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**Datasheet for the decision  
of 24 June 2016**

**Case Number:** T 0039/12 - 3.2.06

**Application Number:** 02796696.9

**Publication Number:** 1456451

**IPC:** D04H1/70, D04H1/00, D04H13/00

**Language of the proceedings:** EN

**Title of invention:**  
MINERAL FIBRE BATTS

**Patent Proprietor:**  
Rockwool International A/S

**Opponent:**  
Knauf Insulation

**Headword:**

**Relevant legal provisions:**  
EPC Art. 116, 108  
EPC R. 101(1), 99(2)  
RPBA Art. 12(2)

**Keyword:**

Admissibility of appeal - no link between statement of grounds of appeal and decision under appeal

**Decisions cited:**

J 0022/86, T 0349/09, T 1581/08, T 0597/05, T 0432/88,  
T 0140/88, T 0355/86, T 0220/83

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0039/12 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 24 June 2016**

**Appellant:** Knauf Insulation  
(Opponent) Rue de Maastricht 95  
4600 Visé (BE)

**Representative:** Farmer, Guy Dominic  
ARC-IP sprl  
Rue Emile Francqui, 4  
1435 Mont-Saint-Guibert (BE)

**Respondent:** Rockwool International A/S  
(Patent Proprietor) Hovedgaden 584  
2640 Hedehusene (DK)

**Representative:** Gill Jennings & Every LLP  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 28 November 2011 rejecting the opposition filed against European patent No. 1456451 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** G. de Crignis  
W. Ungler

## **Summary of Facts and Submissions**

- I. The appellant (opponent) filed an appeal against the decision of the opposition division to reject the opposition against European patent No. 1 456 451.
- II. In its statement of grounds of appeal the appellant requested that the patent to be revoked in its entirety.
- III. In its reply, the respondent (proprietor) requested rejection of the appeal as inadmissible.
- IV. In a communication annexed to the summons to oral proceedings, the Board indicated that the oral proceedings would be limited to the issue of admissibility.
- V. With letter of 25 April 2015, the appellant replied to the communication of the Board. Case law supporting its view was cited. The following requests were made:
  - cancellation of oral proceedings regarding the admissibility of the present appeal;
  - a written decision to be issued regarding admissibility of the present appeal;
  - new oral proceedings to be scheduled to deal with the substantive aspects of the appeal.
- VI. With letter of 2 May 2016, the Board sent a further communication indicating that the arranged oral proceedings would take place.
- VII. With letter of 6 May 2016, the appellant withdrew its request for oral proceedings in respect of the question

of admissibility, and confirmed that it would not attend the scheduled oral proceedings.

VIII. Oral proceedings were held before the Board on 24 June 2016.

As announced in its letter dated 6 May 2016 the appellant did not appear. The requests of the appellant stated in writing are:

- setting aside the decision under appeal and revocation of the European patent;
- cancellation of oral proceedings regarding the admissibility of the appeal;
- issuance of a written decision regarding admissibility of the appeal;
- new oral proceedings to be scheduled to deal with the substantive aspects of this appeal.

The respondent requested that the appeal be rejected as inadmissible.

IX. The written arguments of the appellant may be summarised as follows:

Although the statement of grounds of appeal did not explicitly refer to the reasoning in the appealed decision, the reasons for setting aside the decision would be immediately apparent when reading the appealed decision and the statement of grounds of appeal concurrently.

Existing case law confirmed that implicit disclosure could be sufficient for admissibility of an appeal. This was the case for decisions T 355/86 and T 140/88 which were cited in the Case law of the Boards of

Appeal (7th edition, p. 964 paragraph 1) and which stated that

*"the boards have accepted a general reference to submissions at first instance as potentially constituting grounds for an admissible appeal".*

Also decision J 22/82 stated that it

*"might be regarded as satisfied if it was immediately apparent upon reading the decision under appeal and the Appeal procedure written statement that the decision should be set aside ... The question whether a particular statement alleged to be a statement of grounds of appeal in a particular case meets the minimum requirement of Art. 108 EPC could only be decided in the context of that particular case; and the context of a particular case will normally include the contents of the decision under appeal."*

The question for assessing admissibility was thus whether, upon reading the appealed decision and the ground for appeal together, the parts of the decision appealed and the basis of the appellant's arguments could be understood.

The minimal requirements for admissibility were met in that it could be understood that the appellant contested the opposition division's decision regarding novelty, inventive step and sufficiency. In each case, the opposition division should have followed the appellant's approach and the corresponding conclusions. Thus, it was clear, albeit implicitly, what issues were contested and on what basis. The reasons for setting aside the appealed decision had been provided as had the facts upon which the appeal was based.

- X. The arguments of the respondent may be summarised as follows:

The statement of grounds of appeal did not specify the legal and factual reasons why the contested decision should be set aside and the appeal be allowed. It did not address the contested decision at all. The same arguments in the same form were stated verbatim in the grounds of opposition.

T 349/09 related to an identical situation and held that it was the appeal which needed substantiation with regard to the decision which was attacked. Therefore, a repetition of the arguments before the first instance was insufficient to substantiate the appeal (see also T 1581/08, T 220/83 and T 0432/88). The present appeal should be found inadmissible.

## **Reasons for the Decision**

### *1. Admissibility of the appeal*

1.1 Article 108, third sentence EPC is the basic legal provision relating to statements of grounds of appeal. It requires that: *"Within four months of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations."*

1.2 The applicable provision of the Implementing Regulations is Rule 99(2) EPC which states in general terms the required contents of a statement of grounds of appeal. It reads:  
*"In the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be*

*amended, and the facts and evidence on which the appeal is based."*

1.3 Additionally, Rule 101(1) EPC deals with the rejection of the appeal as inadmissible as follows:

*"If the appeal does not comply with Articles 106 to 108, Rule 97 or Rule 99, paragraph 1(b) or (c) or paragraph 2, the Board of Appeal shall reject it as inadmissible, unless any deficiency has been remedied before the relevant period under Article 108 has expired."*

1.4 The requirements of Rule 99(2) EPC in combination with Article 108 EPC are not met as explained below.

1.5 The statement of grounds of appeal which was filed is almost precisely the same as the arguments filed in support of the notice of opposition. It differs therefrom only in that the heading has been changed from

*"Arguments in support of opposition" to  
"Statement of grounds in support of Appeal"*

and in that the last passage in the opposition brief was deleted, which previously read:

*"Additional prior art documents.*

*We reserve our right the support our positon on the basis of additional prior art documents if this becomes relevant during the opposition procedure."*

1.6 Thus, in the submitted statement of grounds of appeal there is no substantive link to the reasons given in the decision under appeal. It is no more than a "cut and paste" version of the grounds of opposition, such that it lacks any arguments as to why the decision of the opposition division is incorrect.



- 1.7 In its reply to the communication of the Board, the appellant cited decisions T 355/86, T 140/88 and J 22/86.
- 1.8 T 355/86 is concerned with the failure to file the authorisation of the representative and is thus irrelevant to the situation in the present case.
- 1.9 In T 140/88 the appellant referred to a statement made before the opposition division which clearly set out a number of grounds which were considered to prejudice maintenance of the patent in amended form, as envisaged by the Opposition Division in its communication pursuant to Rule 58(4) EPC 1973. Thus, T 140/88 was dealing with a special situation in which the submission made in the opposition proceedings already adequately addressed the reasons underlying the contested decision. However, this does not apply in the present case.
- 1.10 J 22/86 states in its head note:  
*"In order to comply with Article 108 EPC, the written statement setting out grounds of appeal should set out fully the reasons why the appeal should be allowed and the decision under appeal should be set aside. Exceptionally, where the written statement does not contain such full reasons, the requirement for admissibility may be regarded as satisfied if it is immediately apparent upon reading the decision under appeal and the written statement that the decision should be set aside."*  
Due to the word "exceptionally" this head note indicates that the question of whether a particular statement alleged to be a statement of grounds of appeal in a particular case meets the minimum requirement of Article 108 EPC can only be decided in

the context of the particular case. The statement of grounds of appeal in the present case does not deal at all, not even implicitly, with the detailed arguments given in the decision. In fact it simply ignores the reasons in the contested decision. It may be noted that apart from the appellant's broad statement that the reasons for setting aside the decision were implicit, it is not indicated where such implicit statement(s) might be found.

- 1.11 Accordingly, the case law cited by the appellant does not support its case.
- 1.12 Decision T 349/09 cited by the respondent relates to a situation identical to the current case. In this decision it was stated that (Reasons, item 6) *"the obligatory requirement is to substantiate the appeal and not just refer to or repeat the substantiation of the opposition. This distinction - namely, that oppositions attack patents, but appeals attack decisions - is crucial and the attack must be presented accordingly."* Additionally, it was confirmed (Reasons, item 21) that there is *"no difference between the mere incorporation by reference in a statement of grounds of appeal of first instance submissions and, as in this case, the repetition of such submissions in extenso. In either case, the absence of any correlation of the grounds of appeal to the decision under appeal will be equally detrimental to admissibility"*. Therefore, a repetition of the arguments before the first instance was held insufficient to substantiate the appeal (see also T 432/88).

1.13 T 432/88 (Reasons, item 3) also concluded that *"accordingly, the appellant has left it entirely to the Board and to the respondent to conjecture in what respect the appellant may consider the decision under appeal to be defective. This is just what the requirement that grounds for appeal be filed is designed to prevent"*.

1.14 It may further be noted that the statement of grounds of appeal also does not comply with Article 12(2), second sentence, RPBA requiring that the statement of grounds of appeal *"shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on."*

1.15 In view of the above, the appeal does not meet the requirements of Article 108 EPC in conjunction with Rule 99(2) EPC and therefore has to be rejected as inadmissible in accordance with Rule 101(1) EPC.

## 2. *Appellant's requests*

2.1 Request for cancellation of the oral proceedings regarding the admissibility of the present appeal scheduled on 24 June 2016

According to Article 116 EPC, oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings.

The Board considered it expedient to hold the oral proceedings in order to deal with any outstanding matter(s) in a procedurally efficient manner.

- 2.2 Request for a written decision regarding admissibility of the appeal

This request is dealt with by way of this decision.

- 2.3 Request for new oral proceedings to deal with the substantive aspects of this appeal

In view of the appeal being inadmissible, the appeal procedure is terminated by means of this decision such that the request for oral proceedings is moot.

## Order

### **For these reasons it is decided that:**

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



C. Spira

M. Harrison

Decision electronically authenticated