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**Datasheet for the decision  
of 25 October 2024**

**Case Number:** T 2084/22 - 3.2.07

**Application Number:** 14790542.6

**Publication Number:** 3057909

**IPC:** C03B37/05, C03C3/062,  
C03C3/085, C03C13/06

**Language of the proceedings:** EN

**Title of invention:**  
MAN-MADE VITREOUS FIBRES

**Patent Proprietor:**  
ROCKWOOL A/S

**Opponent:**  
Saint-Gobain Isover

**Headword:**

**Relevant legal provisions:**  
RPBA 2020 Art. 13(2)

**Keyword:**  
Amendment after notification of Art. 15(1) RPBA communication  
- deletion of a dependent claim - exceptional circumstances  
(yes) - new objection - exceptional circumstances (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 2084/22 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 25 October 2024**

**Appellant:** Saint-Gobain Isover  
(Opponent) Tour Saint-Gobain  
12, Place de l'Iris  
92400 Courbevoie (FR)

**Representative:** Saint-Gobain Recherche  
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**Respondent:** ROCKWOOL A/S  
(Patent Proprietor) Hovedgaden 584  
2640 Hedehusene (DK)

**Representative:** Gill Jennings & Every LLP  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 8 July 2022  
rejecting the opposition filed against European  
patent No. 3057909 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** B. Paul  
**Members:** S. Watson  
Y. Podbielski

## **Summary of Facts and Submissions**

- I. An appeal was filed by the opponent against the decision of the opposition division rejecting the opposition against European patent No. 3 057 909. The opponent requested that the decision under appeal be set aside and the patent be revoked in its entirety.
- II. With its reply to the appeal, the patent proprietor requested that the appeal be dismissed and filed auxiliary requests 1 to 18.
- III. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 9 July 2024, according to which the appeal was likely to be allowed in part as the subject-matter of claim 1 of the main request (patent as granted) and auxiliary requests 1 and 2 appeared not to be inventive (Article 56 EPC).  
  
The board also gave its preliminary opinion that the subject-matter of claim 1 of auxiliary request 3 appeared to be inventive, but there appeared to be an issue of double patenting relating to the subject-matter of claim 6 of the request, with respect to a divisional patent of the patent in suit.
- IV. The patent proprietor filed submissions dated 26 July 2024, including a set of claims according to auxiliary request 3a, in response to the board's communication.
- V. The opponent responded to the preliminary opinion of the board and the patent proprietor's submissions with letter dated 24 September 2024.

VI. Oral proceedings before the board took place on 25 October 2024.

During the oral proceedings the patent proprietor withdrew its main request and auxiliary requests 1 and 2.

At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.

VII. The final requests of the parties are as follows.

The opponent ("appellant") requested

- that the decision under appeal be set aside, and
- that the patent be revoked in its entirety.

The patent proprietor ("respondent") requested

- that the decision under appeal be set aside, and
- that the patent be maintained in amended form on the basis of the sets of claims according to auxiliary request 3a, filed with letter dated 26 July 2024 or auxiliary requests 3 or 4 to 18 filed with the reply to the appeal.

VIII. The arguments of the parties relevant for the decision are dealt with in detail in the reasons for the decision.

IX. Independent claim 1 of auxiliary request 3a reads as follows:

"A method of manufacture of man-made vitreous fibres (MMVF) comprising:  
providing a fiberising apparatus, wherein the fiberising apparatus comprises:

a set of at least four rotors each mounted for rotation about a different substantially horizontal axis;

wherein each rotor has a driving means;

rotating the rotors;

wherein the first rotor rotates to give an acceleration field of from 25 to 60 km/s<sup>2</sup>; and

wherein the second rotor rotates to give an acceleration field of 125 to 250 km/s<sup>2</sup>;

wherein the third rotor rotates to give an acceleration field of 150 to 300 km/s<sup>2</sup>;

wherein the fourth rotor rotates to give an acceleration field of 225 to 400 km/s<sup>2</sup>;

providing a mineral melt, wherein the melt has a composition comprising the following, expressed by wt of oxides:

SiO<sub>2</sub> in an amount of from 33 to 45 wt%,

Al<sub>2</sub>O<sub>3</sub> in an amount of from 16 to 24 wt%,

an amount of K<sub>2</sub>O and/or Na<sub>2</sub>O,

an amount of CaO and/or MgO,

wherein the ratio of the amount of Al<sub>2</sub>O<sub>3</sub> to the amount of SiO<sub>2</sub> is in the range 0.34-0.73,

wherein the ratio of the total amount of K<sub>2</sub>O and Na<sub>2</sub>O, to the total amount of CaO and MgO, is less than 1;

pouring the melt on to the periphery of the first rotor;

wherein melt poured on to the periphery of the first rotor in the set is thrown on to the periphery of the subsequent rotors in turn and fibres are thrown off the rotors;

and collecting the fibres that are formed."

