 as granted made apparent):

"1. A fiber sheet, **characterized** in that the fiber sheet it is obtainable by foam based production technology,

- it comprises 50-99 wt% of natural fibers having average fiber length of 0.5-5mm and 1-50 wt% of reinforcement fibers having average fiber length of 5-30 mm,

- it comprises fibers having average fiber length of 0.5-100 mm,

- a binder selected from a group consisting of polyvinyl alcohols, polyvinyl acetate dispersions, ethyl vinyl alcohol dispersions, polyurethane dispersions, acrylic latexes, styrene butadiene dispersions, binders based on finely divided cellulose, binders based on cellulose derivatives, biopolymers, and combinations thereof,

- foaming agent,

- 50-99 wt% of said fibers are natural fibers and 1-50 wt% of said fibers are reinforcement fibers selected from polymer fibers, mineral fibers, non-wood natural fibers and glass-fibers and combinations thereof, and said fiber sheet has stretch in the range of 3-50%."

Claim 1 of auxiliary request 1 reads as follows (amendments vis-à-vis claim 1 made apparent):

"1. A fiber sheet, **characterized** in that the fiber sheet it is obtainable by foam based production technology,

- it comprises 50-99 wt% of natural fibers having average fiber length of 0.5-5mm and 1-50 wt% of reinforcement fibers having average fiber length of 5 - 30 mm,

- it comprises fibers having average fiber length of 0.5-100 mm, and where 50-99 wt% of said fibers are natural fibers and 1-50 wt% of said fibers are reinforcement fibers selected from polymer fibers, mineral fibers, non-wood natural fibers and glass-fibers and combinations thereof,

- a binder selected from a group consisting of polyvinyl alcohols, polyvinyl acetate dispersions, ethyl vinyl alcohol dispersions, polyurethane dispersions, acrylic latexes, styrene butadiene dispersions, binders based on finely divided cellulose, binders based on cellulose derivatives, biopolymers, and combinations thereof,

- foaming agent,

~~50-99 wt% of said fibers are natural fibers and 1-50 wt% of said fibers are reinforcement fibers selected from polymer fibers, mineral fibers, non wood natural fibers and glass fibers and combinations thereof,~~ and  
- said fiber sheet has stretch in the range of 3-50%."

- IV. In reply to the appeal, the opponent (hereinafter **respondent**) rebutted the appellant's submissions and objected to the admittance of auxiliary request 1.
- V. The appellant requested in writing that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the claims of the main request or, alternatively, of auxiliary request 1, both as filed with the grounds of appeal. The respondent requested in writing that the appeal be dismissed.
- VI. After having received the board's preliminary opinion, the appellant announced that they will not attend the oral proceedings. The board then informed the parties that the already scheduled oral proceedings were cancelled.

## Reasons for the Decision

### *Main request*

#### 1. Clarity (Article 84 EPC)

##### 1.1

F0	1. A fiber sheet, characterized in that
F1	the fiber sheet it is obtainable by foam based production technology,
F2	- it comprises 50 - 99 wt% of natural fibers having average fiber length of 0.5 - 5mm and 1-50 wt% of reinforcement fibers having average fiber length of 5 - 30 mm,
F3	- it comprises fibers having average fiber length of 0.5-100 mm,
F4	- a binder selected from a group consisting of polyvinyl alcohols, polyvinyl acetate dispersions, ethyl vinyl alcohol dispersions, polyurethane dispersions, acrylic latexes, styrene butadiene dispersions, binders based on finely divided cellulose, binders based on cellulose derivatives, biopolymers, and combinations thereof,
F5	- foaming agent,
F6	- 50-99 wt% of said fibers are natural fibers and 1-50 wt% of said fibers are reinforcement fibers selected from polymer fibers, mineral fibers, non-wood natural fibers and glass-fibers and combinations thereof,
F7	- and where said fiber sheet has stretch in the range of 3-50%.

The above numbering given on page 2 of the statement of grounds of appeal of the features of claim 1 at issue will be used hereinafter.

1.2 The board stresses that the relevant issue is whether the additional presence of F3 in claim 1 (see also the difference with claim 1 as granted rendered apparent in point III. above) causes a lack of clarity that was not present in granted claim 1.

