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**Datasheet for the decision
of 13 May 2026**

Case Number: T 0157/25 - 3.2.01

Application Number: 11000036.1

Publication Number: 2343474

IPC: F21S8/00, F21S8/08

Language of the proceedings: EN

Title of invention:

Lighting system and assembling method of the same

Patent Proprietor:

Khatod Optoelectronic SRL

Opponent:

Schöpf, Patrick

Headword:

Relevant legal provisions:

RPBA 2020 Art. 12(6)

EPC R. 80, 139

Keyword:

Late-filed request - should have been submitted in first-instance proceedings (yes)

Amendment occasioned by ground for opposition - amendments allowable (no)

Correction of error - immediately evident that nothing else could have been intended (no)

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 0157/25 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 13 May 2026

Appellant: Khatod Optoelectronic SRL
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted/electronically
transmitted on 27 November 2024 revoking
European patent No. 2343474 pursuant to Article
101(3)(b) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: S. Mangin
M. Millet

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (patent proprietor) against the decision of the opposition division to revoke the patent in suit (hereinafter "the patent").

- II. The opposition division held during oral proceedings in the absence of the parties that the amendment to claim 3 was not occasioned by a ground for opposition under Article 100 EPC. Therefore, the main request did not fulfil the requirements of Rule 80 EPC.

- III. Oral proceedings were held before the Board on 13 May 2026 in the absence of the parties as announced by the appellant and respondent with letter dated 30 April 2026, received on 4 May 2026 and letter received on 6 May 2026 respectively.

- IV. The appellant (patent proprietor) requested with the statement of grounds of appeal that the appealed decision be set aside and that a patent be granted on the basis of the main request filed with the statement of grounds of appeal.
In his letter dated 10 March 2026 received on 11 March 2026, the appellant additionally requested that in the alternative the patent be maintained on the basis of the main request filed in opposition proceedings.

The respondent (opponent) requested that the appeal be dismissed and the patent be revoked.

- V. Dependent claim 3 of the new main request filed with the statement of grounds of appeal reads as follows:

"Optic group according to claim 1, characterized by comprising at least a planar plate (20) preferably polymeric in which is integrated in just one piece with said planar housing matrix (50) of said plurality of optics (30)".

- VI. Dependent claim 3 of the main request filed in opposition proceedings corresponds to claim 3 of the new main request with the addition of the term "supporting". Claim 3 reads as follows:

"Optic group according to claim 1, characterized by comprising at least a planar supporting plate (20) preferably polymeric in which is integrated in just one piece with said planar housing matrix (50) of said plurality of optics (30)".

- VII. The following documents are referred to in the present decision:

D1: US 2009/0310356 A1

D2: WO 2009/065389 A1

Reasons for the Decision

1. Admissibility of the new main request - Article 12(6) RPBA

The new main request is not admitted into the appeal proceedings.

- 1.1 The respondent (opponent) requested that the new main request not be admitted as it is:
- not substantiated,
 - against the need of procedural economy,
 - diverging from the subject-matter previously claimed,
- and

- late filed.

- 1.2 The appellant (patent proprietor) did not provide any arguments with the statement of grounds of appeal why the new main request shall be admitted in the appeal proceedings.

With letter dated 10 March 2026, received on 11 March 2026, the appellant submitted arguments about why the new main request should be admitted in the appeal procedure.

The appellant argued in particular that the new main request was not "late filed" (Article 12(6) RPBA).

The opposition division's communication of 15 October 2024 only concerned novelty and inventive step, not Rule 80 EPC.

The opposition division had expressed a preliminary opinion favourable to the main request (which corresponded to the granted claims except for the dependency correction of claim 13).

Only on 15 October 2024 did it communicate the possibility of reconsidering its preliminary opinion, but only regarding novelty and inventive step ("*The Opposition Division maintain the OP as it may reconsider its preliminary opinion concerning novelty and inventive step*", page 1 of the communication of the opposition division dated 15 October 2024).

This reconsideration did not occur in the final decision. In the opposition decision (page 2, point 9), the opposition division incorrectly reported something different from what was written on 15 October 2024, which concerned only novelty and inventive step.

The appellant had already informed the Opposition Division that it would not attend the oral proceedings, and requested a decision with documents on file preventing the proprietor from filing documents and arguments.

It was not reasonably foreseeable that the Opposition Division would revoke the patent, let alone solely for Rule 80 EPC rather than for novelty and inventive step.

The new main request was filed with the statement of grounds of appeal, i.e., at the first available opportunity, and was a direct response to the change of opinion by the opposition division during oral proceedings. It was therefore not late filed. According to Case law, a new main request that removed the ground for revocation was admissible even if filed only on appeal.

According to case law, since this new request was filed in direct response to a change in the opposition division's preliminary opinion, the new main request arguments and the appeal arguments under Rule 139 EPC were filed in due time and concerned a simple, non-complex matter. Therefore, the Board had no discretion not to admit them, as this was inseparably linked to the principle of equal treatment of the parties, the right to be heard, and the adversarial principle.

- 1.3 The Board is not convinced by the arguments of the appellant. The Board draws the attention of the parties to Article 12(6) RPBA, second sentence, which states that:

"The Board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading

to the decision under appeal, unless the circumstances of the appeal case justify their admittance".

In opposition proceedings, with letter dated 6 September 2024 (see page 1 under "Amended claims set") the opponent raised, *inter alia*, the objection that the amendment made to claim 3 of the main request on file was contrary to Rule 80 EPC ("*the addition of the term "supporting" in claim 3 as granted, must be occasioned by the grounds for opposition (cf. GL H-II, 3.1). Since this is not the case here, the Main Request shall be rejected as a consequence.*"). It is noted here that the reference to the Guidelines H-II 3.1 is a specific reference to the requirements of Rule 80 EPC.)

Further in opposition proceedings, the patent proprietor was informed by the Opposition Division with communication dated 15 October 2024 that the oral proceedings would be maintained and that the previously communicated preliminary opinion on novelty and inventive step favourable to the patent proprietor might be reconsidered.

The opponent's letter dated 6 September 2024 was notified to the patent proprietor with communication dated 11 September 2024.

With letter dated 25 October 2024 the patent proprietor informed the opposition division that they would not attend the oral proceedings. The patent proprietor did not comment on the submissions made by the opponent with letter dated 11 September 2024.

Thus, the patent proprietor made a deliberate choice to not attend the oral proceedings even knowing that the patent might be revoked for lack of novelty or

inventive step and even being aware of the opponent's objection under Rule 80 EPC.

By doing so the patent proprietor deprived themselves, of its own volition, of the last opportunity to react to the opponent's objection under Rule 80 EPC in opposition proceedings.

Under these circumstances the Board takes the view that the new main request should have been submitted in opposition proceedings, where there was the occasion (to react to the Rule 80 EPC objection), and also the opportunity to do so (at the latest at the oral proceedings). Accordingly, the new main request is not admitted pursuant to Article 12(6) RPBA.

2. Main request in opposition proceedings

Irrespective of the question of admissibility under 13(2) RPBA, as indicated by the Opposition Division, dependent claim 3 does not comply with Rule 80 EPC and cannot be corrected under Rule 139 EPC.

2.1 According to the appellant (patent proprietor) claim 3 was compliant with Rule 80 and 139 EPC.

2.1.1 Claim 3 of the main request in opposition was compliant with Rule 80 EPC as it had been attacked by the opponent.

Novelty and inventive step attacks were raised against all dependent claims, including claim 3, in the grounds of opposition.

Furthermore, in their letter of 6 September 2024, the opponent argued on page 1 that the amendment made to claim 3 was not occasioned by the grounds of

opposition, although on the same page the opponent stated:

"ARTICLE 100(c) EPC - Extension of subject-matter According to §13.1 of the communication, claims 3, 13, and 16 of the Main Request allegedly fulfill the requirements of Art. 123(2) EPC. Although in disagreement with the above, the Opponent has no further observation to make related to this ground".

