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**Datasheet for the decision  
of 6 May 2025**

**Case Number:** T 1636/23 - 3.2.07

**Application Number:** 18732910.7

**Publication Number:** 3638589

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**Language of the proceedings:** EN

**Title of invention:**  
METHOD FOR PACKAGING CERAMIC SLABS

**Patent Proprietor:**  
Granitifiandre Societa' Per Azioni

**Opponent:**  
FLORIM CERAMICHE - SOCIETA' PER AZIONI SOCIETA' BENEFIT

**Headword:**

**Relevant legal provisions:**  
EPC Art. 123(2)  
RPBA 2020 Art. 13(2)

**Keyword:**

Amendments - added subject-matter (yes)

Amendment after notification of Art. 15(1) RPBA communication  
(yes)

Amendment taken into account (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1636/23 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 6 May 2025**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
6 July 2023 concerning maintenance of the  
European Patent No. 3638589 in amended form.**

**Composition of the Board:**

**Chairwoman** A. Beckman  
**Members:** V. Bevilacqua  
S. Fernández de Córdoba

## **Summary of Facts and Submissions**

I. Appeals were filed by the patent proprietor and by the opponent against the decision of the opposition division to maintain European patent No. 3 638 589 in amended form.

II. The opposition division found that granted claim 1 extended beyond the content of the application as originally filed (in the following, reference will be made to PCT publication WO 2018/229591 A1) and maintained the patent in amended form on the basis of auxiliary request 1.

III. The opponent (appellant) initially requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

The patent proprietor (appellant) initially requested

- that the decision under appeal be set aside and that the patent be maintained as granted (main request),

alternatively

- that the appeal of the opponent be dismissed and the patent be maintained in amended form on the basis of auxiliary request 1,

as a further alternative

- that the patent be maintained in amended form on the basis of one of auxiliary requests 2 to 7.

IV. In preparation for oral proceedings, the board issued a communication pursuant to Article 15(1) RPBA, in which it gave its preliminary opinion that the patent in suit

was likely to be revoked.

V. In response to the board's communication, the patent proprietor submitted a letter dated 19 December 2024 and:

- withdrew the main request and auxiliary requests 2 and 3,
- made auxiliary request 1, on the basis of which the patent was maintained in amended form by the opposition division, their new main request, and
- filed new auxiliary requests 8 to 15.

VI. Oral proceedings before the board took place on 6 May 2025. At the end of oral proceedings, the decision was announced.

VII. The final requests of the patent proprietor were

- that the appeal of the opponent be dismissed, i.e. that the patent be maintained in amended form on the basis of auxiliary request 1,

alternatively

- that the patent be maintained in amended form on the basis of one of auxiliary requests 4 to 15,

whereby

auxiliary requests 4 and 5 were first filed during opposition proceedings and re-filed with the statement setting out the grounds of appeal, auxiliary requests 6 and 7 were filed with the patent proprietor's reply to the statement setting out the grounds of appeal of the opponent, and auxiliary requests 8 to 15 were filed with the letter dated 19 December 2024.

The final requests of the opponent were

- that the decision under appeal be set aside and that the patent be revoked,

- and not to admit auxiliary requests 8 to 15 into the proceedings.

VIII. Claim 1 of **auxiliary request 1** reads as follows (amendments with respect to claim 1 as originally filed are in bold, emphasis added by the board):

**"A method for packing ceramic slabs (C) by means of a packing station (100), wherein the packing station (100) comprises:**

~~**A packing station for ceramic slabs comprising:**~~

- a conveyor (180) adapted to support and advance a ceramic slab (C) or a stack of ceramic slabs (C),
- a packaging head (130) adapted to form a protective casing around the ceramic slab (C) or the stack of ceramic slabs (C),
- a handling head (135) adapted to directly grip the ceramic slab (C) or the stack of ceramic slabs (C),
- a tooling area (U15) adapted to receive the packaging head (130) and the handling head (135),
- a robot (105) adapted to selectively pick up the packaging head (130) or the handling head (135) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on the conveyor (180),

**wherein the method provides for performing a first activity, if the conveyor (180) brings inside a work space (U10) a ceramic slab (C) or a stack of ceramic slabs (C) of a first type, and a second activity, if the conveyor (180) brings inside the work space (U10) a ceramic slab (C) or a stack of ceramic slabs (C) of a second type, and wherein the ceramic slab or slabs of the second type has/have a smaller size than the ceramic slab or slabs of the first type, the first activity including the steps of:**

- controlling the robot (105) to pick up the handling head (135) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on the conveyor (180),
- using the robot (105) equipped with the handling head (135) to directly grip the ceramic slab (C) or the stack of ceramic slabs (C), and
- transferring the ceramic slab (C) or the stack of ceramic slabs (C) to a supporting element (195), the second activity including the steps of:
  - controlling the robot (105) to pick up the packaging head (130) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on the conveyor (180),
  - using the robot (105) equipped with the packaging head (130) to form a protective casing around the ceramic slab (C) or the stack of ceramic slabs (C)."

