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Datasheet for the decision of 8 May 2026

Case Number: T 0020/25 - 3.3.05

Application Number: 17779018.5

Publication Number: 3441375

IPC: C03C27/12, B60J1/02, G02B27/01, B32B17/10

Language of the proceedings: EN

Title of invention:
LAMINATED GLASS

Patent Proprietor:
AGC INC.

Opponent:
Pilkington Group Limited

Headword:
Laminated glass/AGC

Relevant legal provisions:
EPC Art. 54
EPC R. 106
RPBA 2020 Art. 13(2)

Keyword:

Novelty - (no)
Reordered requests - taken into account (no)
Objection under Rule 106 EPC - dismissed

Decisions cited:

G 0001/24, R 0005/14, R 0004/22, T 2415/13, T 1117/16, T 1776/18, T 2920/18, T 0339/19, T 2295/19, T 2843/19, T 1220/21, T 1692/21, T 1800/21, T 0439/22, T 2482/22, T 2564/22, T 0183/23, T 0622/23, T 0152/24

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 0020/25 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 8 May 2026

Appellant: (Patent Proprietor)	AGC INC. 5-1, Marunouchi 1-chome, Chiyoda-ku, Tokyo 1008405 (JP)
Representative:	Müller-Boré & Partner Patentanwälte PartG mbB Friedenheimer Brücke 21 80639 München (DE)
Appellant: (Opponent)	Pilkington Group Limited Hall Lane Lathom Nr. Ormskirk Lancashire L40 5UF (GB)
Representative:	Howe, Richard Pilkington Group Limited Intellectual Property European Technical Centre Hall Lane Lathom Ormskirk, Lancashire L40 5UF (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted/ electronically transmitted on 5 November 2024 concerning maintenance of the European Patent No. 3441375 in amended form.**

Composition of the Board:

Chair	R. Winkelhofer
Members:	G. Glod
	R. Elsässer

Summary of Facts and Submissions

I. The appeals lodged by the patent proprietor and the opponent concern the opposition division's decision finding that the European patent No. 3 441 375 as amended on the basis of what was then auxiliary request 6 met the requirements of the EPC.

II. The following document is of relevance here:

D6: WO 2017/176452 A1

III. Claim 1 of the patent proprietor's main request reads as follows.

"*1. A laminated glass comprising:*
a first glass plate;
a second glass plate; and
an intermediate film positioned between the first glass plate and the second glass plate, and configured to be bonded to the first glass plate and to the second glass plate,
wherein the laminated glass further includes a plurality of display areas used for a head-up display, and an area outside the display areas that is not used for the head-up display,
wherein the plurality of display areas include a first display area and a second display area, on which virtual images having different image distances are displayed,
wherein at least one of the first display area and the second display area has a cross section that has a wedge shape, in which a thickness of an upper edge is greater than a thickness of a lower edge, when the laminated glass is installed in a vehicle,

wherein an average wedge angle of the first display area is different from an average wedge angle of the second display area,
wherein a difference between the average wedge angle of the first display area and the average wedge angle of the second display area is greater than 0.1 mrad,
wherein the first display area and the second display area are arranged with a predetermined distance between the first display area and the second display area in a vertical direction along the laminated glass, when the laminated glass is installed in the vehicle, and wherein the first display area, a transition area and the second display area are arranged in this order from a lower edge of the laminated glass, wherein the transition area is a part of the area outside the display area,
wherein the transition area is formed having a wedge shape in a cross-sectional view, in which a thickness changes from a lower edge toward an upper edge of the laminated glass, when the laminated glass is installed in the vehicle, and a wedge angle is δ_{B1}*, and*
wherein the predetermined distance is 20 mm or more."

Claim 1 of each of auxiliary requests 14 to 16 and 19 to 21 is worded as a use claim.

IV. The patent proprietor argued that the skilled person would not read Figure 15 of D6 as showing a first display area and a second display area. A single point could not be considered a display area. Claim 1 of the main request was thus novel over D6.

