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**Datasheet for the decision  
of 3 March 2026**

**Case Number:** T 0276/25 - 3.2.07

**Application Number:** 13773758.1

**Publication Number:** 3055113

**IPC:** B28B19/00, C04B28/14,  
C04B111/00

**Language of the proceedings:** EN

**Title of invention:**

METHOD FOR PRODUCING A GYPSUM PLASTERBOARD

**Patent Proprietor:**

Knauf Gips KG

**Opponent:**

SAINT-GOBAIN PLACO

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(c), 123(2), 123(3), 111(1)  
RPBA 2020 Art. 11

**Keyword:**

Grounds for opposition - extension of subject-matter (yes)  
Amendments - extension beyond the content of the application  
as filed (no) - broadening of claim (no) - inescapable trap  
(no) - allowable (yes)  
Remittal - special reasons for remittal - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0276/25 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 3 March 2026**

**Appellant:** Knauf Gips KG  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 20 December  
2024 revoking European patent No. 3055113  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** G. Patton  
**Members:** A. Cano Palmero  
Y. Podbielski

## **Summary of Facts and Submissions**

I. The patent proprietor lodged within the prescribed time limit and in the prescribed form an appeal against the decision of the opposition division revoking European patent No. 3 055 113.

II. The patent proprietor (appellant) requests

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

or, in the alternative,

that the patent be maintained according to any of auxiliary requests 1 to 5 filed during opposition proceedings and re-filed with the statement setting out the grounds of appeal,

or, in the alternative,

that the patent be maintained according to auxiliary request 6 filed with letter dated 26 September 2025,

or, in the alternative,

that the case be remitted to the opposition division for further prosecution.

III. The opponent (respondent) requests

that the appeal be dismissed,

or, in the alternative,

that the case be remitted to the opposition division for further prosecution if discussion on the grounds of opposition under Articles 100(b) and 100(a) EPC becomes necessary.

- IV. In preparation for oral proceedings the board communicated its preliminary assessment of the case in a communication pursuant to Article 15(1) RPBA, according to which the decision under appeal could be set aside and the case be remitted to the opposition division for further prosecution.
- V. Both parties responded to that communication in the substance, the respondent with letter dated 2 February 2026 and the appellant with letter dated 19 February 2026.
- VI. Oral proceedings before the board took place on 3 March 2026. For further details of the oral proceedings reference is made to the minutes thereof. The order of the present decision was announced at the end of the oral proceedings.
- VII. The lines of argument of the parties are dealt with in detail in the reasons for the decision.
- VIII. Independent claim 1 according to the patent as granted (main request) reads as follows:

"A method for producing a gypsum plasterboard comprising the steps of:

- providing bundler dust obtained from gypsum plasterboard leftovers of a plasterboard trimming process using a trimming device, namely a bundler saw, wherein the bundler dust is obtained from the production process of impregnated plasterboards with silicone oil as a hydrophobic agent;
- adding an amount X of bundler dust to a gypsum slurry for producing the gypsum plasterboard

characterised in that

the amount X of bundler dust is  $0.1 \text{ g/m}^2 \leq X \leq 30 \text{ g/m}^2$  for producing the gypsum plaster board and that a naftalen sulfonate-based liquefier is added to the gypsum slurry, in an amount of 2 to 15  $\text{g/m}^2$ ."

- IX. Independent claim 1 according to auxiliary request 1 reads as follows (additions with respect to claim 1 of the main request underlined by the board):

"A method for producing a gypsum plasterboard comprising the steps of:

- providing bundler dust obtained from gypsum plasterboard leftovers of a plasterboard trimming process using a trimming device, namely a bundler saw, wherein the bundler dust is obtained from the production process of impregnated plasterboards with silicone oil as a hydrophobic agent, wherein the silicone oil is polymethylhydrogen siloxane;
- adding an amount X of bundler dust to a gypsum slurry for producing the gypsum plasterboard

characterised in that

the amount X of bundler dust is  $0.1 \text{ g/m}^2 \leq X \leq 30 \text{ g/m}^2$  for producing the gypsum plaster board and that a naftalen sulfonate-based liquefier is added to the gypsum slurry, in an amount of 2 to 15  $\text{g/m}^2$ ."