IX. Claim 1 of **auxiliary request 4** corresponds to claim 1 of auxiliary request 1, the only difference being that the transferring step of the first activity is defined as follows (features added with respect to claim 1 of auxiliary request 1 are in bold, emphasis added by the board):

"- transferring the ceramic slab (C) or the stack of ceramic slabs (C) to a supporting element (195) **arranged in a loading area (U30)**,".

X. Claim 1 of **auxiliary request 5** corresponds to claim 1 of auxiliary request 4, the only difference being that the steps of the first activity have been further amended as follows (features added with respect to claim 1 of auxiliary request 4 are in bold, emphasis added by the board):

"the first activity including the steps of:

- controlling the robot (105) to pick up the handling head (135) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on the conveyor (180),
- using the robot (105) equipped with the handling head (135) to directly grip the ceramic slab (C) or the stack of ceramic slabs (C),
- **using the robot (105) equipped with the handling head (135) to pick up the ceramic slab (C) or the stack of ceramic slabs (C) from the conveyor (180), and**
- **using the robot (105) equipped with the handling head (135) to transferring** the ceramic slab (C) or the stack of ceramic slabs (C) to a **transportable** supporting element (195) arranged in a loading area (U30)".

XI. Claim 1 of **auxiliary request 6** reads as follows (features added with respect to claim 1 of auxiliary request 1 are in bold, emphasis added by the board):

"A method for packing ceramic slabs (C) by means of a packing station (100), wherein the packing station (100) comprises:- a conveyor (180) adapted to support and advance a ceramic slab (C) or a stack of ceramic slabs (C),

- a packaging head (130) adapted to form a protective casing around the ceramic slab (C) or the stack of ceramic slabs (C),
- a handling head (135) adapted to directly grip the ceramic slab (C) or the stack of ceramic slabs (C),
- a tooling area (U15) adapted to receive the packaging head (130) and the handling head (135),
- a robot (105) adapted to selectively pick up the packaging head (130) or the handling head (135) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on

the conveyor (180),  
wherein the method provides for performing a first activity, if the conveyor (180) brings inside a work space (U10) a ceramic slab (C) or a stack of ceramic slabs (C) of a first type, and a second activity, if the conveyor (180) brings inside the work space (U10) a ceramic slab (C) or a stack of ceramic slabs (C) of a second type, and  
wherein the ceramic slab or slabs **of the first type has/have large size and the ceramic slab or slabs** of the second type has/have a smaller size than the ceramic slab or slabs of the first type,  
the first activity including the steps of:  
- controlling the robot (105) to pick up the handling head (135) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on the conveyor (180),  
- using the robot (105) equipped with the handling head (135) to directly grip the ceramic slab (C) or the stack of ceramic slabs (C), and  
- transferring the ceramic slab (C) or the stack of ceramic slabs (C) to a supporting element (195),  
the second activity including the steps of:  
- controlling the robot (105) to pick up the packaging head (130) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on the conveyor (180),  
- using the robot (105) equipped with the packaging head (130) to form a protective casing around the ceramic slab (C) or the stack of ceramic slabs (C)."

XII. Claim 1 of **auxiliary request 7** reads as follows  
(features added with respect to claim 1 of auxiliary request 1 are in bold, emphasis added by the board):

"A method for packing ceramic slabs (C) by means of a packing station (100), wherein the packing station (100) comprises:

- a conveyor (180) adapted to support and advance a ceramic slab (C) or a stack of ceramic slabs (C),
- a packaging head (130) adapted to form a protective casing around the ceramic slab (C) or the stack of ceramic slabs (C),
- a handling head (135) adapted to directly grip the ceramic slab (C) or the stack of ceramic slabs (C),
- a tooling area (U15) adapted to receive the packaging head (130) and the handling head (135),
- a robot (105) adapted to selectively pick up the packaging head (130) or the handling head (135) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on the conveyor (180),

wherein the method provides for performing a first activity, if the conveyor (180) brings inside a work space (U10) a ceramic slab (C) or a stack of ceramic slabs (C) of a first type, and a second activity, if the conveyor (180) brings inside the work space (U10) a ceramic slab (C) or a stack of ceramic slabs (C) of a second type, and

wherein the ceramic slab or slabs of the second type has/have ~~a smaller size than the ceramic slab or slabs of the first type,~~ **a different format than the ceramic slab or slabs of the first type,**

the first activity including the steps of:

- controlling the robot (105) to pick up the handling head (135) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on the conveyor (180),
- using the robot (105) equipped with the handling head (135) to directly grip the ceramic slab (C) or the stack of ceramic slabs (C), and

- transferring the ceramic slab (C) or the stack of ceramic slabs (C) to a supporting element (195), the second activity including the steps of:
  - controlling the robot (105) to pick up the packaging head (130) from the tooling area (U15) and bring it to operate at the ceramic slab (C) or the stack of ceramic slabs (C) on the conveyor (180),
  - using the robot (105) equipped with the packaging head (130) to form a protective casing around the ceramic slab (C) or the stack of ceramic slabs (C)."

## Reasons for the Decision

1. Auxiliary request 1 - added subject-matter ("within the loading area" issue)
  - 1.1 Claim 1 of auxiliary request 1, on the basis of which the patent was maintained in amended form by the opposition division, has been modified with respect to claim 1 as originally filed also by adding, as part of the steps defining the first activity, the step of  
  
*"transferring the ceramic slab (C) or the stack of ceramic slabs (C) to a supporting element (195)".*
  - 1.2 As shown in the appealed decision (see point II.8.2), the opposition division dismissed the opponent's objection under Article 123(2) EPC related to the above amendment and directed against the omission of the feature "within the loading area", finding that said feature was implicit in claim 1 because the supporting element was inevitably located somewhere, i.e. in a loading area, within reach of the robot.
  - 1.3 The opponent contests the above findings, contending that the supporting element is only disclosed, in the application as filed, as being accommodated inside said loading area.

The opponent puts forward that an embodiment where the supporting element is outside the loading area falls within the claim scope but is not disclosed in the application as filed.

1.4 The patent proprietor replies that "loading area" is not to be seen as a specific area of the packing station, but rather as an area within reach of the robot, included in the work space U10 and contends that the claimed requirement that the robot transfers "the ceramic slab or the stack of ceramic slabs to a supporting element" implicitly requires the supporting element to be within reach of the robot, i.e., in a "loading area".

According to the patent proprietor there is no indication in the originally filed application supporting the narrow interpretation of "loading area" made by the opponent, according to which the loading area is a pre-defined, specific portion of the working area of the robot.

In particular figure 1, where the loading area is indicated by reference U30 does not support this interpretation, because of its schematic nature, as confirmed on page 6 of the original description.

On the contrary, any portion of the working area of the robot occupied by a supporting element would be considered, by a skilled reader of the application as filed, as the loading area.

In other words, areas outside the robot's reach cannot receive slabs, and areas within reach intrinsically belong to the "loading area".

There is therefore no added subject-matter in this claim, even if no loading area is mentioned therein, because as soon as a supporting element is located in the working space of the robot, a loading area is

effectively present as an implicit feature of the claim.

- 1.5 The board is not convinced by the arguments of the patent proprietor, summarized above, disagrees with the findings of the appealed decision, and concurs with the opponent's argumentation that an embodiment where the supporting element is outside the specifically disclosed loading area, but still within reach of the robot, falls within the scope of claim 1 but lacks basis in the application as filed.

This is because while claim 1 requires the robot to transfer ceramic slabs to a supporting element, it does not specify that this supporting element must be located in a "loading area".

The claim scope thus encompasses embodiments where the supporting element is located anywhere within reach of the robot.

Contrary to the patent proprietor's argument, a supporting element being within reach of the robot does not necessarily mean that it is in the "loading area".

This is because the tooling area U15 is also within the robot's work space U10 and reach. A supporting element located in the tooling area would be within reach but not in the loading area.

The conveyor 180 is also within the robot's work space and reach. A supporting element located on the conveyor would therefore also be within reach but not in the loading area.

Any other location within work space U10 but outside the specifically defined loading area U30 could

potentially accommodate a supporting element within the robot's reach.

The application as filed only discloses the supporting element being located specifically within the loading area U30, which is described as a distinct area within the larger work space U10. There is no disclosure of the supporting element being located elsewhere within the robot's reach.

