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**Datasheet for the decision  
of 27 January 2026**

**Case Number:** T 0173/25 - 3.2.07

**Application Number:** 14817166.3

**Publication Number:** 3013525

**IPC:** B24D3/04, B24D3/34

**Language of the proceedings:** EN

**Title of invention:**

ABRASIVE ARTICLE INCLUDING SHAPED ABRASIVE PARTICLES

**Patent Proprietor:**

Saint-Gobain Ceramics & Plastics, Inc.

**Opponent:**

VSM Vereinigte Schmirgel- und  
Maschinen-Fabriken AG

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2), 83, 54(3), 56  
RPBA 2020 Art. 13(1), 13(2)

**Keyword:**

Main request - Amendments - extension beyond the content of the application as filed (yes) - added subject-matter (yes)  
Amendment to appeal case - amendment gives rise to new objections (no) - amendment overcomes issues raised (yes) - exercise of discretion  
Amendment after notification of Art. 15(1) RPBA communication (yes)  
Amendment after notification of Art. 15(1) RPBA communication - exceptional circumstances (yes) - cogent reasons (yes) - taken into account (yes)  
Added subject-matter (no)  
Sufficiency of disclosure - (yes)  
Novelty - (yes)  
Inventive step - (yes)

**Decisions cited:**

T 0182/89, T 0019/90

**Catchword:**



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

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Case Number: T 0173/25 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 27 January 2026**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
29 November 2024 concerning maintenance of the  
European Patent No. 3013525 in amended form.**

**Composition of the Board:**

**Chairman** G. Patton  
**Members:** A. Cano Palmero  
S. Fernández de Córdoba

## **Summary of Facts and Submissions**

I. The patent proprietor and the opponent lodged appeals within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent No. 3 013 525 in amended form on the basis of the then auxiliary request 2.

Since each party to the proceedings is both appellant and respondent, they are referred to below as the patent proprietor and the opponent, for the sake of clarity.

II. An opposition was filed against the patent in its entirety and based on the grounds for opposition pursuant to Articles 100(a), (b) and (c) EPC (novelty, inventive step, sufficiency of disclosure and added subject-matter).

III. In preparation for oral proceedings, scheduled at the parties' requests, the board communicated its preliminary assessment of the case to the parties by means of a communication pursuant to Article 15(1) RPBA dated 23 September 2025. The parties responded to the board's communication in the substance, the patent proprietor with letter dated 5 November 2025 and the opponent with letter of 21 January 2026. With its letter the patent proprietor submitted new auxiliary requests and filed an affidavit from Mr Vujcic, dated 30 October 2025.

IV. Oral proceedings before the board took place on 27 January 2026. During the oral proceedings, the respondent submitted *inter alia* the text of the claims according to auxiliary request 2\_modified and an

adapted description paragraph according to that request. At the conclusion of the oral proceedings the decision was announced. Further details of the proceedings can be found in the minutes thereof.

V. The final requests of the parties are as follows:

for the patent proprietor

that the decision under appeal be set aside, and that the patent be maintained according to the set of claims filed as main request with the patent proprietor's statement setting out the grounds of appeal,

or, in the alternative,

that the patent be maintained in amended form according to the set of claims filed as auxiliary request 2\_modified during the oral proceedings before the board;

for the opponent

that the decision under appeal be set aside and that the patent be revoked.

VI. The lines of arguments of the parties are dealt with in detail in the reasons for the decision.

VII. Independent claim 1 of the main request with the feature labelling used by the parties, reads as follows:

"1 A coated abrasive article (500)

- 1.1 comprising a plurality of shaped abrasive particles (300, 505) overlying a backing (501),  
characterized in that
  - 1.1.1 each of the shaped abrasive particles (300, 505) of the plurality of shaped abrasive particles (300, 505) includes a body (301)
    - 1.1.1.1 comprising at least 90 wt% alpha alumina
    - 1.1.1.2 having an average crystallite size within a range including at least 0.01 microns and not greater than 1 micron,
- 1.2 the coated abrasive article having a plain-carbon steel lifespan grinding efficiency of not greater than  $8.08 \text{ J/mm}^3$  ( $3.0 \text{ hp min/in}^3$ ) per 236 g/mm (6000 g/in) of initial material removed."

