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**Datasheet for the decision
of 25 September 2025**

Case Number: T 1639/23 - 3.2.03

Application Number: 17707115.6

Publication Number: 3408469

IPC: E04F19/06, E04F19/04

Language of the proceedings: EN

Title of invention:

SKIRTING BOARD AND AN IMPROVED METHOD FOR MANUFACTURING A
SKIRTING BOARD OR FINISHING PROFILED SECTION

Patent Proprietor:

Decruy nv

Opponent:

Depro Profiles SA

Headword:

Relevant legal provisions:

RPBA 2020 Art. 12(6), 12(4)

EPC Art. 54(2)

Keyword:

Late-filed evidence - admitted in first-instance proceedings (no) - circumstances of appeal case justify admittance (yes)
Amendment to case - exercise of discretion - reasons for submitting amendment in appeal proceedings (yes) - amendment admitted (yes) - evidence
Novelty - main request (no)

Decisions cited:

T 1776/18, T 2172/21, T 2662/22, T 0823/23

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 1639/23 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 25 September 2025

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 July 2023 concerning maintenance of the
European Patent No. 3408469 in amended form.**

Composition of the Board:

Chairman N. Obrovski
Members: R. Baltanás y Jorge
B. Goers

Summary of Facts and Submissions

- I. European patent No. 3 408 469 relates to "*a skirting board and an improved method for manufacturing a skirting board or finishing profiled section*".
- II. An opposition was filed against the patent based on Articles 100(c), 100(b) and 100(a) EPC in conjunction with Articles 54 and 56 EPC.
- III. This appeal by the opponent (appellant) is against the interlocutory decision of the opposition division, which found that the amended main request filed during oral proceedings met the requirements of the EPC.
- IV. In a communication pursuant to Article 15(1) RPBA, the Board indicated its preliminary opinion that D7 was to be admitted, that the subject-matter of claim 1 was not novel over D7, and that the patent would likely be revoked.
- V. The representative of the patent proprietor (respondent) informed the Board by letter dated 5 September 2025 that he - as well as the respondent - would not attend the oral proceedings scheduled for 24 September 2025.
- VI. The Board informed the parties by letter dated 9 September 2025 that the oral proceedings were cancelled and that the decision would be taken in writing.

VII. Requests

The appellant requested that the decision under appeal be set aside and the patent be revoked on the grounds of extension of subject-matter (Article 123(2) EPC), sufficiency of disclosure (Article 83 EPC), lack of novelty and lack of an inventive step (Articles 54 and 56 EPC).

The respondent requested that the appeal be dismissed.

VIII. Claim 1 as maintained (of the main and only claim request in appeal proceedings), including the numbering of its features as adopted by the Board, reads as follows (amendments with respect to granted claim 1 are marked in bold):

- 1 *Skirting board for a wall of a space,*
- 2 *comprising a body composed of at least a carrier material and a decorative top layer,*
- 3 *in which said body comprises a first longitudinal side which forms at least a part of the front side of the skirting board and is the side with the top layer,*
- 4 *a second longitudinal side*
- 5 *and a top part which forms at least a part of the top side of the skirting board,*
- 6 *whereby at the location of the transition (11) between the first longitudinal side and the top part, the second longitudinal side, at least at the location of the transition, comprises a recess,*
- 7 *whereby said recess forms a cavity which is at least partly filled with a filler having a different composition than the carrier material,*

- 8 *whereby the decorative top layer (2) is continuous at the location of the transition (11),*
- 9 ~~*characterized in that wherein the transition (11) is composed of at least the decorative top layer (2) and a residual layer of carrier material (1),*~~
- 10 *wherein the transition between the first longitudinal side and the top part has a curved configuration,*
- 11 ~~*and in that wherein said cavity is situated just under the residual layer of carrier material and extends up to the rear side of the skirting board.*~~

IX. Prior art

The following documents relevant for this decision were filed during the opposition proceedings on the last day of the period defined by Rule 116(1) EPC:

D7: JP 2012076233 A

D7': English machine translation of D7

The appellant filed the following document for the first time with its statement setting out the grounds of appeal:

D7'': English human translation of D7

X. The appellant's arguments relevant to this decision can be summarised as follows.

(a) Admittance of D7 and D7'

The opposition division admitted an amended main request which included features from the description in claim 1 and which had been submitted by the respondent-

patent proprietor in accordance with the deadline as stipulated in Rule 116 EPC. The submission of D7 and D7' on the same day as the amended main request had to be considered a reply of the appellant-opponent to this amended main request.

(b) Novelty, D7

Document D7 disclosed (as supported by its translation D7'') all features of claim 1.

Paragraph [0001] of D7'' disclosed a skirting board as one of the embodiments of "*the present invention*", the embodiment of Figures 1 and 2 of D7'' corresponding thus to a skirting board in the eyes of the skilled person.

Figure 2(c) of D7 showed a V-shaped groove (18) with a flat bottom (18a) in the same manner as the type of groove shown in Figures 20 to 22 of the contested patent. Consequently, after applying adhesive (24) and folding the groove (18) of D7 (see paragraphs [0050] and [0051]), an analogous "cavity" within the meaning of claim 1 had to be present (see also Figure 1(b) of D7). The non-zero thickness of adhesive (24) between the edges of the groove (18) as folded is shown by means of the hatched layer in Figure 1(b) of D7 (see also paragraph [0011]).

XI. The respondent's arguments relevant to this decision can be summarised as follows.

(a) Admittance of D7 and D7'

As considered by the opposition division, documents D7 and D7' were late filed and *prima facie* not relevant

for novelty since features 1 (skirting board), 7 (cavity at least partly filled with a filler having a different composition than the carrier material) and 11 (cavity situated just under the residual layer of carrier material and extending up to the rear side of the skirting board) were not disclosed in D7 and its translation D7'.

(b) Novelty, D7

The embodiments shown in the Figures of D7 did not disclose a skirting board within the meaning of feature 1 of claim 1 since they were partial representations which did not even define the ends of the represented elements.

Moreover, D7 did not disclose features 7 and 11 since it was disclosed that the intention was to "close the groove" (see paragraphs [0011] and [0051] of D7'). The thickness of the adhesive (24) had to be 0 mm since the adhesive layer was the only one for which the thickness was not specified in D7, the lines in the figures being merely indicative and not expressing any measure of thickness.

Reasons for the Decision

1. Admittance of documents D7 and D7' - Article 12(6) RPBA
- 1.1 Under Article 12(6), first sentence RPBA the Board shall *inter alia* not admit objections or evidence which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or

unless the circumstances of the appeal case justify their admittance.

- 1.2 The opposition division did not admit D7 and D7' (among other documents) and the corresponding objections based on them into the opposition proceedings since they were considered late filed and, *prima facie*, not relevant.
- 1.3 Claim 1 of the current main request is based on claim 1 of an amended main request filed on the final date referred to in Rule 116(1) EPC, namely on 9 March 2023, which was two months before the oral proceedings. Claim 1 of the amended main request submitted on 9 March 2023 included features taken from the description (see the underlined part of feature 11 in point VIII. above).
- 1.4 Documents D7 and D7' were submitted by the appellant also on the final date referred to in Rule 116(1) EPC.
- 1.5 Objections and evidence submitted by an opponent after the end of the opposition period under Article 99(1) EPC and claim requests submitted by a patent proprietor after the end of the period under Rule 79(1) EPC can generally be considered to not have been submitted in due time within the meaning of Article 114(2) EPC (see T 2172/21, Reasons 2, first paragraph; T 823/23, Reasons 7.18; and T 2662/22, Reasons 8.1, antepenultimate paragraph). Hence, the opposition division had discretion not to admit the aforementioned amended claim request or the aforementioned documents.
- 1.6 However, depending on the circumstances, an opposition division may have very little degree of freedom when exercising its discretion whether to admit a submission made at a certain point in time in response to a

development in the proceedings (see T 1776/18, Reasons 4.6.9).

1.7 In the case at hand, documents D7 and D7' were submitted by the appellant-opponent at the same time as the respondent-patent proprietor submitted two amended claim requests. These amended claim requests replaced all previously filed claim requests. During the oral proceedings before the opposition division, the patent proprietor filed, in two consecutive steps, two further amended claim requests as new main requests. The opposition division admitted all these amended claim requests into the opposition proceedings. When the fourth amended claim request was admitted by the opposition division, the appellant-opponent raised an objection against it based on documents D7 and D7', which the opponent had already filed on the final date referred to in Rule 116(1) EPC. The opposition division did not admit this objection for lack of *prima facie* relevance. While *prima facie* relevance is a correct criterion for the exercise of discretion, an opposition division must in such a situation also take account of previous procedural developments and ensure that the parties' opportunities to adapt their cases in the opposition proceedings are properly balanced. It appears questionable whether this was the case.

1.8 In any case, i.e. regardless of whether the opposition division's exercise of discretion suffered from an error, the Board considers that the circumstances of the appeal case justify the admittance of document D7. In particular, the Board considers document D7 *prima facie* highly relevant with regard to novelty (as to the substantive discussion of this matter see point 3. below). The Board thus admits document D7 under Article 12(6), first sentence RPBA. In view of the

Board's considerations on the admittance of D7'' (see point 2. below), it is not necessary to address the admittance of document D7'.

2. Admittance of D7'' - Article 12(4) RPBA

2.1 Document D7'' was submitted for the first time with the statement setting out the grounds of appeal and is therefore an amendment within the meaning of Article 12(4), first sentence RPBA.

2.2 Since D7'' is a human translation of D7, it is highly relevant for the understanding of the disclosure of D7 and *prima facie* also relevant for the outcome of the proceedings.

2.3 The respondent has not specifically contested the admittance of D7''. While it did contest the admittance of D7 and D7' into the appeal proceedings for lack of *prima facie* relevance (and arguably wants this argument to be understood as applying to the admittance of D7'' as well), the Board does not share this view, as explained in point 1. above.

2.4 The Board thus exercises its discretion under Article 12(4), second sentence RPBA and admits D7'' into the appeal proceedings.

3. Novelty, D7 - Article 54(2) EPC

3.1 Undisputed features

It is undisputed that the embodiment of Figures 1 and 2 of D7 discloses "a fixture member for building" comprising:

- a body composed of at least a carrier material (12) and a decorative top layer (16) (feature 2)
- in which said body comprises a first longitudinal side which forms at least a part of the front side of the fixture member for building and is the side with the top layer (see Figure 1)
- a second longitudinal side (see longitudinal side defined by carrier material (12) in Figure 1) (feature 4)
- and a top part which forms at least a part of the top side of the fixture member for building (see Figure 1(b))
- whereby at the location of the transition between the first longitudinal side and the top part, the second longitudinal side, at least at the location of the transition, comprises a recess (18) (feature 6)
- whereby the decorative top layer (16) is continuous at the location of the transition (feature 8)
- wherein the transition is composed of at least the decorative top layer (16) and a residual layer of carrier material (12) (see Figure 2(c)) (feature 9)
- and wherein the transition between the first longitudinal side and the top part has a curved configuration (this being inherent to the act of bending in this type of technique; see in this context D4', page 14, lines 8 to 11) (feature 10)

3.2 Feature 1 (skirting board for a wall of a space)

The respondent argued that the embodiments shown in the Figures of D7 did not disclose a skirting board since they were partial representations which did not even define the ends of the represented elements.

This is not persuasive.

The invention of D7 relates in its more general terms "*to a fixture member for building such as a door frame, a tread, or a **skirting board** used in a building such as a house, and a **method of manufacturing a fixture member set for building**" (see paragraph [0001] of D7''') (emphasis added).*

After this general statement, D7 discloses a number of embodiments for producing fixture members for buildings in which the decorative paper used as a surface member is not torn by bending (see paragraph [0009] of D7''') in order to address the problems of this technique (see paragraphs [0002], [0003] and [0008] of D7''').

In this context, the skilled person understands in a direct and unambiguous manner that the production techniques involving bending disclosed in the embodiments of D7 are intended for the production of, among other elements, skirting boards.

Figures 1 and 2 are **schematic** representations of a generic "fixture member for building", and the skilled person understands in light of the general description that they also relate to a production method for a skirting board. The fact that the ends of the represented elements are not defined and that

particular details typical of a skirting board are omitted has no bearing on this.

Therefore, feature 1 is disclosed in the embodiment of Figures 1 and 2 of D7, and, consequently, D7 anticipates features 3 and 5 as well since the skilled person understands that the "fixture member for building" is meant to include a "skirting board" as defined in these features (see preceding point 3.1 for the references).

- 3.3 Features 7 (the recess forms a cavity) and 11 (the cavity is situated just under the residual layer of carrier material and extends up to the rear side of the skirting board)

The respondent argued that D7 did not disclose features 7 and 11 since it was disclosed that the intention was to "close the groove" (see paragraphs [0011] and [0051] of D7'). The respondent also brought forward that the thickness of the adhesive (24) had to be 0 mm since the adhesive layer was the only one for which the thickness was not specified in D7, the lines in the figures being merely indicative and not expressing any measure of thickness.

This is not persuasive.

Paragraph [0011] of D7' discloses that "*the V-shaped groove 18 provided in the timber base member 12 is bent so as to be closed*". Paragraph [0051] of D7' basically repeats this by making reference to Figure 1(b). The skilled person reading this information and looking at Figure 1 understands "to be closed" merely as the fact that the two sides of the groove (18) are approached to each other by bending to reach a "closed position" with

respect to the initially "open" position (see Figure 1(a)) but not necessarily as causing a contact between these sides. Moreover, the skilled person understands that the adhesive disclosed in Figure 1 contributes to this "closing" of the groove when the piece is bent.

Concerning the thickness of the adhesive (24), the absence of a definition of this parameter in D7 does not in any way imply that this thickness is 0 mm. The fact that the thickness might have been defined for other layers has no bearing on this.

Figure 2 discloses grooves (18) with a flattened bottom (see D7'', page 6, line 38 to page 7, line 8), and Figure 1(b) discloses an assembled device in which the sides of the grooves are parallel to each other. The skilled person understands from these two features - together with the thickness of the adhesive (24) represented in the schematic figures - that the two sides of the groove are actually at a significant distance once assembled and that this distance is bridged by the adhesive (24), which even protrudes out from the grooves (18) after bending, as disclosed in Figure 1(b).

The skilled person looking at the disclosure of D7 thus understands that the groove (18) ("recess") forms a cavity which is filled with an adhesive (24) ("filler") having a different composition than the carrier material (12), and that this cavity is situated just under the residual layer of carrier material (12) (see Figure 2(c)) and extends up to the rear side of the skirting board to be produced according to the embodiment of Figures 1 and 2 (see Figure 1(b)), as defined in features 7 and 11.

3.4 Conclusion

In view of the above, the subject-matter of claim 1 is not novel with respect to D7. The question of whether the current main request should not have been, as argued by the appellant, admitted into the opposition proceedings, does therefore not have to be addressed.

4. Outcome of the proceedings

Since, taking into consideration the amendments made in the main request, the patent and the invention to which it relates do not meet the requirements of the EPC, and since no further request was submitted by the respondent, the European patent is to be revoked (Article 101(2) and (3)(b) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



C. Spira

N. Obrovski

Decision electronically authenticated