As argued by the opponent during oral proceedings, a skilled reader of the original application documents understands that the method disclosed therein foresees different, separate areas for the robot to perform different activities, and sees no teaching therein that these area can overlap or change in any way.

Therefore, claim 1 encompasses embodiments where the supporting element is within the robot's reach but outside the loading area U30 (e.g. in the tooling area, on the conveyor, or elsewhere in work space U10). Such embodiments fall within the claim scope but lack basis in the application as filed.

This introduces subject-matter extending beyond the content of the application as filed, in contravention of the requirements of Article 123(2) EPC.

For the above reasons, auxiliary request 1, cannot be allowed, and the appealed decision has to be set aside.

2. Auxiliary request 4 - added-subject-matter ("first and second activity" issue)
  - 2.1 Claim 1 of auxiliary request 4 has been amended, with respect to claim 1 of auxiliary request 1, by specifying that the supporting element is arranged in the loading area.
  - 2.2 The opponent argues that claim 1 of auxiliary request 4 still extends beyond the content of the application as originally filed.

According to the opponent, there is no original disclosure for the "first activity" as claimed, (see also decision under appeal, II.8.2, page 5, first paragraph).

- 2.3 The patent proprietor acknowledges that the terms "first activity" and "second activity" were not literally present in the original disclosure, however argues that these terms merely indicate a whole group of originally disclosed steps, mentioned in original claims 7, 9 and 13 and on pages 2 and 4 of the original description, without providing any additional technical contribution or introducing any previously undisclosed subject-matter.

The patent proprietor specifically refers to original claim 9 to support the above argument, explaining that claim 9 already encompassed two operating modes due to the presence of the word "or" in the first step.

These two operating modes have been included in independent claim 1 under the wording "first activity" and "second activity", respectively, to make the features as clear and concise as possible.

The specific steps involved with each of these activities (and mentioned in the original claims 9 and 13) have been explicitly included in the claim and clearly linked to the respective "activity" in conformity with the original disclosure.

- 2.4 The board concurs with the position of the opponent and is not convinced by the argumentation of the patent proprietor, summarized above, for the following reasons.

The "first activity", as defined in claim 1 of auxiliary request 4, is not based on original claim 9 alone because at least the final step thereof which reads

*"transferring the ceramic slab or the stack of ceramic slabs to a supporting element"*

is missing from original claim 9.

While original claim 13 does mention transferring ceramic slabs to a supporting element, this claim, combined with claim 9, still does not provide a basis for the "first activity" as defined in claim 1 of auxiliary request 4.

As correctly noted by the opponent, also the passages on pages 12 and 13 of the application as filed, mentioning a step of transferring the ceramic slab or the stack of ceramic slabs to a supporting element, do not give a basis for the "first activity" as claimed in claim 1 of auxiliary request 4.

This is because these passages relate to the

description of the depicted embodiment and disclose transferring the ceramic slab or the stack of ceramic slabs to a supporting element, but only by gripping the ceramic slab or the stack of ceramic slabs with a handling head configured with **adhesion members**.

As the claim's definition of the first activity omits any mention of using a handling head with adhesion members, which are the only gripping means disclosed for transferring the ceramic slab (C) or the stack of ceramic slabs (C) to a supporting element arranged in a loading area (U30) for this embodiment, the board agrees with the opponent that the "first activity", as defined in the claim, extends beyond the content of the originally filed documents.

As a consequence of the above the board concurs with the opponent that claim 1 of auxiliary request 4 extends beyond the content of the originally filed documents, and is therefore not allowable.

3. Auxiliary request 5 - added subject matter ("first and second activity" issue)

In the communication under Article 15(1) RPBA under point 7, the board referred to the following factual and legal position with respect to added subject-matter of auxiliary request 5, which was neither questioned nor commented on by the parties. The board sees no reason to deviate from its opinion in this respect and confirms it as follows.

Claim 1 of auxiliary request 5 also contravenes the requirements of Article 123(2) EPC, for the same reasons, already discussed above with respect to claim

1 of auxiliary request 4.

This is because also in auxiliary request 5 the claim's definition of the first activity omits any mention of using a handling head with adhesion members, which are the only gripping means disclosed for transferring the ceramic slab (C) or the stack of ceramic slabs (C) to a supporting element arranged in a loading area (U30) in the embodiment for this embodiment.

The board therefore agrees with the opponent that auxiliary request 5 is not allowable.