- X. Independent claim 7 according to auxiliary request 1 reads as follows (additions with respect to claim 8 of the patent as granted underlined by the board):

"A use of bundler dust obtained from a production process of impregnated plasterboards with silicone oil, namely polymethylhydrogen siloxane, as a hydrophobic

agent, namely from leftovers of a plasterboard trimming process using a bundler saw, as additive for producing a gypsum plasterboard wherein the amount X of bundler dust in a gypsum slurry is  $0.1 \text{ g/m}^2 \leq X \leq 30 \text{ g/m}^2$ , in particular  $0.6 \text{ g/m}^2 \leq X \leq 2 \text{ g/m}^2$  for producing the gypsum plaster board according to European standard EN 520 type A 13 or  $2.4 \text{ g/m}^2 \leq X \leq 3 \text{ g/m}^2$  for producing the gypsum plaster board according to European standard EN 520 type H2 13."

XI. Since the wording of the claims of auxiliary requests 2 to 6 is not relevant for the present decision, there is no need to reproduce it here.

### **Reasons for the Decision**

1. *Main request (patent as granted) - Added subject-matter, Articles 100(c) and 123(2) EPC*

1.1 The appellant contested the reasoned finding of the opposition division that the omission of the polymethylhydrogen siloxane (in the following: PMHS) as silicone oil in the subject-matter of claims 1 and 8 as granted resulted in an unallowable generalisation (see reasons for the decision under appeal, point II.2.2.3).

1.1.1 In particular, the appellant argued that the passages of the original description on page 2, lines 27 to 29 and page 5, lines 25 to 26 and original claim 4, using the expressions "silicone oil (polymethylhydrogen siloxane)" and "silicone oil, polymethylhydrogen siloxane", did not limit the expression before the parentheses or the comma, so that the use of other silicone oils other than PMHS was justified.

- 1.1.2 In addition, the appellant indicated that the expression "silicone oil" was used also without the alleged restriction of PMHS on original page 4, line 5; on original page 7, line 1 and in original claim 9. There was according to the appellant no technical reason why in the process of page 4, line 5 or claim 9 it was possible to use silicone oil in general, whereas in a process where bundler dust is obtained from the production process of impregnated plasterboards (according to claim 4 and pages 2 and 5) the silicone oil should have the specific meaning of PMHS only.
- 1.1.3 Finally, the appellant argued that the skilled person had *a priori* from the original application no reason to assume that the agent to provide hydrophobisation necessarily had to be PMHS and no other silicone oil.
- 1.2 The board is not persuaded by the appellant's arguments and rather concurs with the opposition division and with the respondent that the subject-matter of claim 1 extends beyond the original disclosure, for the following reasons.
  - 1.2.1 Firstly, as correctly found by the opposition division, original claim 9 and the passages of original pages 4 and 7 relate to a different embodiment which does not deal, at least directly and unambiguously, with bundler dust being prepared from leftovers of the trimming process, as it is the case in original claims 1 and 4 and original pages 2 and 5. The above passages of original pages 4 and 7 and claim 9 disclosing the use of a general silicone oil in a method of preparing bundler dust involving stucco cannot constitute a basis for the silicone oil introduced in claim 1 of the main request relating to a method for producing gypsum plasterboard in which the bundler dust is prepared from

leftovers of the trimming process, *i.e.* not from stucco. These two distinct methods for obtaining the bundler dust is clearly stated on page 6, line 34 to page 7 line 6, in particular on page 6 line 35, where the term "alternatively" is used. There is no disclosure in the application as filed towards combining the two distinct methods for preparing the bundler dust.

Secondly, the board follows the respondent's argument that, in the sections of the application forming the basis for the embodiment in which the bundler dust is obtained from gypsum plasterboard leftovers, the only disclosure of a hydrophobic agent is a silicone oil (polymethylhydrogen siloxane) as it is originally disclosed on page 2, page 5 and claim 4. The board also concurs with the opposition division and the respondent that the parentheses or the comma do not necessarily imply that the features in brackets or after the comma are to be seen as optional, in particular in the description as originally filed, and in particular in the present case where the silicone oil is always specified as polymethylhydrogen siloxane in the said relevant passages.

The board notes that it has been uncontested by the parties that PMHS is a particular type of silicone oil, such that the appellant's argument that silicone oil and PMHS could be seen as two separate embodiments is not convincing.

- 1.2.2 The board consequently concludes that, since all passages of the application as originally filed that form the basis for a method in which bundler dust is obtained from leftovers of impregnated plasterboards with silicon oil require that the silicon oil is PMHS,

the definition of the hydrophobic agent merely as "silicon oil" in claim 1 of the main request results in an unallowable intermediate generalisation.

1.2.3 In the present case, the question whether PMHS exhibits any enhanced or particular hydrophobisation effect compared with other silicone oils is irrelevant for the question of added subject-matter, since the nature of another silicon oil already amounts to a new technical information to the skilled person.

1.3 In sum, the omission of the feature that the silicone oil is PMHS results in that the skilled person is presented with new technical information, such that the subject-matter of claim 1 of the main request does not meet the requirements of Article 123(2) EPC. Thus the ground of opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted.