"Further observation" implied that the opponent had indeed raised objections to claim 3 since it attacked the same features of claim 16 under Article 123(2) EPC in the grounds of opposition, this was why the opposition division evaluated claim 3 under Article 123(2) EPC in its preliminary opinion of 16 April 2024, point 13.1.

Claim 3 was therefore subject to adversarial debate under Article 123(2) EPC, and the proprietor had the right to correct an obvious error (Rule 139 EPC) to avoid and prevent objections under Article 123(2) EPC, since the term "supporting" was missing, even though the Opposition Division had considered that term implicitly included in claim 3 in its preliminary opinion (point 13.1).

2.1.2 As an alternative, the appellant requested a correction of an obvious error under Rule 139 EPC.

In his view the error was obvious as the description used 15 times: "planar supporting plate 20" or "supporting planar plate 20" (see page 5, lines 7-8, 13-14, 16-17, 20 and 25; page 6, lines 5-6; page 10, line 21; page 16, line 22; page 17, lines 16, 17 and 20; page 18, lines 21-22; page 19, lines 14 and 18).

In the description, the element was introduced under the antecedent rule as "a planar supporting plate 20" (page 5, lines 7-8), therefore always together with the term "supporting". Never was "planar plate" used without "supporting".

Figures 2 and 3 clearly showed a supporting plate. Claims 14 and 16 also used the expression "supporting plate 20". The skilled person was able to recognise this inconsistency between the feature "planar plate 20" in claim 3, without the word "supporting", and the entire disclosure, including the description (15 occurrences) and the two further claims 14 and 16, which always use the word "supporting" together with "planar plate 20".

The omission of the term "supporting" in claim 3 was unintentional, because it was not consistent with the entire disclosure of the patent.

The skilled person, based on the description, would not have directly and unambiguously derived "planar plate 20" as present in claim 3, because they would have understood it together with "supporting".

- 2.1.3 The appellant (patent proprietor) also argued that the correction was obvious as:
- the description never introduced "planar plate 20" without "supporting";
 - the only coherent formulation was a "planar supporting plate 20", which appeared 15 times explicitly described throughout the entire description of the granted patent always in combination with the term "supporting", and all the claims except claim 3 found explicit support in the description.

2.1.4 The appellant further argued that even if considered a limitation, the term "supporting" introduced no divergence but converged with the disclosure. Rather, it constituted a natural technical and semantic convergence with the entire disclosure and with the features of claim 3 in combination with claim 1.

"Supporting" was a reinforcing term, not a new technical feature. It merely clarified a function already implicit in the meaning of "planar plate (20)".

2.1.5 The appellant also submitted that the description used "planar supporting plate 20" fifteen times, and never "planar plate 20". Figures 2 and 3 confirmed the same terminology; therefore, the amendment fully complied with the description and did not violate Article 123(2) EPC, and it was admissible under Rule 80 EPC or under Rule 139 EPC, since it was an obvious omission of a term that appeared fifteen times throughout the granted patent description.

2.1.6 The appellant argued that there was convergence with the technical meaning of "plate". According to the Merriam-Webster dictionary, the definition of the term "plate" was the following:

"a smooth flat thin piece of material" and "forged, rolled, or cast metal in sheets usually thicker than 1/4 inch (6 millimeters)".

From this it followed that a "plate" was:

- rigid,
- with a minimum thickness of approximately 6 mm,
- therefore, capable of maintaining planarity,
- naturally suitable for supporting the optics, since it was integrated with the planar matrix of housings 50 of the optics 30 themselves, which in turn were made in

a single piece with the planar matrix of housings 50, given that claim 3 depended on claim 1.

2.1.7 There was also a functional convergence with the claimed structure. Claim 3 defined a plate:

- planar,
- integral with the planar matrix of housings 50 and optics 30,
- preferably polymeric.

These features necessarily implied both the supporting function and rigidity, because the optics in the figures were shown mounted on top of the planar plate 20. Moreover, the optics according to claim 3 were made in a single piece with the planar plate 20, which was preferably made of a polymer that was optical and rigid; if the optics were not rigid, the illumination and the light pattern would be altered (page 5, lines 8-25; page 13, lines 10-14; page 19, lines 20-24; and claim 17).

2.2 The Board is not convinced by the appellant's (patent proprietor's) arguments.

2.2.1 Rule 80 EPC reads as follows:

"Without prejudice to Rule 138, the description, claims and drawings may be amended, provided that the amendments are occasioned by a ground for opposition under Article 100, even if that ground has not been invoked by the opponent".

(a) The introduction of the term "supporting" in dependent claim 3 is not occasioned by a ground for opposition, as the term has been introduced for consistency purposes.

In his letter of 6 June 2023 under conclusion on page 24, the proprietor states:

"We have replied to arguments on Extension of subject-matter and to arguments on insufficiency of disclosure and we file an amended set of claims with correction of dependence on claim 13 and with a correction in dependent claim 3 adding word "supporting" to the feature "planar plate (20)" to uniform the wording feature according to other dependent claims and according to the description."

- (b) Under "ARTICLE 100(c) EPC - Extension of subject-matter" on page 1 of the opponent's letter from 6 September 2024, it is stated that:

"According to §13.1 of the communication, claims 3, 13, and 16 of the Main Request allegedly fulfill the requirements of Art.123(2) EPC.

Although in disagreement with the above, the Opponent has no further observation to make related to this ground".

This statement concerns claim 3 with the addition of the term "supporting" and not claim 3 as granted. Therefore, the argument of the appellant submitting that the amendment to claim 3 was occasioned by a ground for opposition under Article 100(c) EPC cannot be followed. Furthermore, the objections of added subject-matter regarding claims 13 and 16 are not related to the expressions "planar plate" or "planar supporting plate".

- (c) In its notice of opposition, the opponent indicated under "Claim 3 of EP'474" on page 3 that:

"The additional features of claim 3 are already known:

- from E1, by the positioning sheet 50 with the plurality of optics 10 affixed to it;

- from E2, by the support carrier 1 which can be integrated with the lens elements 42, 43 using injection molding.

Based on the considerations above, claim 3 lacks novelty over E1, and inventive step over E2".

However, the addition of the term "supporting" in claim 3 cannot be considered as occasioned by a ground for opposition under Article 100(a) EPC as argued by the appellant as the term is introduced in a dependent claim and cannot restore novelty or inventive step of independent claim 1.

2.2.2 Rule 139 EPC reads as follows:

"Linguistic errors, errors of transcription and mistakes in any document filed with the European Patent Office may be corrected on request. However, if the request for such correction concerns the description, claims or drawings, the correction must be obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction".

(a) The Board judges that claim 3 as granted did not contain any obvious error nor was the correction obvious.

The Board notes that the terms of the claims define the scope of protection and do not require them to contain all the features of the description. So, while the description may refer to a "planar supporting plate", the proprietor may have wished to only refer to "planar plate" in the claims. Claim 3 makes technical sense such that the skilled person would not see any obvious error. For the same reason, the correction is not obvious.

Although the term "supporting" finds a basis in the description, it is not obvious that it should be introduced into claim 3.

(b) The Board does not contest the fact that the term "supporting" may have been unintentionally omitted. However, there is no way for the skilled person to recognise the unintentional omission of the term "supporting" in claim 3.

(c) Moreover, although the addition of the term "supporting" in claim 3 may, as argued by the appellant, not introduce any divergence but rather align the claim with the disclosure and comply with the requirements of Article 123(2) EPC, these are not the relevant criteria for compliance with Rules 80 or 139 EPC.

3. Finally, the Board notes that neither the new main request filed on appeal nor the main request filed during the opposition proceedings would be allowable in light of the further objections raised by the respondent in its reply to the statement of grounds of appeal, in particular the objections relating to novelty and inventive step.

The appellant did not reply to those objections, in particular did not explain why they were incorrect and why the claims were novel and inventive over D1 and D2. In the absence of any reasoning from the appellant, the Board sees no basis for rejecting the respondent's objections.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



M. Schalow

G. Pricolo

Decision electronically authenticated