VIII. Independent claim 1 of auxiliary request 2\_modified reads as follows:

"A coated abrasive article (500) comprising a plurality of shaped abrasive particles (300, 505) overlying a backing (501), characterized in that each of the shaped abrasive particles (300, 505) of the plurality of shaped abrasive particles (300, 505) includes a body (301) comprising at least 90 wt% alpha alumina formed by sintering having an average crystallite size within a range including at least 0.01 microns and not greater than 1 micron, wherein a majority of the shaped abrasive particles (300, 505) of the plurality of shaped abrasive particles are coupled to the backing (501) in a side orientation,

wherein the body (301) comprises a percent flashing of between 1 % and 40%,  
the coated abrasive article having a plain-carbon steel lifespan grinding efficiency of not greater than 8.08 J/mm<sup>3</sup> (3.0 hp min/in<sup>3</sup>) per 236 g/mm (6000 g/in) of initial material removed."

### **Reasons for the Decision**

1. *Main request - Added subject-matter, Article 123(2) EPC*
- 1.1 The opposition division found in point 2.2 of the reasons of the decision under appeal that feature 1.1.1.1 "*comprising at least 90% wt% alpha alumina*" was not inextricably linked to the other features relating to the sintering process of the embodiment of page 14, lines 1 to 12.
- 1.2 The opponent contested this finding by arguing that the composition of at least 90 wt% alpha alumina introduced in claim 1 was originally disclosed only in combination with "*a sintering process with specific features*". For the opponent, claim 1 "*defined without these features being included*" led to an unallowable intermediate generalisation.
- 1.3 The patent proprietor disagreed and indicated that this added feature was disclosed in one separate sentence and stood alone. No other technical features directly related to the abrasive particles were disclosed as being mandatory with this feature. Therefore, the general isolation of technical feature 1.1.1.1 from this embodiment did not result in an unallowable intermediate generalisation.

1.4 The board disagrees. Contrary to the arguments of the patent proprietor, the board is convinced that feature 1.1.1.1 on original page 14, lines 9 to 10 (reference is made in the present decision to the application as published WO 2014/210532 A1) is presented as one particular "instance" of the embodiment of page 14, lines 1 to 12 where the skilled reader unambiguously understands that when forming alpha alumina for the shaped abrasive particles comprising at least about 90 wt% alpha alumina as claimed, this alpha alumina is formed by a sintering process. Therefore, it cannot be agreed with the patent proprietor that the feature of the particle composition is not inextricably linked to a sintering process.

1.5 The patent proprietor argued that, in any case, feature 1.1.1.1 was to be read in combination with the feature that the shaped abrasive particles had an average crystallite size within a range including at least 0.01 microns and not greater than 1 micron (feature 1.1.1.2). The only technology which enabled producing alpha alumina shaped abrasive particles with that average crystallite size was the "chemical ceramic" or "sol-gel" technology, as confirmed by the affidavit of Mr Vujcic (see in particular point 9 thereof). Since this technology essentially included a sintering step the feature "formed by sintering" was to be regarded as an inherent feature that did not need to be added to the claim in order to meet the requirements of Article 123(2) EPC.

In this respect the patent proprietor also argued that the sintering referred to on page 14, lines 1 to 12 of the application as originally filed was different from the so-called sintering process mentioned on page 1, line 14 and lines 22 to 30 of the application as

originally filed. The sintering on page 14 was a step of the sol-gel process which was the process according to the invention and described in the application as originally filed from page 3, line 31 to page 14, line 9 and also mentioned in the claims (see claim 25). The sintering process mentioned on page 1 was unrelated to the sintering step of page 14 such that mentioning "sintering" in claim 1 would only lead to confusion.

Furthermore, the description as originally filed was so constructed that the sol-gel process was described from page 3, line 31 to page page 14, line 9 followed by a description of the products resulting from this process as from page 14, line 9. As a consequence, said feature 1.1.1.1 on page 14, line 10 was a result of the complete sol-gel process which, following the logic of the opponent, would then have to be included as a whole in claim 1, *i.e.* feature 1.1.1.1 was not linked to only the sintering step in isolation.