## **Reasons for the Decision**

1. *Auxiliary request 3a - admittance (Article 13(2) RPBA)*
  - 1.1 The respondent filed a new set of claims, auxiliary request 3a, after notification of the communication under Article 15(1) RPBA. Auxiliary request 3a differed from auxiliary request 3, filed with the respondent's reply to the statement of grounds of appeal, only in that dependent claim 6 (dependent claim 7 as granted) had been deleted. The subject-matter of the other claims remained unchanged.
  - 1.2 The appellant requested that the set of claims not be considered, as no exceptional circumstances were present as required by Article 13(2) RPBA.
  - 1.3 The board follows the arguments of the respondent that the deletion in auxiliary request 3 of dependent claim 6 had already been expressly indicated in the final paragraph of its reply to the appeal.

In addition, as independent claim 1 of auxiliary request 3a is identical to claim 1 of auxiliary request 3 no new issues arise from its admittance.

- 1.3.1 It is established case law that, even if the deletion of a dependent claim is regarded as an amendment to a party's appeal case, such an amendment may be admitted according to Article 13(2) RPBA, provided that it does not alter the factual and legal scope of the proceedings (see Case Law of the Boards of Appeal, 10th edition 2022 ("CLB"), V.A.4.2.2 d)).

In the present case, as independent claim 1 of auxiliary request 3a is identical to that of auxiliary

request 3, filed with the respondent's reply to the appeal, the factual and legal scope of the respondent's appeal case did not alter and the appellant was not faced with any new subject-matter.

- 1.3.2 The appellant argued at the oral proceedings before the board that the issue of double patenting, which necessitated the deletion of claim 6, had been raised during the opposition proceedings. The respondent therefore could and should have filed such a request earlier and not only after the notification of the preliminary opinion of the board.

The board notes that the decision under appeal did not deal with the issue of double patenting as it was not relevant to the granted claims and there is no mention of double patenting in the statement of grounds of appeal.

The issue was first raised in the appeal proceedings by the respondent itself, in its reply to the appeal, in particular in relation to whether a new request to overcome a possible issue of double patenting would be allowable or not under Rule 80 EPC.

It was only with the board's preliminary opinion, set out in point 11.5 of its communication according to Article 15(1) RPBA, that a concrete objection of double patenting in the appeal proceedings was raised, and the issue of whether amendments to the claims would be possible under Rule 80 EPC was considered.

- 1.4 For the above reasons, auxiliary request 3a is therefore admitted into the appeal proceedings.

2. *Article 123(2) EPC - admittance of an objection  
(Article 13(2) RPBA)*

2.1 At the oral proceedings before the board the appellant raised an objection under Article 123(2) EPC to claim 1 of auxiliary request 3a.

2.1.1 The appellant argued that by deleting claim 6, the subject-matter of claim 1 had been extended beyond the content of the application as originally filed.

According to the appellant, the ranges for the acceleration fields of the rotors specified in claim 1, were only disclosed together with the feature of the deleted claim 6, namely that the last rotor in the set rotates to give an acceleration field from 5 to 15 times the acceleration field of the top rotor.

The deletion of this feature had therefore led to an extension of subject-matter under Article 123(2) EPC.

2.1.2 The appellant argued further that auxiliary request 3a was a new request and that, as such, the appellant should be able to raise a new objection.

2.2 The respondent requested that the objection not be admitted into the appeal proceedings as there were no exceptional circumstances present which would justify the admittance of the objection (Article 13(2) RPBA).

The respondent argued that the deletion of claim 6 had not changed the subject-matter of claim 1 in any way, which remained the same as claim 1 of auxiliary request 3. As auxiliary request 3 had been filed with the respondent's reply to the appeal, the appellant could and should have raised any objections under Article

123(2) EPC against claim 1 of that request in a response to the reply to the appeal.

- 2.3 The board follows the arguments of the respondent that the deletion of dependent claim 6 did not cause an amendment in the subject-matter of claim 1, as the feature of deleted claim 6 never formed part of the subject-matter of claim 1.

Therefore, the objection raised was against the subject-matter of claim 1 alone. As claim 1 of auxiliary request 3a was identical to that of auxiliary request 3, filed with the reply to the appeal of 28 March 2023, the objection could have been raised against auxiliary request 3.

The appellant chose not to respond to the reply to the appeal before the preliminary opinion of the board was issued on 9 July 2024. After the preliminary opinion, the appellant filed written submissions dated 24 September 2024, but still did not raise any Article 123(2) EPC objections against claim 1 of auxiliary request 3.

- 2.4 Regarding the appellant's argument that the late-filing of the new request allowed it to raise new objections, the board notes that while a party must be allowed to respond to a new request, this is in order to raise objections which arise from the new request, it is not a further opportunity to raise objections which could have already been raised, but were not, against requests already forming part of the proceedings.

- 2.5 The objection under Article 123(2) EPC raised against claim 1 of auxiliary request 3a is therefore not admitted into the appeal proceedings.

3. *Conclusion*

3.1 At the oral proceedings before the board, the appellant confirmed that it had no further objections to auxiliary request 3a, apart from the Article 123(2) EPC objection set out in point 2. above.

3.2 In the absence of any admissible objections, the patent is to be maintained in amended form according to the claims of auxiliary request 3a.

**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 with the order to maintain the patent with the following claims and a description to be adapted thereto if necessary:

Claims 1-11 of auxiliary request 3a filed with letter dated 26 July 2024.

The Registrar:

The Chairman:



G. Nachtigall

B. Paul

Decision electronically authenticated