2. *Auxiliary request 1 - Extension beyond the scope of protection, Article 123(3) EPC*

2.1 The opposition division found in point II.3.4 of the reasons for the decision under appeal, that the subject-matter of claims 1 and 7 of auxiliary request 1 extended beyond the protection conferred by the patent, contrary to the requirements of Article 123(3) EPC.

2.1.1 In particular, the opposition division concluded that claims 1 and 7 did not exclude the presence of further bundler dust obtained from the production process of impregnated plasterboards with silicone oils that are different from PMHS. The opposition division agreed with the respondent's argument that the claims of auxiliary request 1 narrowed the definition of blunder dust and then only limited the amount of this narrowly

defined bundler dust obtained from the production process of impregnated plasterboards with PMHS as being from 0.1 g/m<sup>2</sup> to 30 g/m<sup>2</sup>. Since blunder dust obtained with a different silicon oil (*i.e* not PMHS) was not explicitly disclaimed, the claims allowed for the presence of bundler dust obtained from the production process of impregnated plasterboards with silicone oil as a hydrophobic agent in amounts greater than 30 g/m<sup>2</sup> (for example 25 g/m<sup>2</sup> of blunder dust obtained with PMHS and 10 g/m<sup>2</sup> of blunder dust obtained with a different silicone oil). The subject-matter of claims 1 and 7 of auxiliary request 1 extended beyond the scope of the patent.

2.1.2 On the basis of the same reasoning, the respondent pointed out that, since claim 1 of auxiliary request 1 provided a narrower definition of the bundler dust that was present in the amount of 0.1 g/m<sup>2</sup> to 30 g/m<sup>2</sup> (treated with PMHS), claim 1 of auxiliary request 1 did not correspond to granted claim 3, which rather explicitly required that the amount of bundler dust applied to any bundler dust obtained with silicone oil in general. The additional feature of claim 3 of the patent as granted should be included at the very end of the method of claim 1 in order to correspond to claim 3 of the patent as granted. Only in this manner could a modified claim 1 based on claims 1 and 3 of the patent as granted fulfil the requirements of Article 123(3) EPC.

2.2 The board does not concur with the finding of the opposition division and cannot follow the arguments of the respondent for the following reasons.

2.2.1 The board is firstly convinced that claim 1 of auxiliary request 1 is the direct combination of claims

1 and 3 as granted. In particular, the board notes that granted claim 3 exclusively makes a restriction on the silicone oil, which is just mentioned in one instance in granted claim 1, so that there is no room for any other possible feature combination. The board concurs with the appellant that the subject-matter of claims 1 and 7 of auxiliary request 1 is unambiguously limited to PMHS as silicone oil due to the wording used :  
"wherein the silicone oil is..." (claim 1),  
"namely..." (claim 7) for the bundler dust obtained from the production process of impregnated plasterboards.

2.2.2 As the subject-matter of claim 1 of auxiliary request 1 corresponds to granted claim 3, it cannot extend beyond the scope of the protection conferred by the patent in suit alone for this reason. The use claim 7 of auxiliary request 1 has been accordingly adapted to claim 1 and restricted in the same manner. In addition the board is of the view that the use of a bundler dust obtained with PMHS as silicone oil as in claim 7 of auxiliary request 1 is a particular case of the use of the bundler dust obtained with silicone oil in general as in granted claim 8. That claim 7 does not correspond as such to a claim of the patent as granted, as argued by the respondent, does not change the fact that the additional features restrict the scope of the claim (see also following point 2.2.3)

2.2.3 The board agrees with the appellant that the requirement, that the amount X of bundler dust (defined on the fifth line in claim 7) is  $0.1 \text{ g/m}^2 \leq X \leq 30 \text{ g/m}^2$  for producing the gypsum plasterboard, limits the absolute amount of bundler dust for producing the gypsum plaster board, regardless of how this bundler dust has been obtained. The bundler dust mentioned in

the fifth line of claim 7 is not specified as being limited to the bundler dust of the first line of the same claim.

The same applies to claim 1 in which the bundler dust in the step of "adding an amount X of bundler dust" limits the absolute amount of bundler dust for producing the gypsum plasterboard as it is not specified as being the specific bundler dust obtained from gypsum plasterboard leftovers of the providing step.

Consequently, the method and use of claims 1 and 7 of auxiliary request 1 defines the maximum amount of bundler dust which may be used.