- 1.6 The board is not persuaded by the arguments of the patent proprietor, for the following reasons.
  - 1.6.1 The patent proprietor's request for the admittance into the proceedings of the affidavit of Mr Vujcic was contested by the opponent under Article 13(2) RPBA as it was filed after notification of the board's communication according to Article 15(1) RPBA dated 23 September 2025. Its admittance together with its relevance in substance to the objection of Article 123(2) EPC were discussed at the oral proceedings before the board. The board followed the patent proprietor's view, contested by the opponent, that exceptional circumstances according to Article 13(2) RPBA were given due to the fact that the board in its preliminary opinion provided with the said

communication, points 6.3 and 6.4, elaborated on and extended the objection based on Article 123(2) EPC in that "sintering" as such was missing from claim 1, *i.e.* not (undefined) specific features as it had been argued by the opponent (see for instance pages 19 and 20 of its grounds of appeal and point 1.2 above; see also point 2 below for the admittance of auxiliary request 2\_modified). The filing of the affidavit of Mr Vujcic was therefore considered as a legitimate reaction to the board's communication and, hence, it was admitted into the proceedings.

Furthermore, as put forward at the oral proceedings by the board, and undisputed by the parties, the patent document **EP 1 274 665 B1** filed by the opponent with its letter dated 21 January 2026 had also to be admitted as a matter of fairness as a legitimate reaction to the admission of the late-filed affidavit of Mr Vujcic.

- 1.6.2 As acknowledged by the opposition division in its findings in the reasons for the decision under appeal, the patent in suit identifies three different technologies to produce shaped abrasive particles, namely by fusion, sintering and chemical ceramic. In particular, document EP 1 274 665 B1 shows in example 1 and claim 1 that shaped particles consisting mainly of alpha alumina with crystallite size as claimed can be formed not only by sol-gel technology but also by extruding and cutting a ceramic mass of previously obtained alpha-alumina followed by a final sintering.

As a consequence, it cannot be excluded that shaped abrasive particles with features 1.1.1.1 and 1.1.1.2 can be obtained by other processes than "sol-gel" technology, contrary to the patent proprietor's view. Adding sintering in the claim would therefore not lead

to confusion. This is all the more true since the board does not follow the patent proprietor's view that in the description as originally filed the resulting product described as from page 14, line 9 is to be obtained by the general teaching of the process described from page 3 onwards, unrelated to the specific disclosure of the passages where the specific features of the product are discussed. It is clear to the board that the whole paragraph on page 14, line 1 to 12 refers to sintering and that feature 1.1.1.1 on page 14, line 10 is a result of sintering, see for instance the first sentence of said paragraph, page 14, lines 1 and 2, which introduces sintering, and the following sentences of said paragraph still referring to sintering (see also point 1.4 above).

1.7 In consequence, while the original disclosure only disclosed shaped abrasive particles with 90 wt% alpha alumina **formed by sintering**, claim 1 according to the patent as granted covers shaped abrasive particles with 90 wt% alpha alumina formed by any process. The new technical teaching provided by the isolation of feature 1.1.1.1 from the disclosure on page 14, line 1 to 12 is therefore that the claimed amount of alpha alumina in the body of the shaped abrasive particles can be obtained possibly also without applying a sintering process, which is not disclosed in the application as originally filed. It follows that the skilled person is presented with new technical information, so that the subject-matter of claim 1 according to the main request extends beyond the original disclosure.

1.8 In sum, the board concludes that the opponent has convincingly demonstrated the incorrectness of the decision under appeal. Therefore, the subject-matter of

claim 1 of the main request does not meet the requirements of Article 123(2) EPC.

2. *Auxiliary request 2\_modified - Admittance, Articles 13(1) and 13(2) RPBA*

2.1 The text of the claims according to auxiliary request 2\_modified was submitted during the oral proceedings before the board. This request is to be regarded as an amendment to the patent proprietor's case since it was filed after the patent proprietor had filed its statement setting out the grounds of appeal and its reply to the opponent's statement setting out the grounds of appeal. Since this amendment was also made after notification of the communication under Article 15(1) RPBA, its consideration is subject to Article 13(2) RPBA. The criteria of Article 13(1) RPBA may also be applied (see OJ EPO 2020, Supplementary publication 1, Annex 2: Rules of procedure of the Boards of Appeal 2020, explanatory remarks on Article 13(2) RPBA, page 221).