4. Auxiliary requests 6 and 7 - added subject-matter ("within the loading area" issue)

In the communication under Article 15(1) RPBA under point 4, the board referred to the following factual and legal position with respect to added subject-matter of auxiliary requests 6 and 7, which was neither questioned nor commented on by the parties. The board sees no reason to deviate from its opinion in this respect and confirms it as follows.

Claim 1 of each of auxiliary requests 6 and 7 comprises the step of

*"transferring the ceramic slab (C) or the stack of ceramic slabs (C) to a supporting element (195)"*

without mentioning that the supporting element is "within the loading area".

As a consequence of the above, both requests contain an unallowable amendment, for the reasons already discussed in point 1 above in relation to the auxiliary request 1 ("within the loading area" issue) and

therefore are not allowable.

5. Admittance of auxiliary requests 8 to 15
- 5.1 The patent proprietor submitted eight additional auxiliary requests in response to the board's communication under Article 15(1) RPBA.
  - 5.1.1 The patent proprietor contends that these requests should be admitted because they respond to a change in the subject of the appeal proceedings, specifically, that with the board's preliminary opinion, it is allegedly the first time that a body of the European Patent Office has objected to auxiliary request 1 for contravening Article 123(2) EPC.
  - 5.1.2 The patent proprietor further argues that this was also the first time that a body of the European Patent Office has examined auxiliary requests 1-5 (submitted during opposition proceedings) and auxiliary requests 6-7 (submitted with the reply to the opponent's grounds of appeal).
  - 5.1.3 Additionally, the proprietor brings forward that the board's argumentation in the preliminary opinion concerning the omission of "adhesion members" in relation to the "transferring" step belonging to the "first activity" introduces novel reasoning deviating from the arguments advanced by the opponent.

According to the patent proprietor, the opponent's argument during opposition and appeal proceedings focused primarily on the literal absence of the terms "first activity" and "second activity" in the original disclosure, and that the combination of original claims

1 and 9 does not support that these activities are selected depending on the type of ceramic slabs.

The proprietor argues that the opponent never specifically objected that the "first activity" is not supported due to the "transferring" step or that this step was only disclosed in combination with adhesion members.

In other words, according to the patent proprietor, a specific objection, identifying an unallowable extension in the combination of the mention of the step "transferring the ceramic slab or the stack of ceramic slabs to a supporting element" with the omission of "adhesion members", was raised, for the first time under point 2.4 of the board's communication issued under Article 15(1) RPBA.

5.2 The patent proprietor's arguments for admitting the new auxiliary requests 8-15 are not persuasive for the following reasons.

5.2.1 The board notes that the opponent did raise objections of added subject-matter against all auxiliary requests 1 to 7, including auxiliary request 1, in its statement setting out the grounds of appeal, at the outset of appeal proceedings.

5.2.2 The opponent also explicitly identified the issue with respect to the missing "adhesion members" in combination with the "transferring" step in their statement setting out the grounds of appeal, in the following sentence on page 4 (the relevant wording is in bold, emphasis added by the board):

"The cited part of the description mentions that a series of steps may be performed by the packing station 100 if conveyor 180 brings inside workspace U10 a ceramic slab C or a stack of ceramic slabs V for example having a large size. Such series of steps includes, among others, the following features: by means of the **adhesion members** 140, the handling head 135 grips the ceramic slab C which, due to a subsequent movement of robot 105, **is transferred** within the loading area U30 where it is released on a corresponding supporting element 195 [see page 12, line 28 ff]. **Such features are not present in claim 1.**"

This objection of the opponent clearly identifies that the missing feature "adhesion members" was disclosed in combination with the other features of the "first activity" in the original application and in particular with the "transferring" step thereof.

It is on that basis that the opponent argued that the features of the "first activity" extends beyond the content of the originally filed application.

Therefore this aspect of the discussion was not introduced under point 2.4 of the board's communication pursuant to Article 15(1) RPBA for the first time.

On the contrary this issue was raised by the opponent at the outset of appeal proceedings and the proprietor had ample opportunity to address it by filing appropriate auxiliary requests in reply to the opponent's statement setting out the grounds of appeal, where a corresponding objection was clearly formulated.

In conclusion, the arguments presented by the patent proprietor do not establish a change in the subject of

the appeal proceedings that would justify the presence of exceptional circumstances and therefore the admission of these late filed requests.

Auxiliary requests 8-15 are therefore not admitted into appeal proceedings pursuant to Article 13(2) RPBA.

## **Order**

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

**The decision under appeal is set aside.**

**The patent is revoked.**

The Registrar:

The Chairwoman:



G. Nachtigall

A. Beckman

Decision electronically authenticated