Reordering the requests was acceptable. In particular, auxiliary request 14 had already been submitted before the opposition division; it had to be considered by the board. Furthermore, the board also had to deal with the other requests submitted by the patent proprietor. Therefore, auxiliary requests 14 to 16 and 19 to 21 had to be dealt with in substance.

In not admitting these requests, the board had violated the patent proprietor's right to be heard and their property rights.

The objection under Rule 106 EPC reads as follows:

"*I raise an objection under Rule 106 EPC in conjunction with Article 112a(2)(c) EPC. More specifically, the proprietor's right to be heard pursuant to Article 113 EPC has been violated, and this amounts to a fundamental violation giving rise to grounds for filing a Petition for Review pursuant to Article 112a(2)(c) EPC.*
The Board of Appeal decided on the appeal without deciding on requests relevant to that decision, which amounts to a fundamental violation under Rule 104 EPC giving rise to grounds for filing a Petition for Review pursuant to Article 112a(2)(d) EPC.
In particular, after discussing the Main Request, Auxiliary Requests 0 to 13 then on file have been withdrawn by the proprietor. However, according to the decision of the Board of Appeal, the then lower-ranking requests, inter alia Auxiliary Requests 14, 15, 16 and 19 had not been admitted into the proceedings by the Board. According to my understanding, the reasoning by the Board of not admitting these requests was an 'amendment to the case'. However, these requests had already been filed with the grounds of appeal or at

least with the reply to the opponent's grounds of appeal. Noteworthy, Auxiliary Request 14 was admissibly raised in the first instance proceedings and maintained in the second instance. Thus, withdrawing of Auxiliary Requests 0 to 13 should not be regarded as an amendment to the case, in particular since the aforementioned remaining requests, which are use claims, should have streamlined the discussion and the amendments are considered to be straightforward and prima facie overcome all issues relating to the claim interpretation of the product claims, including novelty/inventive step objections.

The above does not only represent a procedural violation, but also a violation of the property rights of the proprietor constitutionally protected under the laws of all member states of the EPO. Contrary to the present case, the proprietor should have the opportunity to properly defend his property right, namely EP 3 441 375 B1 in amended form, i.e. also based on corresponding use-claims at least according to Auxiliary Requests 14, 15, 16 and 19.

In this regard, it is also noted that I requested remitting the present case to the first instance for further prosecution at least as long as the above-mentioned Auxiliary Requests 14, 15, 16 and 19 are concerned.

Not considering requests which have been duly filed – without the necessity to file them earlier – amounts to a violation of the right to be heard of the patent proprietor under Art. 113 EPC to have his case fully assessed by the technical board of appeal. Moreover, it amounts to deciding on the appeal without deciding on a request relevant to that decision amounting to a fundamental violation under Rule 104 EPC. Also, as mentioned above, there is a constitutional violation of the property rights of the proprietor."

V. The opponent's arguments are reflected in the Reasons for the Decision set out below.

VI. At the end of the oral proceedings on 8 May 2026, the requests were as follows (all other requests then on file had been withdrawn).

The patent proprietor requests that the decision under appeal be set aside and amended such that the patent be maintained as amended on the basis of the main request, submitted with the statement setting out the grounds of appeal on 4 March 2025, or on the basis of one of auxiliary requests 14 to 16 or 19 to 21, (re-)submitted with the reply to the opponent's appeal on 9 July 2025.

The opponent requests that the decision under appeal be set aside and amended such that the patent be revoked.

Reasons for the Decision

Main request

1. Interpretation of claim 1

The patent proprietor and the opponent have different understandings of claim 1.

Claim 1 is directed to a product, i.e. the **glass as such** (for example after production), not to the production process or the use of a head-up display. The claim does not address the driver, the vehicle, including a car, or the light source.

The only structural features of the claim are the first

glass plate, the second glass plate and the intermediate film. The display areas are not restricted in any particular way since the area is not defined as such. The size of the display areas is completely undefined. The same applies to the sequence of the areas (upper and lower), since the position of the glass is only fixed once it has been installed in the car. This, however, is not part of the claim. Nor is there any definition of the image – including the size – that is supposed to be displayed in the area.
The only further restriction in claim 1 is that the two areas chosen for the head-up display have to be distant from each other by 20 mm or more and have to have average wedge angles that differ by at least 0.1 mrad.

Consequently, claim 1 of the main request is to be understood as follows:

A laminated glass comprising: a first glass plate; a second glass plate; and an intermediate film positioned between the first glass plate and the second glass plate, and configured to be bonded to the first glass plate and to the second glass plate,
wherein the laminated glass is suitable for defining a plurality of display areas, which are suitable for a head-up display, and an area outside the display areas which is suitable for not being used for the head-up display, wherein two display areas can be defined, which in the vertical direction are distant from each other by 20 mm or more, whereby the cross section of these areas (undefined in size) has a wedge shape, and the average wedge angle of the first area is different from the average wedge angle of the second area by at least 0.1 mrad.

Contrary to the patent proprietor's assertion, claim 1 is not construed any differently in the light of the description, which, in view of G 1/24, has to be consulted when interpreting a claim, or in the light of T 439/22 of 11 December 2025. According to the latter, a person skilled in the art reading the claim in the context of the description and figures will try to take a definition found in the description and figures at face value (Reasons 6). However, in the case in hand, paragraphs [0033] and [0036] of the patent, cited by the patent proprietor, do not provide any definition of the size of the head-up display area. It is only indicated that the head-up display area is an area on which an image can be reflected (paragraph [0036]). Figure 2, cited in paragraph [0033], merely confirms that two areas have to be chosen such that the distance between the two is L, with claim 1 defining L as 20 mm or more.

The patent proprietor also argued that the board's interpretation was not in line with T 1220/21. However, that decision is not relevant for this case. The wording of the claim in that decision is different from the wording of the claim in the case in hand. In particular, said decision mainly deals with the expression "continuously changing wedge angle" (Reasons 3.2.5), while the case in hand concerns the definition of first and second display areas. In any case, this board would not be bound by the decision of the board in case T 1220/21 even if the claims were identical.

2. Article 54 EPC

It is undisputed that D6 (prior-art document under Article 54(3) EPC) discloses a laminated glass (windshield) comprising a first glass plate, a second

glass plate and an intermediate film (paragraph [0009]). It is also evident from Figure 15 that different regions are present that are suitable for providing a head-up display. In windshield W-2 depicted in that figure, a suitable display region is present 225 mm to 250 mm from the bottom, for example, and a different display region is present 349 mm to 375 mm from the bottom. The difference in wedge angle is > 0.1 mrad, and the distance between the two zones is more than 20 mm. In line with the above interpretation of claim 1, D6 discloses all the structural product features of the claim.

The patent proprietor's argument that several "selections" would be needed to arrive at the feature combination of claim 1 is not convincing; no such "selection" is needed. In the glass disclosed in D6, the different display areas are present, and the glass has the properties called for by claim 1 of the main request. In addition, the patent proprietor has not provided any reasons why the opposition division's conclusion that the wedge angle of the interlayer corresponds to that of the laminated glass (point 5.5.1.3 of the impugned decision) is incorrect.

The question is not whether the skilled person would select certain areas as head-up display areas but whether the windshield disclosed in Figure 15 of D6 has all the structural features called for by claim 1. As explained above, this is the case.

In this context, the proprietor argued that the different regions identified above were too small to be used as a head-up display since display areas usually measured about 20 to 20 cm. However, as mentioned above, the claim does not specify the size of the image

to be displayed. In principle, a dot or an arrow would be sufficient to indicate, for instance, a direction to the driver. Therefore, the regions identified above having a size of about 2.5 cm are suitable for a head-up display.

For these reasons, the requirements of Article 54 EPC are not met and the main request must fail.

Auxiliary requests 14 to 16 and 19 to 21

3. Article 13(2) RPBA – admission and consideration

3.1 The relevant sequence of events is as follows.

In reply to the notice of opposition, the patent proprietor filed a new main request and six auxiliary requests containing product claims only. In reply to the opposition division's preliminary opinion, the patent proprietor filed seventh to thirteenth auxiliary requests, likewise all containing product claims only. At the same time, a fourteenth auxiliary request containing use claims was filed.

During oral proceedings, the opposition division decided that the sixth auxiliary request met the requirements of the EPC; the request relating to the use did not have to be dealt with.

With the statement of grounds of appeal, the patent proprietor filed a new main request and auxiliary requests 1 to 13 "in the given order". Only auxiliary requests 12 and 13 related to use claims.

With the reply to the opponent's appeal, the patent proprietor filed auxiliary requests 6 to 21 "in the

given order", with auxiliary requests 14 to 16 and 19 to 21 relating to use claims. Auxiliary request 14 corresponds to auxiliary request 12 as filed with the proprietor's statement of grounds of appeal, and to auxiliary request 14 as filed at first instance.

The board issued a communication pursuant to Article 15(1) RPBA on 28 January 2026, in which they expressed the preliminary opinion that auxiliary request 11 appeared to be allowable. The lower-ranking requests were not dealt with at that stage.

Oral proceedings took place on 8 May 2026. At the beginning of the oral proceedings, the patent proprietor confirmed their requests (and their order). Following the discussion of auxiliary request 11, which was found allowable, and of the main request, which was found not to meet the requirements of Article 54 EPC, the appellant changed the order of their requests and asked that the requests ranking lower than auxiliary request 11, in particular auxiliary requests 14 to 16 and 19 to 21, be discussed. Ultimately, only these auxiliary requests were maintained besides the main request.

The patent proprietor justified the reordering of their requests by claiming that they were free to choose the order of the requests, which had been filed on time.

3.2 However, this is not permissible.

Reordering claim requests is an amendment to the patent proprietor's appeal case (see Case Law of the Boards of Appeal, 11th edition, 2025, V.A.4.2.3(i), V.A.4.5.4(q); T 1436/19, Reasons 1; T 2564/22, Reasons 2.1; T 622/23, Reasons 3.3). Under Article 13(2) RPBA, any such

amendment to a party's appeal case after the notification of a communication under Article 15(1) RPBA will not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons.

At least in a case like the present one where the auxiliary requests are not convergent, promoting a lower-ranking request is not merely a formal matter but shifts the subject of the proceedings.

The auxiliary requests in question, containing use claims, had always been ranked lower by the patent proprietor, at both the first and the second instance, meaning that they were only intended to be considered if higher-ranking auxiliary requests (i.e. those containing product claims) were not found allowable.

This condition did not materialise as higher-ranking auxiliary requests were found allowable (what was then auxiliary request 6 by the opposition division, and auxiliary request 11 in the board's preliminary opinion). As a consequence, there was no need or scope to deal with the lower-ranking auxiliary requests containing use claims during the opposition and appeal proceedings, notably not in the board's communication.

In particular, the patent proprietor did not provide any reasons why they did not file the requests relating to use claims as higher-ranking auxiliary requests before the opposition division so that the opposition division could have ruled on them.

It was only during the oral proceedings before the board – after auxiliary request 11 had been discussed and found allowable and the main request had been found

to lack novelty – that the patent proprietor decided to promote their lower-ranking auxiliary requests containing the use claims and to withdraw the higher-ranking auxiliary requests relating to product claims, including auxiliary request 11.

In doing so, the patent proprietor, by contrast with their previous approach in the proceedings, effectively intended to remove the inherent condition underpinning the lower-ranking requests, namely that they should be considered only if no higher-ranking request was allowable.

Considering those auxiliary requests in substance now would mean the board having to deal, for the first time, with matters not dealt with either by the opposition division or in their own preliminary opinion. It would, in particular, require discussions which did not take place in the opposition proceedings and are thus not reflected in the impugned decision, with such discussions having to take place either before the board or before the opposition division by way of a remittal of the case.

This immediate procedural consequence is confirmed not least by the patent proprietor themselves with their request for the case to be remitted to the opposition division, which the patent proprietor made alongside the reordering of their requests in the event that such reordering be permissible.

Article 12(6), second sentence, RPBA, which applies throughout the appeal proceedings, expresses and codifies the principle that each party should submit all facts, evidence, arguments and requests that appear relevant as early as possible so as to ensure fair,

speedy and efficient proceedings. In particular, a party to the appeal proceedings is not at liberty to bring about the shifting of their case to the appeal proceedings as they please, and so compel the board either to give a first ruling on the critical issues or to remit the case to the opposition division (cf. also Article 13(3) RPBA 2007). Conceding such freedom to a party would run counter to orderly and efficient opposition-appeal proceedings (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, V.A.4.2.2(a); see e.g. T 183/23, Reasons 32).

In effect, it would enable a kind of "forum shopping" which would jeopardise the proper distribution of functions between the departments of first instance and the boards of appeal and would be unacceptable for procedural economy generally (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, V.A.4.3.1).

The patent proprietor's conduct also runs counter to the parties' procedural obligation to conduct appeal proceedings diligently and expeditiously, which ensures fairness to the other parties, and to bring the proceedings to an end within a reasonable time (T 2843/19, Reasons 3.3; T 1692/21, Reasons 53; T 1776/18, Reasons 4.5.7; Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, V.A.4.1.2).

This obligation also includes the duty to determine the order of auxiliary requests clearly and consistently, in general by means of a convergent step-by-step introduction of ever more restricted features, as a prerequisite for those requests being dealt with in a procedurally efficient and fair way (cf. communication of 23 December 2024 in T 22/24, point 17; cf. also Case Law of the Boards of Appeal of the EPO, 11th edition,

2025, V.A.4.3.6(e) and (f)).

The RPBA are based on the principles of procedural economy versus fair proceedings, in order to guarantee that both are carefully balanced in each individual case (T 152/24, Reasons 1.4, T 1800/21, Reasons 3.4.2 et seq., T 2295/19, Reasons 3.4.6, T 2920/18, Reasons 3.14; T 1117/16).

Effectively withholding requests from being dealt with at an earlier stage of the proceedings – as the patent proprietor has done here – and "reserving" them for a later stage of the appeal proceedings runs counter not only to these principles but also to the primary object of the appeal proceedings to review the decision under appeal (Article 12(2) RPBA) and, ultimately, to the very object and purpose of the (subsequent) communication pursuant to Article 15(1) RPBA ("*… in order to help concentration on essentials during the oral proceedings, the Board shall issue a communication drawing attention to matters that seem to be of particular significance for the decision to be taken. The Board may also provide a preliminary opinion* …"), which requires any such matters to be put forward beforehand (e.g. see T 1692/21, Reasons 52 et seq.).

It follows from the above that it is incumbent on a party to submit their requests in the proceedings in good time, in order for them to be taken into account already in the board's communication (cf. again T 1692/21, Reasons 53; cf. also T 2843/19, Reasons 3.3). This includes, in particular, carefully reflecting on the order of the auxiliary requests on file so that requests the patent proprietor deems preferred are dealt with as a matter of priority, in particular prior to requests they deem less preferred.

Renumbering auxiliary requests at a (very) late stage, and thus bringing matters deemed preferred to the table for the first time at this late stage, is at odds with the patent proprietor's procedural duties and obligations and is unfair to other parties, who cannot be expected to deal with such requests at the oral proceedings (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, V.A.4.3.6(f), T 2415/13, Reasons 1.3).

