

Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non



\*000963\*

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Aktenzeichen / Case Number / N° du recours : T 134/86 - 3.2.2

Anmeldenummer / Filing No / N° de la demande : 81 301 672.2

Veröffentlichungs-Nr. / Publication No / N° de la publication : 0 038 222

Bezeichnung der Erfindung: Deformable sheet material, especially for use in  
Title of invention: roof tightening  
Titre de l'invention :

Klassifikation / Classification / Classement : E04D 13/14

### ENTSCHEIDUNG / DECISION

vom / of / du 3 June 1988

Anmelder / Applicant / Demandeur : V. KANN RASMUSSEN HOLDING A/S

Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 52

Kennwort / Keyword / Mot clé : Patentable invention (yes)

Leitsatz / Headnote / Sommaire



Case Number : T 134/86 - 3.2.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 3 June 1988

**Appellant :** V. KANN RASMUSSEN HOLDING A/S  
No. 10 Tobaksvejen  
2860 SOBORG (DK)

**Representative :** M.F. Ford et al  
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**Decision under appeal :** Decision of Examining Division 107  
of the European Patent Office  
dated 8 January 1986 refusing  
European patent application  
No. 81 301 672.2 pursuant to  
Article 97(1) EPC

**Composition of the Board :**

**Chairman :** C. Maus  
**Members :** C. Andries  
W. Moser

## Summary of Facts and Submissions

I. European patent application No. 81 301 672.2, filed on 15 April 1981 (publication No. 0038 222) with claimed priority dates of 15 April 1980 and 26 August 1980 based on Danish patent applications No. 1598/80 and 3650/80 respectively, was refused by the decision of the Examining Division 107 dated 8 January 1986.

This decision was based on Claims 1 to 10 received on 13 February 1984, and Claims 11 to 13 received on 8 September 1984.

II. The reason given for the refusal was that the application failed to meet the requirements of the European Patent Convention because of the Appellant's request that a patent be granted on the basis of a text to which the Examining Division, as a result of the addition of Claims 11 to 13, had not consented within the meaning of Rule 86(3) EPC. Furthermore, the Examining Division withheld permission to file a divisional application (pursuant to Rule 25(1)(a) EPC) based on these Claims 11 to 13 and held that the subject-matter of Claim 11 extended beyond the content of the application as filed.

III. On 7 March 1986, the Appellant lodged an appeal against this Decision and paid simultaneously the corresponding appeal fee. The Statement of Grounds was submitted on 22 March 1986.

The Appellant requests the cancellation of the impugned decision in its entirety and the grant of a patent including Claims 11 to 13 (main request) and, alternatively, either the grant of a patent excluding said Claims 11 to 13 as well as the permission for filing a divisional application

containing these Claims 11 to 13 (first auxiliary request) or the grant of a patent that would only comprise present Claims 1 to 10 (second auxiliary request).

- IV In reply to a communication containing in detail the reasons for the Board's provisional view that the main request as well as the first auxiliary request seemed to lack admissibility, the Appellant withdrew the main request and the first auxiliary request and solely maintained his second auxiliary request aimed at granting a patent in the form deemed allowable by the Examining Division, i.e. on the basis of valid Claims 1 to 10.

#### Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC. It is therefore admissible.
2. After the examination of the prior art documents, the Board comes to the conclusion that the subject-matter of both independent Claims 1 and 9 is novel with regard to these documents. Neither can it see any reasons to doubt the presence of an inventive step. Therefore, like the Examining Division before, the Board is thus satisfied that a patent may be granted on the basis of present Claims 1 to 10. Consequently, the case is to be remitted to the first instance for the grant of a patent on the basis of the text according to the second auxiliary request.

#### Order

For these reasons, it is decided that:

1. The Decision under appeal is set aside.

2. The case is remitted to the first instance with the order to grant a patent on the basis of

- Claims 1 to 10, received on 13 February 1984;
- description: pages 1, 1a, 3, 4 and 5 received on 4 August 1984,  
pages 2 and 2a received on 13 February 1984,  
page 6 as published and amended on  
lines 5 and 10 ("roof sealing" instead of  
"sheet");
- drawings: sheets 1/2 and 2/2 as published.

The Registrar

The Chairman

S. Fabiani

C. Maus