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**Datasheet for the decision
of 26 July 2012**

Case Number: T 1265/08 - 3.5.02
Application Number: 97500191.8
Publication Number: 878980
IPC: H05B 3/26, H05B 6/28, H05B 6/26
Language of the proceedings: EN

Title of invention:

Process to manufacture heating panels and panels obtained therefrom

Patentee:

Sanchez Duque, David

Opponent:

H K Wentworth Limited
Saint-Gobain Glass France

Headword:

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Relevant legal provisions:

EPC Art. 54, 56, 100(a)(b)

Keyword:

"Claims objected to in decision under appeal deleted in appeal"
"Remaining opposition grounds do not prejudice maintenance"

Decisions cited:

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Catchword:

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Case Number: T 1265/08 - 3.5.02

D E C I S I O N
of the Technical Board of Appeal 3.5.02
of 26 July 2012

Appellant:
(Patent Proprietor)

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(Opponent 1)

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Respondent II:
(Opponent 2)

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Decision under appeal:

Decision of the Opposition Division of the European Patent Office posted 17 April 2008 revoking European patent No. 878980 pursuant to Article 101(2) EPC.

Composition of the Board:

Chairman: M. Ruggiu
Members: R. Lord
P. Mühlens

Summary of Facts and Submissions

- I. This is an appeal of the proprietor against the decision of the opposition division to revoke the European patent No. EP 0 878 980.

Two oppositions had been filed against the patent in suit. Opponent 1 raised grounds under Article 100(a) EPC (lack of novelty and of inventive step) and under Article 100(c) EPC (added subject-matter) against the patent in its entirety. Opponent 2 raised grounds under Article 100(a) EPC (lack of novelty and of inventive step) and under Article 100(b) EPC (insufficiency of disclosure) against the patent in its entirety.

The reasons given for the decision were that claim 3 of the granted patent defined subject-matter extending beyond the content of the application as originally filed (Article 123(2) EPC) and that the subject-matter of that claim was not new (Article 54 EPC).

- II. The appellant (proprietor of the patent) requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of claims 1 and 2 filed with letter dated 24 June 2008.

The respondents (opponents 1 and 2) have not presented any requests in reply to the appeal.

- III. Claim 1 of the appellant's sole request reads as follows:

"A process for manufacturing heating panels able to be installed on any surface to be desirably heated,

comprising the following process steps:

preparing a first base board (1), or substrate of a fireproof insulating material, preferably micanite, ceramic or similar;

applying to said first base board (1) a coating layer of an electricity conducting material, for example copper, forming at least two longitudinal strips (8);

applying over the areas surrounding said longitudinal strips (8) a coating of insulating material (9), for example glass fiber, and applying over selected areas a coating layer of heat generating electroconducting paint forming sectors (7) in such a way that they are in electrical contact with said longitudinal strips (8);

characterized in that,

said longitudinal strips (8) and said sectors (7) are applied in such a way that the sectors (7) are connected with each other in series; and in that,

a second base board of fireproof insulating material is attached to the face of said first [sic] base board (1) over which the coatings have been made, and hiding them sandwichwise."

Claim 2 is dependent on claim 1.

IV. The appellant essentially argued as follows:

The reasons of the decision under appeal concerned only claims 3 to 5 of the granted patent, and the opposition division had indicated that claims 1 and 2 were acceptable. Therefore, since the present request was limited to only those two claims, the patent should be

maintained in that form.

Neither respondent has presented any arguments in reply to the grounds of appeal.

Reasons for the Decision

1. The appeal is admissible.
2. The reasons for the revocation of the patent in the decision under appeal concerned only claims 3 to 5 of the granted patent. These claims have been deleted in the appellant's present request. The remaining claims 1 and 2 are essentially as granted.
3. In their respective grounds of opposition opponent 1 raised objections of lack of novelty and lack of inventive step (Article 100(a) EPC in combination with Articles 54 and 56 EPC) with respect to claims 1 and 2, and opponent 2 raised an objection of insufficiency of disclosure (Article 100(b) EPC) which covered those claims. In the annex to the summons to oral proceedings dated 4th January 2008, and again in the "obiter dictum" section of the decision under appeal, the opposition division indicated the reasons why they considered that these objections did not prejudice the maintenance of the patent. In the absence of any reply to those reasons from the respondents, either during the procedure before the opposition division or during the appeal procedure, the board sees no reason to deviate from the conclusions of the opposition division in this respect. In its grounds of opposition opponent 2 also mentioned objections of lack of novelty and

inventive step (Articles 54 and 56 EPC) with respect to claims 1 and 2, but given that these consisted of nothing more than statements to the effect that the objections raised with respect to claims 3 to 5 applied also to these claims, the board considers that the argumentation of the opposition division applies correspondingly to these objections.

4. The board therefore concludes that none of the opposition grounds raised by the opponents (now respondents) prejudices the maintenance of the patent in amended form on the basis of the claims of the appellant's request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent in amended form on the basis of claims 1 and 2 filed with letter of 24 June 2008 a description to be adapted to these claims and drawings possibly also to be adapted.

The Registrar:

The Chairman:

U. Bultmann

M. Ruggiu