Article 13(2) RPBA also sanctions the obligation to contribute to the swift conduct of the appeal proceedings, and thus the obligation to submit claims deemed preferred in high-ranking auxiliary requests, either by putting them in the "correct" order from the outset or by reordering the requests on file, for example as a consequence of a change in priorities on the patent proprietor's part, in good time before the communication (cf. again T 1692/21, Reasons 53). This has not happened here.

This obligation all the more necessitates an immediate reaction to a communication under Article 15(1) RPBA which finds a higher-ranking request allowable and which consequently does not deal with lower-ranking requests. If these requests now need to be promoted (i.e. given higher priority) due to a change in priorities on the patent proprietor's part or for whatever reason, in order to have them addressed in the remainder of the appeal proceedings, particularly at oral proceedings, they have to be reordered and ranked higher as early as possible (cf. Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, V.A.4.3.4(g)(iv)).

It is good board practice in the communication under Article 15(1) RPBA not to deal with requests which are not relevant for the decision to be taken at that moment in time, in particular when they have only been filed in the event that no higher-ranking requests are found allowable.

While the nature of a preliminary opinion expressed in the communication under Article 15(1) RPBA means that it is always a possibility that the preliminary opinion changes during the oral proceedings, with lower-ranking requests then becoming pertinent and having to be addressed in one way or another, a patent proprietor cannot merely wait until the oral proceedings to reorder and/or withdraw a higher-ranking auxiliary request that is found allowable.

Filing a request first as auxiliary request X and then later as auxiliary request Y results in a different procedural situation, even if the content is the same in both cases. Different criteria concerning the admission may apply (procedural economy, fairness, divergence, etc.). The patent proprietor's view that the order of their requests can be changed at will, at any time, is not in line with the principles outlined above.

There are no exceptional circumstances that warrant taking auxiliary requests 14 to 16 and 19 to 21 into account (Article 13(2) RPBA), either in terms of procedural economy or in terms of fair proceedings towards the opponent (cf. T 339/19, catchword). Consequently, these auxiliary requests are not part of the appeal proceedings.

4. Rule 106 EPC

The patent proprietor further argued, *inter alia*, that their right to be heard had been violated (Article 112a(2)(c) EPC), that the board had not decided on a request relevant to the decision (Rule 104(b) EPC) and that there had been a "constitutional violation" of their property rights.

This is not convincing.

4.1 It is self-evident that the right to be heard does not mean that the board has to agree with a party's position; it merely means that that position has to be considered. If the board's response or take does not satisfy a party, this is not a procedural violation; it simply means that the board took a different view of the facts and thus the substance of the case (R 5/14, Reasons 3).

There is no doubt that it was discussed at some length whether the patent proprietor's requests relating to the use should be taken into account. In addition, it is evident from the above that the board has considered the patent proprietor's arguments and reasoned why it does not agree. No violation of their right to be heard is apparent.

4.2 Furthermore, the board took a decision on all the requests at the end of the oral proceedings, namely to refuse the main request for lack of novelty and not to take auxiliary requests 14 to 16 and 19 to 21 into consideration, for the reasons set out above. Consequently, a decision was taken on all requests relevant for the final outcome.

4.3 The patent proprietor also had a fair opportunity to defend their property rights at stake. Notably, the board even found one of the then pending requests allowable.

In addition to the reasoning set out above, it is to be noted that defending the property rights enshrined in a patent does not mean that the patent proprietor has the right to have requests considered at any point in time. Otherwise, the Rules of Procedure of the Boards of Appeal (RPBA), which try to balance the parties' interests and thus to set out a fair procedure between them in accordance with Article 6 ECHR (see R 4/22, Reasons 2.10), would be meaningless.

Therefore, the patent proprietor's opinion to the contrary, i.e. that concerns of validity had to trump any other considerations, e.g. those of procedural economy and transparency or the nature of appeal proceedings as a judicial review, cannot be shared (see T 2482/22, Reasons 3.2).

As a consequence, the objection under Rule 106 EPC has to be dismissed.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chair:

C. Vodz R. Winkelhofer

Decision electronically authenticated