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**Datasheet for the decision
of 16 September 2014**

Case Number: T 2246/13 - 3.2.05

Application Number: 01923662.9

Publication Number: 1296840

IPC: B44C1/22

Language of the proceedings: EN

Title of invention:

Method of producing permanent identification on glass segments

Patent Proprietor:

AGC Glass Europe

Opponent:

Pilkington Group Limited

Relevant legal provisions:

EPC Art. 111(1)
EPC R. 103(1)(a)

Keyword:

Decision issued before expiry of time-limit for comment
Substantial procedural violation - violation of the right to
be heard (yes)
Reimbursement of appeal fee (yes)

Decisions cited:

G 0005/88, G 0007/88, G 0008/88, G 0002/97, T 1607/08



**Beschwerdekammern
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Case Number: T 2246/13 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 16 September 2014

Appellant: AGC Glass Europe
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1348 Louvain-la-Neuve (BE)

Representative: François Wéry
AGC Glass Europe
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Respondent: Pilkington Group Limited
(Opponent) Prescott Road
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Representative: Andrew James Marsh
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 6 September
2013 revoking European patent No. 1296840
pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman M. Poock
Members: S. Bridge
M. J. Vogel

Summary of Facts and Submissions

I. The appeal of 22 October 2013 is against the decision of the opposition division dispatched on 6 September 2013 revoking European patent No. 1 296 840. The appeal fee was paid simultaneously and the statement setting out the grounds of appeal was received on 20 December 2013.

II. On 8 February 2013 the opposition division issued a summons to oral proceedings to be held 17 October 2013.

With fax of 14 August 2013 the opponent indicated that it would not be represented at the proposed oral proceedings on 17 October 2013.

This fax was forwarded to the patent proprietor by the European Patent Office with letter of 21 August 2013.

With letter of 6 September 2013 the patent proprietor was informed by the European Patent Office that the oral proceedings were cancelled and that the procedure would be continued in writing.

By a separate letter also of 6 September 2013 the patent proprietor received the decision of the opposition division revoking the patent.

III. The appellant (patent proprietor) requests that the decision under appeal be set aside, the case be remitted to the department of first instance for further prosecution and that the appeal fee be reimbursed.

The respondent (opponent) did not file any observations or requests during the appeal proceedings.

IV. In the written procedure, the appellant argued essentially as follows:

The appellant was surprised by the two letters of 6 September 2013.

The letter of 6 September 2013, by which the European Patent Office cancelled the oral proceedings and announced that the procedure would be continued in writing, resulted in a legitimate expectation that the appellant would nevertheless have the opportunity to file observations.

However, the combination with the further letter of 6 September 2013 with the decision revoking the patent had the effect of abruptly cutting short the deadline of 17 September 2013 for submissions in preparation of the oral proceedings while depriving the appellant from any further possibility of reacting.

The appellant's right to be heard had thus been violated.

Reasons for the Decision

1. The appeal is admissible.
2. Violation of the right to be heard

The appellant's right to be heard was violated, because the summons to oral proceedings before the opposition division included a deadline for submissions in preparation of the oral proceedings up to 17 September 2013, but the decision revoking the patent was already issued on 6 September 2013.

The opposition division cancelled the oral proceedings after the opponent in effect withdrew its request for oral proceedings on 14 August 2013 and announced that the procedure would be continued in writing.

However, this does not mean that the previously valid deadline of 17 September 2013 for filing further submissions is cancelled or reduced without issuing a prior communication (see also T 1607/08, point 2.4).

The letter of 6 September 2013 by which the European Patent Office cancelled the oral proceedings and announced that the procedure would be continued in writing, in itself, results in a legitimate expectation on the part of the appellant that it would have the opportunity to file observations, if only to be able to react to the changed situation resulting from the other party's withdrawal of its request for oral proceedings.

The appellant thus could not expect that a decision revoking the patent would be issued on the same date.

The decision of the opposition division was therefore a surprise and deprived the appellant of its right to make full use of the deadline it initially had been accorded.

The principle of the protection of legitimate expectations, also referred to as the principle of good faith, generally recognised among the Contracting States, is also a well established principle in proceedings pursuant to the EPC. Its application to procedures before the EPO implies that measures taken by the EPO should not violate the reasonable expectations of the users of the European patent system

(see the decisions of the Enlarged Board of Appeal G 5/88, G 7/88, G 8/88; G 2/97, OJ EPO 1999, 123, point 1 of the Reasons).

In accordance with the principle of good faith governing the relationship between the EPO and the parties acting before it, the principle of the protection of the appellant's legitimate expectations was violated and resulted in a violation of its right to be heard (Article 113(1) EPC).

For this reason the case must be remitted to the first instance (article 111(1) EPC) and the appeal fee must be reimbursed by reason of a substantial procedural violation (Rule 103(1) (a) EPC).

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 for further prosecution.
3. The appeal fee is to be reimbursed.

The Registrar:

The Chairman:



D. Meyfarth

M. Poock

Decision electronically authenticated