1.3 In the lower half of page 8 and the upper half of page 9 of the decision under appeal, the opposition division found that:

- the introduction of F3 in claim 1 of present main request (formerly auxiliary request 4 in opposition) resulted in that such claim defines two sets of "*fibers*" (in F2 and F3), and
- consequently, the penultimate feature of the claimed "*fiber sheet*", i.e. F6 (which mentions ranges of "*wt% of said fibers*"), might apply to the (set of) "**natural fibers**" (hereinafter also **NFs**) and "**reinforcement fibers**" (hereinafter also **RFs**) described in F2, or to the (set of) "*fibers*" described in F3.

The opposition division concluded that "*due to the open wording of the first two items of claim 1, there is no support for understanding that both items refer to the same set of fibers*". The board understands this conclusion as necessarily implying that the "*fibers*" described in F3 might also designate further fibers, different from the NFs and RFs described in F2.

1.4 The board understands further that the appellant in the section entitled "*Art. 123(2) EPC and Art. 84 EPC - Claim 1*" of the grounds of appeal relied again on the

construction of claim 1 under consideration already presented in opposition (and summarised in the third and fourth paragraphs of page 8 of the appealed decision). This is apparent from the following passages in the appellant's submission:

i) the sentence bridging pages 2 and 3, which appears to refer to the "*fibers*" described in F3 (in the context of the discussion of a difference between claim 1 under consideration and original claim 1) as "*the fibers contained in the fiber sheet*";

ii) the first sentence on page 3, where the appellant concludes that "*the fibers defined in feature F2 are already defined to be natural fibers and reinforcement fibers and their length is within the range defined in feature F3 and thus, they are totally included in the broader definition of F3*";

iii) the first sentence on page 4, where a passage reads: "*the person skilled in the art would have seen whether his fiber sheet comprises fibers having average fiber length of 0.5-100 mm (F3)*", and

iv) the similar statement in the penultimate paragraph on page 2, that the person skilled in the art "*would have defined if his fiber sheet comprises 50-99 wt% of natural fibers having average fiber length of 0.5-5mm and 1-50 wt% of reinforcement fibers having average fiber length of 5-30 mm*".

The board stresses that the passages iii) and iv) appear to necessarily imply that a skilled person is also able to determine the amount and average fiber length of separately (all) the NFs and (all) the RFs that are comprised in the fiber sheet, as well as the overall average fiber length of (all) the fibers comprised in the fiber sheet.

Hence, it appears that in the opinion of the appellant the skilled reader of claim 1 of the main request would come to the conclusion that:

- the terms "*natural fibers*" and "*reinforcement fibers*" in F2 may only plausibly refer to respectively all NFs and all the RFs that are comprised in the "*fiber sheet*", and
- the term "*fibers*" in F3 may only plausibly refer to all the "*fibers*" that are comprised in the "*fiber sheet*".

The board stresses that even though the appellant in its submission never explicitly stated that the "*fibers*" described in F3 were all the fibers comprised in the fiber sheet, the above construction of F3 (as substantially equivalent to "the fiber sheet comprises fibers such that the average fiber length of all the fibers comprised therein is of 0.5-100 mm") appears necessarily implied by at least the appellant's argument in ii) above (i.e. that the term "*fibers*" in F3 encompasses the NFs and RFs defined in F2).

- 1.4.1 The board notes further that under the appellants' construction of F2 and F3 discussed above, the appellant's conclusion that: "*when feature F2 defines that "it (the fiber sheet) comprises 50 - 99 wt% of natural fibers having average fiber length of 0.5 - 5mm and 1-50 wt% of reinforcement fibers having average fiber length of 5 - 30 mm," then it is automatically true that also "50-99 wt% of said fibers are natural fibers and 1-50 wt% of said fibers are reinforcement fibers" as defined in F6*" (see the conclusion in the second paragraph on page 3 of the statement of grounds of appeal), appears convincing to the board.

Indeed, under the appellant's construction of F2 and F3, F6 can only limit the (minimum) amounts of the NFs and RFs in terms of the given minimum values of wt% in respect to the total weight of (some of, or all) the fibers comprised in the sheet, whereas more stringent limitations as to the amounts of these two sorts of fibers are imposed by F2, which requires identical minimum values of wt% but in respect to the total weight of the whole fiber sheet.

The board stresses that a corollary of this conclusion is that F6 cannot possibly impose any further limitation as to the amounts of the NFs and RFs present in the fiber sheet, in addition to those already expressed by F2. Thus, it is apparent that F2 renders completely redundant F6.

- 1.4.2 The board considers it also appropriate to stress at this point that according to appellant's construction of F3, the "*fibers*" mentioned therein may also encompass further fibres in addition to the NFs and RFs (whose amounts and average fiber lengths are defined in F2). Indeed, the only plausible function of the broader range of "*average fiber length*" defined in F3 for (all) "*fibers*" comprised in the "*fiber sheet*" would be to allow for the possible (optional) presence of further fibers, different from the NFs and RFs (for which narrower average fiber lengths are instead already required in F2).

However, it must be stressed that this construction of F3 allows for the optionally present further fibers (different from NFs and RFs), those lengths and those amounts that result in an "*average fiber length*" of "*0.5 to 100 mm*" when also considering the amounts and lengths of the NFs and RFs (defined in F2, but also

encompassed by the "*fibers*" of F3). Hence, for instance the fiber sheet could also comprise "further" fibers (different from NFs and RFs) having per se an average fiber length above 100 mm as long as, due to the mandatory presence of NFs and RFs of much smaller lengths imposed by F2, the average fiber length of all the (NFs, RFs and further) "*fibers*" remains in the range specified in F3.

1.5 As already discussed above, the reasoning of the opposition division necessarily implies the possibility - for the skilled reader of claim 1 of the main request *per se* - of construing the features F2 and F3 as referring to different (sets of) fibers.

1.5.1 This renders immediately apparent to the board, in particular the alternative possibility of plausibly construing the "*fibers*" components that are described in F3, as exclusively referring to further fibers different from the NFs and the RFs.

In other words, it is immediately apparent to the board that a skilled reader of F3 in the context of claim 1 under consideration (and thus also in view of the preceding F2), would regard as equally plausible to construe F3 as substantially equivalent to:

- "the fiber sheet comprises fibers such that the average fiber length of all the fibers comprised therein is of 0.5-100 mm" (i.e. the appellant's construction of F3 considered in 1.4 above), or
- "the fiber sheet comprises further fibers having average fiber length of 0.5-100 mm".

1.5.2 The board stresses that similar to the appellant's construction of F3, also the second alternative for the construction of F3 is perfectly consistent with the

(apparently sole) plausible construction of F2 (i.e. as describing the amount and average fiber length for respectively all the NFs and all the RFs that are comprised in the fiber sheet), also allows for the occurrence of F3 in the fiber sheet to remain verifiable (at least to the same extent as the occurrence of F3 and F2, as construed by the appellant, are alleged by the appellant themselves to be verifiable), and does not hinge on the fact that F6 remains redundant due to F2.

Indeed, also the second alternative for the construction of F3 necessarily implies that F6 cannot possibly impose any limitation to the "further" fibers of F3 (i.e. "*fibers*" that cannot be NFs or RFs) and has no bearings onto the fact the limitations expressed by F6 would certainly be complied within any "*fiber sheet*" that satisfies the more stringent limitations as to the amounts of NFs and RFs imposed by F2.

- 1.5.3 Nevertheless, according to such alternative construction, F3 would impose the mandatory presence of some (substantial amount of) further fibers that are neither NFs nor RFs.

This alternative construction of F3 would however require these mandatorily present further fibers to only have those lengths and to be present in those amounts that result in an "*average fiber length*" of "*0.5 to 100 mm*", independent of the amounts and lengths of the NFs and RFs also mandatorily comprised in the fiber sheet. Hence, for instance the further fibers (different from NFs and RFs) comprised in the fiber sheet cannot possibly have an average fiber length of above 100 mm *per se*.

These two consequences of the equally plausible construction of F3 as referring exclusively to fibers different from those described in F2 are manifestly different from those described for the construction of F3 (presented by the appellant i.e.) as referring to all the fibers in the fiber sheet.

1.6 Hence, the construction of F3 provided by the appellant results in a different definition of the claimed subject-matter in comparison to that resulting from the second plausible alternative construction of that feature F3 described in point 1.5.1 above.

1.7 The board concludes that, for the skilled reader of claim 1 of the main request there are two plausible alternative constructions of F3, which result in that two different definitions of the claimed "*fiber sheet*" appear possibly intended. This confirms that the opposition division was correct in finding (4th paragraph, page 9 of the decision under appeal) that the introduction of F3 in claim 1 of the main request "*generates confusion which makes the subject-matter of the claim not clearly understandable. This ambiguity hence detracts from the understanding of the claim and consequently claim 1 does not meet the requirements of clarity*".

1.8 Hence, already for this reason, the board concludes that the amendment of granted claim 1 resulting in claim 1 of the main request under consideration introduces a new ambiguity as to the subject-matter of the claim. Thus, claim 1 of the main request is found to contravene Article 84 EPC and this request cannot be allowed.

2. Admittance of auxiliary request 1
  - 2.1 Claim 1 of this request only differs from that of the main request in that in the former F6 has been shifted in the same sub-paragraph in which F3 is given, whereby F6 is additionally introduced by the wording "*and where*".
  - 2.2 The appellant justified the filing of this amended set of claims with the statement of grounds of appeal, as in reaction to the finding of the opposition division that the set of claims according to auxiliary request 4 filed during the oral proceedings of 10 November 2021 contravened Articles 84 and 123(2) EPC.
    - 2.2.1 The board notes however that:
      - already the notice of opposition contained objections based on the ground of opposition of Article 100(c)/123(2) EPC;
      - with the reply to opposition the appellant filed a set of amended claims as main request;
      - further, three sets of amended claims were filed on 10 September 2021 in reaction to the opposition division's preliminary opinion of 30 November 2020 that the previously filed set of amended claims still contravened Article 123(2) EPC and also Article 123(3) EPC;
      - at the oral proceedings of 10 November 2021, the opposition division admitted auxiliary request 4 that had been filed by the appellant, after having been informed that the main request contravened Article 123(2) and (3) EPC and none of the auxiliary requests 1 to 3 filed on 10 September 2021 was allowable in view of Article 123(3) EPC (for the same reasons for which the main request

also did not comply with this requirement of the EPC).

The board also notes that neither during the oral proceedings in opposition nor in these appeal proceedings the appellant has alleged that the discussion at the hearing in opposition (as to the lack of compliance of the main request with Article 123(2) and (3) EPC and of auxiliary requests 1 to 3 with Article 123(3) EPC) contained submissions or referred to facts that took the appellant by surprise.

2.2.2 Hence, and since the objection under Article 84 EPC debated at the hearing before the opposition division (and that the opposition division found convincing) is inherent to the specific amendment presented for the first time with claim 1 of auxiliary request 4, the fact that the appellant has been confronted with such an objection for the first time during the oral proceedings that concluded the opposition was a consequence of his own choice to react to the opposition division's preliminary opinion in the communication dated 30 November 2020, namely by only filing auxiliary requests 1 to 3 on 10 September 2021, i.e. almost ten months after said preliminary opinion, and so just two months before the hearing. In other words, it was the appellant's own making that caused that it had become aware of the objections against auxiliary requests 1 to 3 during the opposition oral proceedings only, and thus also lead to the filing of auxiliary request 4 during that hearing, thereby inevitably also causing that he could only become aware of the opposition division's objection thereto under Article 84 EPC at the last stage of the opposition.

2.2.3 Accordingly, also the filing of auxiliary request 1 at the appeal stage appears a consequence of the appellant's own choice to only file auxiliary requests 1 to 3 on 10 September 2021.

2.3 Moreover, as convincingly argued by the respondent in points 2 and 3 of the reply to appeal, the amendments carried out in claim 1 of the auxiliary request are *prima facie* unsuitable to overcome the reasons for which the opposition division found that the wording of claim 1 of the (then pending auxiliary request 4, now main request) contravened Articles 84 and 123(2) EPC.

Indeed, the shift of F6 in the same sub-paragraph in which F3 is given cannot possibly resolve the issue of clarity, since the wording "*wt% of said fibers*" of F6 is still explicitly preceded by two totally independent definitions of two distinct sets of fibers.

2.4 In view of the above considerations, the board, exercising the discretion under Article 12(4) RPBA, decides not to admit auxiliary request 1.

**Order**

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

**The appeal is dismissed.**

The Registrar:

The Chairman:



A. Wille

J.-M. Schwaller

Decision electronically authenticated