- 2.2.4 The board thus disagrees with the respondent that the amount of blunder dust in claims 1 and 7 of auxiliary request 1 applies only to the narrowly defined blunder dust, so that a fictional recipe resulting from using different claimed blunder dust (with PMHS as silicone oil) and not disclaimed blunder dust (with silicone oils different than PMHS) would still have to remain within the range limits of the granted claims.
- 2.3 It follows that the appellant has convincingly demonstrated the incorrectness of the decision under appeal. As a result, the subject-matter of claims 1 and 7 of auxiliary request 1 meet the requirements of Article 123(3) EPC.
3. *Auxiliary request 1 - Added subject-matter, Article 123(2) EPC*
  - 3.1 The respondent was of the view that there was no possible amendment to granted claims 1 and 8 that would

comply with both Article 123(2) and Article 123(3) EPC, so that the appellant was caught in a situation of an "inescapable trap". On the one hand, the presence of the generic term "silicone oil" without the restriction to PMHS contravened Article 123(2) EPC and on the other hand, Article 123(3) EPC required that any amended claim specified that the content of bundler dust from the production of impregnated plasterboards with silicone oil lied in the range of 0.1 g/m<sup>2</sup> to 30 g/m<sup>2</sup>.

- 3.1.1 If the amended claims 1 and 7 were to be construed as excluding the presence of bundler dust obtained from the production process of impregnated plasterboards with silicone oil other than PMHS, the respondent argued that, although the application as filed disclosed the use of PMHS as a preferred hydrophobic agent, it was entirely silent as to whether other silicone oils might be present, *i.e.* whether the specific claimed range was originally disclosed for the specific bundler dust obtained from the production process of impregnated plasterboards with PMHS as silicone oil. The original application contained no teaching, whether by the way of a disclaimer or otherwise, that ruled out the presence of silicone oils other than PMHS, in addition to PMHS. Consequently, the requirements of Article 123(2) EPC would not be met.
- 3.1.2 If, on the contrary, the subject-matter of claims 1 and 7 was to be interpreted as requiring a content of bundler dust from the production of impregnated plasterboards with silicone oil lying in the range of 0.1 g/m<sup>2</sup> to 30 g/m<sup>2</sup> in order to comply with the requirements of Article 123(3) EPC, this limitation would have no basis in the application as filed, due to the presence of the generic term "silicone oil" and,

hence, the requirements of Article 123(2) EPC would also not be met.

3.2 The board disagrees. As concluded in point 2.2.3 above, the subject-matter of claims 1 and 7 of auxiliary request 1 is considered to limit the content of bundler dust from the production of impregnated plasterboards with silicone oils in general (including PMHS) within the range of 0.1 g/m<sup>2</sup> to 30 g/m<sup>2</sup>, so that the requirements of Article 123(3) EPC are met. Contrary to the respondent's allegation, the board is of the view that the combination of the features of original claims 1, 4, 7 and 8 constitute a valid basis for claim 1 of auxiliary request 1, which furthermore restricts the silicone oil to PMHS, as argued by the appellant. The use claim 7 of auxiliary request 1 has been adapted accordingly to PMHS as silicon oil. In sum, the board concludes that the requirements of Article 123(2) EPC are met by the subject-matter of claims 1 and 7 .

3.3 Since amended claims 1 and 7 of auxiliary request 1 meet the requirements of Articles 123(2) and 123(3) EPC the respondent's view as regards the presence of an inescapable trap cannot be followed.

4. *Remittal of the case to the opposition division, Articles 11 RPBA and 111(1) EPC*

4.1 The respondent requested that the case be remitted to the opposition division for further prosecution in case a discussion on the grounds of opposition under Articles 100(b) and 100(a) EPC became necessary. The appellant also requested that the case be remitted to the opposition division for further prosecution based on the auxiliary requests. The board is aware that, according to Article 11 RPBA, a remittal for further

prosecution should only be undertaken exceptionally, when special reasons apply.

- 4.2 The board notes that the decision under appeal dealt only with the ground of opposition under Article 100(c) EPC, and with issues regarding Articles 123(2) and 123(3) EPC for all requests.
- 4.3 Against this background, after considering all the relevant circumstances of the case at hand, the board comes to the conclusion that the issues relevant to the requirements of at least sufficiency of disclosure (Article 83 EPC) and inventive step (Article 56 EPC) of the auxiliary requests cannot not be decided upon without undue burden (cf. OJ EPO 2020, Supplementary publication 2, explanatory notes to Article 11 RPBA, 46, 54).
- 4.4 Consequently, the board is of the view that there are special reasons within the meaning of Article 11, first sentence, RPBA that apply, and that it is appropriate, following the requests of both parties, to remit the present case to the opposition division for further prosecution, in accordance with Article 111(1) EPC.

## 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 for further prosecution.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated