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**Datasheet for the decision
of 13 May 2022**

Case Number: T 1257/17 - 3.2.03

Application Number: 05818533.1

Publication Number: 1800086

IPC: F41H5/04, F41H5/26, F41H7/04

Language of the proceedings: EN

Title of invention:
ARMORED GLASS COMPOSITION WITH PERIMETER REINFORCEMENT

Patent Proprietor:
AGP América S.A.

Opponent:
Isoclima S.p.A.

Headword:

Relevant legal provisions:
EPC Art. 100(c)

Keyword:
Grounds for opposition - extension of subject-matter (yes)

Decisions cited:

T 0331/87, G 0002/10

Catchword:



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Case Number: T 1257/17 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 13 May 2022

Appellant: Isoclima S.p.A.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 23 March 2017
rejecting the opposition filed against European
patent No. 1800086 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman G. Patton
Members: B. Miller
D. Prietzel-Funk

Summary of Facts and Submissions

I. European patent No. 1 800 086 B1 ("the patent") relates to bullet-proof glass armored compositions.

II. An opposition was filed against the patent on the grounds of Article 100(c) EPC and Article 100(a) EPC together with both Articles 54 and 56 EPC. The opposition division decided to reject the opposition.

This decision was appealed by the opponent ("the appellant"). The appellant requested that the decision under appeal be set aside and that the patent be revoked.

The patent proprietor ("the respondent") requested that the appeal be dismissed.

III. In response to a communication according to Rule 84 EPC, with a letter dated 28 December 2020 the appellant requested that the appeal be continued despite the fact that the patent had already lapsed in all designated contracting states.

IV. Claim 1 of the patent reads as follows:

"An armored glass composition comprising:
a first layered set (1a) comprised of glass layers (30, 30', 30", 30"') bonded together with polymeric adhesive layers (31), said first set having an exterior side facing away from a protected space;
a second layered set (1b) comprised of energy absorbing (32, 7, 9, 12) and adhesive (33) layers, said second

set having an interior side facing towards the protected space and an exterior side adhered to at least part of the interior side of the first layered set (1a);

a perimeter reinforcement (1) having an exterior side adhered to a portion of the interior side adjacent to the perimeter of the first set and an edge adhered to at least a part of the edges of one or more of the glass layers (30) of the first set (1a);

characterized in that

the armored glass composition further comprises a third layered set (2, 3, 5, 6, 10, 11) comprised of layers of materials adhered together and a sealant layer (4), said third set having an exterior side adhered to part of the interior side of the perimeter reinforcement (1), an interior side adhered to part of the exterior side of second set (1b), and a first edge adhered at least to part of the edges of one or more of the layers of the first set (1a); and

the sealant layer (4) having an exterior edge adhered to part of the interior side of the perimeter reinforcement (1) and a side adhered to at least a part of the edges of one or more of the layers of the third set (2, 3, 5, 6, 10, 11) and at least a part of the edge of the second set (1b)."

- V. With the summons to oral proceedings, the Board sent a communication pursuant to Articles 15(1) and 17(2) of the Rules of Procedure of the Boards of Appeal (RPBA 2020) indicating to the parties its preliminary, non-binding opinion that the amendments to claim 1 as granted extended beyond the teaching as originally filed.

VI. With a letter dated 4 May 2022 the respondent informed the Board that it would not attend the oral proceedings on 10 May 2022.

In these circumstances, after reviewing the parties' arguments, the Board saw no reason to change its preliminary opinion and was thus in a position to decide the case on the basis of the written submissions. The scheduled oral proceedings were therefore cancelled by the Board.

VII. The appellant's arguments, insofar as they are relevant for this decision, can be summarised as follows.

The deletion of features i) to iv) of claim 1 as originally filed produced subject-matter which went beyond the teaching of the application as originally filed.

VIII. The respondent's arguments can be summarised as follows.

The deletion of features i) to iv) of claim 1 as originally filed complied with the essentiality test as defined in Chapter H.V.3.1 of the Guidelines for Examination.

Reasons for the Decision

1. Article 100(c) EPC

1.1 The subject-matter of claim 1 as granted extends beyond the content of the application as originally filed (in this regard, reference is made to the corresponding

international publication of the application as filed:
WO 2006/035312 A2, "the application").

- 1.2 Claim 1 as filed requires that the third set of the armored glass composition is "characterized by:
- i) having a high elastic deformation (strain), capable of containing energy from generated glass and projectile splinters, without reaching the breaking limit;
 - ii) high resistance to elongation, allowing its materials to act as a continuous body, without breaking;
 - iii) sufficient adherence capable of not allowing delayering of the armored composition's edge when subject to perimeter projectile impact; and,
 - iv) providing elastic-plastic deformation (strain) capacity of the second set in order for it to elastically-plastically deform in substantially the same magnitude as it would deform in an area far from the armored composition's edge."

Features i) to iv) according to claim 1 as filed therefore define certain mechanical requirements and properties of the third set.

Claim 1 as granted does not require the third layered set to have specific mechanical properties at all, i.e. all four features i) to iv) of claim 1 as filed have been omitted from the wording of claim 1 as granted.

Therefore, the technical teaching of claim 1 of the patent is broader than the teaching of the application as filed, since the third set is not defined any further by the mechanical properties implied by former features i) to iv).

- 1.3 No basis has been identified by the respondent in the application for the deletion of all four features i) to iv) of the third set as defined in claim 1 as filed.

The respondent's arguments correspond to the reasoning in point II.2.3 of the contested decision and are based on the application of the so-called essentiality test or three-point test as set out in Chapter H.V.3.1 of the Guidelines for Examination at the European Patent Office, 2019.

- 1.4 These Guidelines are based on the ruling in T 331/87. According to established case law as summarised in Chapter II.E.1.4.4 b) and c) of the Case Law of the Boards of Appeal, 9th edition, 2019, T 331/87 should no longer be used, however.

In G 2/10 the Enlarged Board of Appeal clearly defined the general principles which govern the requirements of Article 123(2) EPC, i.e. that the skilled person must be able to derive the claimed subject-matter directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the original application as a whole.

Although the essentiality test could still be a useful indicator in certain cases, it is not necessarily congruent with the "gold standard", which has been confirmed by G 2/10.

It follows that even if the amendments were to comply with the essentiality test, it still has to be verified whether the subject-matter of the amended claim is directly and unambiguously derivable by the skilled person, using common general knowledge, from the

application as filed as a whole. Hence, the "gold standard" is the only test that counts for the assessment of the allowability of an amendment.

- 1.5 This is clearly not the case with regard to the amendments to claim 1 as granted, since no teaching can be found in the application that the mechanical properties of the third layered set as defined in claim 1 as filed can be neglected.

In fact, the opposite is true. From page 13, line 15 to page 14, line 15, the application makes it clear that the properties of the third layered set in accordance with features (i) to (iv) are "required" in order to meet the ballistic function against attacks over the 1a' zone, which corresponds to the problem to be solved; see page 10, line 22 to page 11, line 4 of the application. Omitting the properties of the third layered set of claim 1 as filed therefore provides new technical teaching to the skilled person in that said problem can be solved without these properties of the third layered set.

The respondent's argument that the properties according to features (i) to (iv) would be achieved by the structural technical features which have been included in claim 1 as granted is not convincing. As a matter of fact, such an inevitable correspondence between said features (i) to (iv) and the structural features introduced in claim 1 cannot be derived from the application.

The fact that features i) to iv) of claim 1 as filed might be considered to be vague or to define the result to be achieved as indicated in point II.2.3 of the decision under appeal does not imply that the features

are meaningless and can be deleted without changing the technical teaching of the remaining subject-matter, either.

- 1.6 Furthermore, even when following the three points of the essentiality test, it cannot be concluded that the amendments to claim 1 fulfil any of the test criteria.
- 1.6.1 The armored glass composition according to claim 1 as filed is mainly defined by the properties of the third set. It is not immediately apparent from the wording of claim 1 or the accompanying description of the application that any of the four features i) to iv) defining the third set in claim 1 as filed is not essential. As already mentioned above, the application instead confirms on page 13, line 15 to page 14, line 15 that the mechanical properties of the third layered set are "required", i.e. essential.
- 1.6.2 Since the mechanical properties of the third layered set also have an impact on the functionality of the armored glass composition and its stability against a projectile impact or damage caused by projectile splinters, it cannot be concluded that the omitted features have no influence on the problem to be solved by the armored glass composition, either. On the contrary, in the paragraph bridging pages 10 and 11 of the application it is stated that the invention aims to provide an armored glass composition with properties which are linked and partly repeated by the features of claim 1 as filed, which have been omitted from claim 1 as granted. Similarly, in the sentence bridging pages 12 and 13 of the application, the requirements for the third set are confirmed and correspond to the features defined in claim 1 as filed which have been omitted.

Therefore, the skilled person cannot directly and unambiguously recognise that the deleted features i) to iv) are not indispensable for the invention to function.

- 1.6.3 If the third set is not required to contribute to the stability against projectile impact, contrary to the requirements of features i) to iv) in claim 1 as filed, the remaining armored glass composition would have to be adapted in order to compensate for the missing effects provided by the third set.

Hence, the omission of the essential properties cannot be considered to be separate from the remaining layered sets of the armoured glass composition, either.

- 1.7 Therefore, the Board concludes that the omission of features i) to iv) from the wording of claim 1 as granted extends beyond the technical teaching of the application as originally filed.

The ground of opposition pursuant to Article 100(c) EPC therefore prejudices the maintenance of the patent as granted.

Order

For these reasons it is decided that:

1. The decision is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



A. Chavinier

G. Patton

Decision electronically authenticated