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**Datasheet for the decision
of 22 April 2026**

Case Number: T 0311/25 - 3.3.05

Application Number: 15860138.5

Publication Number: 3221529

IPC: C04B28/14

Language of the proceedings: EN

Title of invention:

GYPSUM PANELS, CORES, AND METHODS FOR THE MANUFACTURE THEREOF

Patent Proprietor:

Georgia-Pacific Gypsum LLC

Opponent:

Saint-Gobain Placo SAS

Headword:

Gypsum Panels/Georgia-Pacific

Relevant legal provisions:

EPC Art. 100(c), 54

RPBA 2020 Art. 11

Keyword:

Added subject-matter - main request (yes)

Novelty - auxiliary request (yes)

Remittal - (yes)

Decisions cited:

T 0199/00, T 0210/05, T 0021/10, T 0989/22

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0311/25 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 22 April 2026

Appellant: Georgia-Pacific Gypsum LLC
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Respondent: Saint-Gobain Placo SAS
(Opponent) Tour Saint-Gobain
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Representative: Murgitroyd & Company
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted/electronically
transmitted on 19 December 2024 revoking
European patent No. 3221529 pursuant to Article
101(3) (b) EPC.**

Composition of the Board:

Chair J. Roider
Members: G. Glod
O. Loizou

Summary of Facts and Submissions

I. The patent proprietor's (appellant's) appeal concerns the opposition division's decision to revoke European patent EP 3 221 529 B1. None of the main request and auxiliary requests 1 to 15 were found to meet the requirements of either Article 123(2) EPC or Article 54 EPC.

II. The following document cited in the impugned decision is of relevance here:

D1: US 3 616 173

III. Claim 1 of the patent as granted (main request) reads as follows.

"1. A gypsum panel, comprising: a core having a thickness of about 1.27 cm (½ inch) and a weight of from 6.84 kg/m² to 8.54 kg/m² (1400 lb/msf to 1750 lb/msf), the core comprising gypsum and fiberglass, the fiberglass being present in the core in an amount of from 0.0073 kg/m² to 0.015 kg/m² (1.5 lb/msf to 3 lb/msf) and the gypsum being present in the core in an amount of from 6.59 kg/m² to 8.15 kg/m² (1350 lb/msf to 1670 lb/msf); and wherein the core has an ASTM E-119 wood stud fire test rating of at least 30 minutes."

Claims 1 and 5 of auxiliary request 1 read as follows (the amendment compared with the main request is underlined).

"1. A gypsum panel, comprising: a core having a thickness of about 1.27 cm (½ inch) and a weight of from 6.84 kg/m² to 8.54 kg/m² (1400 lb/msf to 1750 lb/msf),

the core comprising gypsum and fiberglass, the fiberglass being present in the core in an amount of from 0.0073 kg/m² to 0.015 kg/m² (1.5 lb/msf to 3 lb/msf) and the gypsum being present in the core in an amount of from 6.59 kg/m² to 8.15 kg/m² (1350 lb/msf to 1670 lb/msf); and wherein the core has an ASTM E-119 wood stud fire test rating of at least 30 minutes wherein the panel further comprises a paper facer on at least one face of the core."

"5. A method of making a gypsum panel, comprising: combining gypsum stucco in an amount of 5.66 kg/m² to 6.93 kg/m² (1160 lb/msf to 1420 lb/msf), water, and fiberglass to form a slurry; and setting the slurry to form a core having a thickness of about 1.27 cm (½ inch) and a weight of from 6.84 kg/m² to 8.54 kg/m² (1400 lb/msf to 1750 lb/msf), and comprising fiberglass in an amount of from 0.0073 kg/m² to 0.015 kg/m² (1.5 lb/msf to 3 lb/msf) and gypsum in an amount of from 6.59 kg/m² to 8.15 kg/m² (1350 lb/msf to 1670 lb/msf), wherein the core has an ASTM E-119 wood stud fire test rating of at least 30 minutes."

Claims 2 to 4 and 6 to 12 of auxiliary request 1 directly or indirectly refer to one of claim 1 or claim 5.

IV. The appellant argued that the main request and auxiliary request 1 met the requirements of Article 123(2) EPC and 54 EPC.

The respondent (opponent) contested that the main request met the requirements of Article 123(2) EPC and that auxiliary request 1 was novel over D1 (Article 54 EPC).

- V. At the end of the oral proceedings of 22 April 2026, the requests were as follows.

The appellant requested that the decision under appeal be set aside and that the case be remitted to the opposition division for further prosecution of the main request (patent as granted), or alternatively that the case be remitted to the opposition division for further prosecution of one of auxiliary requests 1 to 15 filed with the statement of grounds of appeal.

The respondent requested that the appeal be dismissed (main request), or alternatively that the case be remitted to the opposition division for further prosecution.

Reasons for the Decision

Main request (Patent as granted)

1. Article 100(c) EPC

The appellant argued that claim 1 was based on the application as filed, in particular on claim 9 and paragraphs [00027], [00022] and [00023]. The board is not convinced.

Paragraph [00027] indicates that any embodiment of a gypsum panel core described in the application can be included in the gypsum panel. However, such a general statement is not *carte blanche* to choose any embodiment and combine it with a different embodiment and thereby consider such a combination to be directly and unambiguously disclosed. In particular, paragraph [00027] does not disclose the amount of gypsum present in the core at all and does not disclose

the range of 0.0073 kg/m² to 0.015 kg/m² for the amount of fibreglass. Paragraph [00022] provides that, in some embodiments, the fibreglass is present in the core in an amount of from about 1.5 lb/msf to about 3 lb/msf. Paragraph [00023] discloses that, in some embodiments, the gypsum is present in the core in an amount from about 1350 lb/msf to about 1670 lb/msf. However, the combination of both ranges is not disclosed in the application as filed. When additionally considering the examples, the skilled person would see the combination of 1.5 lb/msf to about 3 lb/msf with 1400 lb/msf to 1620 lb/msf as the combination of choice for the core to be used in the gypsum panel. Therefore, the subject-matter of claim 1 is not directly and unambiguously derivable from the application as filed.

Article 100(c) EPC prejudices maintenance of the patent as granted.

Auxiliary request 1

This request specifies that the panel further comprises a paper facer on at least one face of the core.

2. Article 123(2) EPC

The respondent did not object to claim 1 of this request under Article 123(2) EPC. The board sees no reason to take a different stance and finds that the requirements of Article 123(2) EPC are met.

3. Article 54 EPC

The opposition division and the respondent considered that the fire resistant wallboard of claim 5 of D1 directly and unambiguously disclosed a gypsum panel

according to claim 1 of auxiliary request 1. The Board disagrees for the following reasons.

Claim 1 of this request defines the range of fibreglass as 0.0073 kg/m^2 to 0.015 kg/m^2 . The values present in the original application are between brackets (1.5 lb/msf to 3 lb/msf). Based on the lower endpoint of 0.2 weight percent of glass fibres explicitly disclosed in claim 5 of D1, the respondent calculated a lower limit of 3.3 lb/msf by applying a core weight of 1666 lb/msf. Even if the board were to agree with the respondent's arguments and it were accepted (contrary to the board's position) that the calculated 3.3 lb/msf, which equals 0.016 kg/m^2 , could be considered within the claimed range in view of rounding conventions relating to 3 lb/msf, then the skilled person would still have to first choose the lowest value for the core weight and the lowest value for the weight of fibreglass. Such a double selection cannot be considered to be a direct and unambiguous disclosure.

Not least for this reason, there is no direct and unambiguous disclosure of the subject-matter of claim 1 in D1.

In reply to the board's communication pursuant to Article 15(1) RPBA, the respondent argued that there was a pointer towards the lower end point of the fibreglass range disclosed in claim 5 of D1. The board is not convinced.

There is not a single example of D1 that falls within the scope of claim 1. Examples 1 to 12 use 0.45 weight percent glass fibres to make the core (column 14, lines 7 and 51). The same applies to the compositions listed in tables 3 and 5 (column 16, lines 1 to 4).

Only table 4 lists some examples comprising as little as 0.2 weight percent of glass fibres, which is at the upper end of the claimed range. If anything, the pointer would instead be towards 0.45 weight percent glass fibres, which is close to the upper limit present in claim 5 of D1 and not within the range claimed in the present request.

It should be noted that an example constitutes a specific embodiment, and cannot be freely combined with other information selected from the description of D1 to establish direct and unambiguous disclosure (see T 199/00, Reasons 4.2.1, last two paragraphs; see also T 210/05, Reasons 2.3; T 21/10, Reasons 2.2.1).

Furthermore, this board is not convinced that the concept of "seriously contemplating" is in agreement with a direct and unambiguous disclosure in the case of multiple ranges (see T 989/22, Reasons 1).

Consequently, the subject-matter of claim 1 is novel over D1.

There was no dispute between the parties that the same conclusion also applied to independent claim 5, and claims 2 to 4 and 6 to 12, which directly or indirectly refer to one of claim 1 or claim 5.

There was no other novelty objection from the respondent's side in appeal.

4. Articles 83 and 84 EPC

There were no objections under these Articles by the respondent during appeal proceedings. The board sees no reason to take a different position.

5. Consequently auxiliary request 1 fulfils the requirements of Articles 123(2), 54, 83 and 84 EPC.

6. Article 11 RPBA

The primary object of the appeal proceedings is to review the decision under appeal (Article 12(2) RPBA). No decision was given by the opposition division on the question of inventive step. Both parties requested a remittal of the case to the opposition division in the event of a request meeting the requirements of Articles 123(2) and 54 EPC. Therefore, there are special reasons within the meaning of Article 11 RPBA and the board remits the case to the opposition division for further prosecution.

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 Chair:



C. Vodz

J. Roider

Decision electronically authenticated