2.2 Under Article 13(2) RPBA, any amendment to a party's appeal case made after notification of the communication under Article 15(1) RPBA is, in principle, not to be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons.

2.2.1 The patent proprietor argued that the board's preliminary opinion expressed *inter alia* in points 6.3 and 6.4 of the communication under Article 15(1) RPBA dated 23 September 2025 amounted to a new argumentation line which was not part of the proceedings until that stage. This new argumentation line represented cogent

reasons justifying exceptional circumstances for the admittance of auxiliary request 2\_modified.

- 2.2.2 The opponent contested this and submitted that the patent proprietor could not have been taken by surprise by the board's preliminary opinion. In particular, the assessment of feature 1.1.1.1 under Article 123(2) EPC had been discussed by both parties and by the opposition division; in particular already at the outset of the opposition proceedings (see page 12 of the notice of opposition). The board had merely followed the arguments of the opponent, so that the submission of new auxiliary requests was not justified.
- 2.2.3 The board is not persuaded by the opponent's arguments. While it is true that the opponent had already raised the objection that on page 14 of the original description a sintering process **with specific features** was defined without these features being included together with feature 1.1.1.1 in claim 1 (see point 1.2 above), it is also true that the board in its preliminary opinion elaborated on and extended the objection based on Article 123(2) EPC that feature 1.1.1.1 was inextricably linked to the sintering process; *i.e.* that it was the sintering process to produce alpha alumina as such that was missing in claim 1.
- 2.2.4 The board concludes that a new line of argumentation has been brought forward in the board's communication such that the two lines of argumentation based on Article 123(2) EPC, the original one from the opponent and the one from the board, are not to be considered as one and the same objection since they would theoretically require two different remedies to overcome the Article 123(2) EPC issue. This amounts to

cogent reasons justifying exceptional circumstances for the consideration of auxiliary request 2\_modified under Article 13(2) RPBA.

2.3 Furthermore, Article 13(1) RPBA stipulates that an amendment to a party's appeal case may be admitted at the discretion of the board, subject to the party's justification. The board shall exercise its discretion in view of, *inter alia*, the current state of the proceedings, the suitability of the amendment to resolve the issues which were raised by the board, whether the amendment is detrimental to procedural economy, and whether the party has demonstrated that the amendment, *prima facie*, overcomes the issues raised by the board and does not give rise to new objections.

2.3.1 In the present case, although auxiliary request 2\_modified was filed at a late stage of the proceedings, the board is of the view that the only amendment made with respect to auxiliary request 2 on file, *i.e.* the introduction of the phrase "formed by sintering", clearly resolves the Article 123(2) EPC issue which had been formulated by the board. Procedural economy is observed since the amendment does not give rise to any new objections.

2.4 For these reasons, after concluding that there were cogent reasons justifying exceptional circumstances under Article 13(2) RPBA, the board, considering also the criteria under Article 13(1) RPBA, admitted auxiliary request 2\_modified into the appeal proceedings.

3. *Auxiliary request 2\_modified - Sufficiency of disclosure, Article 83 EPC*

3.1 In its argumentation against the main request, which applied also to auxiliary request 2\_modified, the opponent argued that feature 1.1.1.1 "at least 90 wt% alpha alumina" and feature 1.1.1.2 "average crystallite size 0.01 - 1 micron" were not sufficiently disclosed. There was not a single embodiment according to the invention in the contested patent describing concretely the process to obtain these features. In particular, example 1 (as from paragraph [0136] of the contested patent) disclosed only geometrical particle parameters, not the chemistry or manufacturing conditions. It was not indicated in the contested patent which manufacturing parameters had to be adjusted in order to obtain the claimed crystallite size or chemical composition. The contested patent gave only broad, unspecific ranges for numerous process parameters (*inter alia* liquid content of the mixture, storage modulus, viscosity, amount of organic materials, extrusion pressure, belt and/or screen speed, release distance, screen thickness, type of dopant material and drying temperature), however no guidance to the skilled person on how to produce particles meeting the claimed composition and crystallite size according to features 1.1.1.1 and 1.1.1.2 was provided.

3.2 In addition, the opponent further argued that since claim 1 did not indicate how the plain-carbon steel lifespan grinding efficiency (SGE) of feature 1.2 was to be determined, the requirements of Article 83 EPC were not met. The description of the patent in suit merely contained examples, which were not described as restrictive and clearly defining, so that it was not sufficiently disclosed how the SGE could be determined.

3.3 Lastly, the opponent also argued that although in table 4 of the description a plurality of essential parameters were listed, there were other relevant parameters missing. Such parameters comprised in particular original thickness of the belt-shaped article, scattering density of the abrasive particles in the abrasive article, crystallite size of the abrasive particles, formation and structure of the abrasive articles, composition and disposition of the abrasive particles; energy consumption of the motor and of other components of the grinding system, the properties of the plain carbon steel workpiece and the temperature treatment of the workpiece. In consequence, the skilled person could not carry out the invention according to either the main request or auxiliary request 2\_modified.

3.3.1 The board is not persuaded by the opponent's arguments for the following reasons. It is established jurisprudence of the Boards of Appeal that an objection of lack of disclosure presupposes that there are serious doubts substantiated by verifiable facts. **The burden of proof is upon the opponent(s)** to establish on the balance of probabilities that a person skilled in the art, using their common general knowledge, would be unable to carry out the invention (see the Case Law of the Boards of Appeal of the European Patent Office [CLB], 11th Edition, 2025, II.C.9, first two paragraphs, in particular in relation to T 19/90 and T 182/89).

3.3.2 In the case at hand, no verifiable facts substantiating serious doubts that the invention can be carried out have been presented by the opponent with regard to the

alpha alumina content, the average crystallite size and the SGE.

3.3.3 Merely expressing doubts and mentioning parameters disclosed in the patent that could possibly be numerous and/or broadly defined does not relieve the opponent to provide factual elements with verifiable facts proving its allegations. In the present case, as acknowledged by the opponent itself, the contested patent discloses specific parameters and corresponding ranges. As a result, the board is of the view that the skilled person using their common general knowledge would be able to perform a method for manufacturing abrasive particles fulfilling features 1.1.1.1 and 1.1.1.2.

3.3.4 Furthermore, the board concurs with the opposition division (see point 2.1 of the reasons for the decision under appeal) that the figures and the description of the patent in suit, in particular paragraphs [0116] to [0119], [0122] and [0136] to [0142] together with figures 7 and 8, provide sufficient information to the skilled person of the grinding-related parameters and material-related parameters to put into practice the coated abrasive article, on the basis of those parameters and general technical knowledge.

3.4 The opponent also argued that feature 1.2 of the main request and of auxiliary request 2\_modified was directed to a positive functional property that could in principle be achieved by other abrasive articles with abrasive particles. If a result was to be claimed, which in principle could also be achieved by other articles with other particles, it was the duty of the patent proprietor to indicate how this functional result could be achieved in general, *i.e.* for all claimed articles. The patent should describe in general

terms how the entire claimed area is achieved, not only with the specific structure of the embodiments of the patent.

3.4.1 The board again disagrees with the opponent's view. In particular, the board does not find any verifiable facts in the arguments of the opponent that could substantiate serious doubts that the skilled person is unable to provide a coated abrasive article according to independent claim 1 of auxiliary request 2\_modified. The board concurs with the opposition division in its reasoning with regard to the main request that the patent in suit gives a clear indication to the skilled person on how to put into practice a coated abrasive article with the required features.

3.5 In sum, the board concludes that the opponent has not convincingly demonstrated that the findings of the opposition division were wrong with respect to its conclusion on sufficiency of disclosure, such that auxiliary request 2\_modified meets the requirements of Article 83 EPC.

4. *Auxiliary request 2\_modified - Added subject-matter, Article 123(2) EPC*

4.1 The opponent argued that, for the same reasons as for the main request, auxiliary request 2\_modified did not comply with the requirements of Article 123(2) EPC since feature 1.1.1.2 of claim 1, that the shaped abrasive particles had an average crystallite size within a range including at least 0.01 microns and not greater than 1 micron, was only originally disclosed on page 22, lines 11 to 15 with respect to "abrasive grains" and not originally disclosed in combination

with feature 1.1.1.1 directed to shaped abrasive particles with a specific content of alpha alumina.

4.1.1 The board disagrees and rather concurs with the patent proprietor and with the opposition division (decision under appeal, point 2.2 of the reasons, in particular page 9) that the skilled reader understands from page 22, lines 7 to 10 that the abrasive grains or crystallites described in the following paragraph consist essentially of alumina which also includes the particular case of alpha-alumina in the context of the whole original application. The board is therefore of the view that the skilled person is not presented with a new technical teaching by the combination of features 1.1.1.1 and 1.1.1.2.

4.2 The opponent further argued that the introduction of the feature "formed by sintering" after "alpha alumina" in claim 1 of auxiliary request 2\_modified did not overcome the objection directed to the main request, since according to original page 14, lines 7 to 9 the sintering process still required that a high-temperature phase of alumina, such as alpha alumina, is formed. At the oral proceedings before the board, it was clarified that the alleged missing "specific features" (see point 1.2 above) related to sintering being performed at "high-temperature" enabling the formation of alpha alumina.

4.2.1 The board does not agree. As correctly pointed out by the patent proprietor, specifying that alpha alumina is formed by sintering inevitably implies the formation of a high-temperature alumina phase, such as to obtain alpha alumina. Sintering is also inevitably performed at "high-temperature". Therefore, the inclusion of this

latter feature is not needed in order to comply with the requirements of Article 123(2) EPC.

5. *Auxiliary request 2\_modified - Novelty, Article 54(3) EPC*

5.1 The opponent argued that the subject-matter of claim 1 of auxiliary request 2\_modified was anticipated by document D17a (**WO 2014/005120 A1**), so that the requirements of Article 54(3) EPC were not fulfilled.

5.1.1 In particular, D17a disclosed a coated abrasive article comprising shaped abrasive particles overlying a backing (for example on page 30, lines 25 to 32), each of the shaped abrasive particles comprising at least 90 wt% alpha alumina formed by sintering (for example on page 16, lines 24 to 29) having an average crystallite size within a range including at least 0.01 microns and not greater than 1 micron (for example on page 25, lines 11 to 19).

5.1.2 The embodiment of figure 6, page 32, lines 31 to 36, and also example 1 described on page 38, line 27 to page 39, line 3 anticipated the feature that a majority of the shaped abrasive particles coupled to the backing were in a side orientation. Samples 1 and 2 on page 38, lines 24 to 26 and lines 32 to 35, respectively, additionally disclosed a percent flashing of 26% which anticipated the claimed range.

5.1.3 Finally, still according to the opponent, the feature relating to plain-carbon steel lifespan grinding efficiency per material removed was either a consequence of the structural features (in line with the findings of the opposition division with respect to

the main request) or inherently anticipated by figure 13.

5.1.4 Although the opposition division found in point 3.2 of the reasons for the decision under appeal that no single embodiment of D17a disclosed the combination of all features of claim 1 of the then auxiliary request 1, the opponent was of the view that the skilled person would understand from the whole context of D17a that the abrasive particles previously described in the document could be used in the abrasive article as described in the example, thereby disclosing the subject-matter of the claim in a direct and unambiguous manner.

5.2 The board is not convinced by the opponent's arguments for the following reasons.

5.2.1 It is established jurisprudence of the Boards of Appeal that it is not permissible to combine separate items belonging to different embodiments described in one and the same document, unless such a combination has specifically been suggested (see CLB, *supra*, I.C.4.2).

5.2.2 As correctly indicated by the patent proprietor, the only disclosure in D17a of the claimed side orientation and percent flashing is to be found under example 1 on page 38. However, the samples S1 and S2 of this example neither directly and unambiguously disclose the claimed alpha alumina content and crystallite size, nor suggest its use.

5.2.3 On the contrary, the samples of example 1 start from 42 wt% boehmite, 1 wt% sub-micron alpha alumina and 2 to 4 wt% nitric acid which are dried and subsequently calcined and sintered. The board is not convinced that

these steps directly and unambiguously result in shaped abrasive particles with the claimed content and crystallite size of alpha alumina.

- 5.2.4 In sum, since document D17a does not disclose in a single embodiment the combination of features of claim 1 of auxiliary request 2\_modified, its subject-matter is considered new in accordance to Article 54(3) EPC.
- 5.2.5 The board finally notes that the admittance of the objection of lack of novelty of the subject-matter of claim 1 of auxiliary request 2\_modified with respect to D17a was contested by the patent proprietor and discussed with the parties at the oral proceedings. However, in view of the conclusion on the merit of the objection in favour of the patent proprietor there is no need to deal in this decision with the reasons for its admittance.
6. *Auxiliary request 2\_modified - Inventive step, Article 56 EPC*
- 6.1 The opponent argued that the subject-matter of claim 1 of auxiliary request 2\_modified lacked inventive step starting from document D1 (**US 2013/0074418 A1**) as closest prior art in combination with the teaching of document D6 (**US 2012/0167481 A1**).
- 6.1.1 According to the opponent, D1 anticipated a side orientation of the majority of shaped abrasive particles, since in paragraph [0100] it was disclosed that the shaped abrasive particulate particles (in the form of flat equilateral triangles) were placed into the make coat to affix them to the substrate via an electrostatic projection process. The sole

distinguishing feature of claim 1 of auxiliary request 2\_modified was percent flashing of between 1 % and 40%.

- 6.1.2 The opponent concurred with the opposition division with respect to the then auxiliary request 2 that the problem to be solved derived *inter alia* from this distinguishing feature was to be regarded as how to increase the cutting efficiency of the coated abrasive article (see point 4.3 of the reasons for the decision under appeal).
- 6.1.3 Starting from D1 and faced with the objective technical problem, the skilled person would turn to the teaching of D6, which deals with abrasive articles and is directed to improve the performance, life and efficacy of abrasive particles and the abrasive articles (see paragraph [0009] of D6).
- 6.1.4 The claimed range of 1% to 40% of percent flashing was taught by a large number of abrasive grains in D6, (e.g. the abrasive grain of figure 14I) whereby these values of the flashings in D6 were specifically designed to improve the abrading capabilities.
- 6.1.5 In consequence, starting from D1, and in order to solve the problem of improving cutting efficiency, the skilled person would refer to the teaching of D6 and apply the advantageous design described therein, including the percent flashing, and thus arrive at the subject-matter of claim 1 of auxiliary request 2\_modified in an obvious manner.
- 6.2 The board is not persuaded by the opponent's arguments for the following reasons.

- 6.2.1 As correctly found by the opposition division in point 4.3 of the reasons for the decision under appeal, document D6 does not deal with a majority of shaped abrasive particles coupled to a backing in a side orientation. In this light, taking into consideration the fact that D1 discloses a majority of shaped abrasive particles coupled to the backing in the side orientation, as put forward by the patent proprietor (see for instance figure 10), the board is of the view that the skilled person would not turn to the percent flashing allegedly taught by D6, since this document rather deals, contrary to the teaching of D1, with shaped abrasive particles resting on their respective bottom surfaces, which are the largest surface area regions (see for example paragraph [0106] with reference to figure 13).
- 6.2.2 Consequently, the board is convinced that the skilled person would only combine the teachings of D1 and D6 as the result of an *ex post facto* analysis. The subject-matter of claim 1 of auxiliary request 2\_modified is therefore considered to be inventive in view of documents D1 and D6.
7. At the oral proceedings before the board the opponent confirmed that it had no further objections against auxiliary request 2\_modified.
8. *Auxiliary request 2\_modified - Amended description paragraphs*

The patent proprietor submitted an amended paragraph of the description in accordance with the set of claims of auxiliary request 2\_modified and also indicated that the amended paragraphs filed for the then auxiliary request 2 in opposition proceedings were valid for the

present auxiliary request 2\_modified. No objections to the amended description were raised by either the opponent or the board.

9. *Conclusion*

In view of the above findings, auxiliary request 2\_modified is consequently considered to be admissible and to meet the requirements of the EPC including those of no added subject-matter, sufficiency of disclosure, novelty and inventive step. Hence, the decision under appeal is set aside and the patent maintained in accordance with auxiliary request 2\_modified.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent as amended in the following version:

#### Description, Paragraphs:

1-7, 9-12, 14-56,

58-86, 88-98,

101-145 of the patent specification;

8, 13, 87, 99, 100 filed during oral proceedings before the opposition division on 8 October 2024 for the then auxiliary request 2; and

57 filed during oral proceedings before the board on 27 January 2026 for auxiliary request 2\_modified;

#### Claims, No.:

1 to 10 according to auxiliary request 2\_modified, filed during the oral proceedings before the board on 27 January 2026;

#### Drawings, Figures:

1 to 10 of the patent specification.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated