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**Datasheet for the ancillary decision  
of 11 February 2025**

**Case Number:** T 3217/19 - 3.3.05

**Application Number:** 09716064.2

**Publication Number:** 2262741

**IPC:** C03C1/00

**Language of the proceedings:** EN

**Title of invention:**

FINING AGENTS FOR SILICATE GLASSES

**Patent Proprietor:**

Corning Incorporated

**Opponent:**

Schott AG

**Headword:**

minutes - fining agents/corning

**Relevant legal provisions:**

EPC R. 124(1)

**Keyword:**

Minutes of oral proceedings - request to correct minutes

**Decisions cited:**

T 1891/20

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number: T 3217/19 - 3.3.05**

**A N C I L L A R Y D E C I S I O N**  
**of Technical Board of Appeal 3.3.05**  
**of 11 February 2025**

**Appellant:**

(Opponent)

Schott AG  
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**Representative:**

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**Respondent:**

(Patent Proprietor)

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**Representative:**

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**Decision under appeal:**

**Composition of the Board:**

**Chairman**

P. Guntz

**Members:**

G. Glod

J. Roider

## Summary of Facts and Submissions

- I. By submission of 10 October 2024, the appellant (opponent) requested correction of the minutes of the oral proceedings held before the board on 18 September 2024.
- II. In the communication of 16 October 2024 pursuant to Rule 100(2) EPC, the board expressed its preliminary view that the request should be rejected and set a two-month period for reply.
- III. The appellant replied to this communication on 6 December 2024 and requested that it be indicated in the minutes that
- the main request and auxiliary requests 1 to 3 and 3A extended beyond the content of the application as filed because these requests lacked the feature whereby the at least one fining agent was essentially free of antimony and arsenic,
  - main request A was not in accordance with Article 84 EPC because the term "substantially free of" was unclear,
  - main request B was not in accordance with Article 56 EPC because it *prima facie* lacked an inventive step over D1 in combination with common general knowledge, and
  - auxiliary request 1B was not in accordance with Article 123(2) EPC because the feature whereby the fining agent was free of halogens was not originally disclosed.

IV. The board's written decision dated 18 September 2024 was issued on 10 December 2024 and did not deal with the request for correction of the minutes.

V. The appellant's arguments concerning the correction of the minutes can be summarised as follows.

It was essential to the oral proceedings that the Board announced its view on previously higher-ranked requests, since this caused the respondent to reorder its request, making auxiliary request 2B the main request. Therefore, the board's position on said requests was to be recorded in the minutes.

Since there was no written decision on these requests, the board's conclusions on them were to at least appear in the minutes. This would also have been important for similar cases such as family members of the patent. It would therefore have been of interest to the public at large since it might have prevented misuse of the divisional applications.

### **Reasons for the Decision**

1. The board considered it appropriate to deal with the request for correction in a decision ancillary to the board's written decision dated 18 September 2024 and issued on 10 December 2024 in order not to further delay the issuance of the decision in substance (see also Article 15(9) (a) RPBA).
2. The board agrees with the position taken in T 1891/20 of 16 May 2022 (point 1.3 of the Reasons) that the present ancillary decision cannot be challenged under

Article 112a(1) EPC separately from the board's decision of 18 September 2024 issued in writing on 10 December 2024.

3. The appellant's request for correction is not convincing for the following reasons.
  - 3.1 As rightly pointed out by the appellant, Rule 124(1) EPC sets out that minutes of oral proceedings must be drawn up, containing the essentials of the oral proceedings including the relevant statements made by the parties.
  - 3.2 It is established case law that the board is responsible for deciding upon what is necessary to be recorded in the minutes (see Case Law of the Boards of Appeal of the EPO, 10th edition, 2022, III.C.7.10.1).
  - 3.3 In the case in hand, as indicated in the minutes, the initial discussion during oral proceedings focused on remittal to the opposition division, Article 123(2) EPC of the main request and auxiliary requests 1 to 3 and 3A, and taking into consideration main requests A or B, auxiliary requests 1A or 1B or 2A within the meaning of Article 13(1) and (2) RPBA.
  - 3.4 In view of the deliberations in between, it is self-explanatory that the board gave a negative view on the above requests, which at that point was not a decision, however. Consequently, a new, eventually main request was filed. Further details on this discussion are irrelevant to the case in hand, since a decision on said earlier requests was superfluous.

The minutes only reflect the essentials for the case in hand. The fact that more details, such as those

requested by the appellant, could be relevant to a different case, in particular in view of possible family members, is not important for the case in hand.

As acknowledged by the appellant, neither the examining division, opposition division nor the other boards are bound by the views of the present board, although they might consult previously expressed opinions when judging their own case.

In this context it is evident that an attentive reader of the minutes, including possible members of the examining division or opposition division, other board members or judges from national or international courts, will understand that the outcome of the discussion and the board's assessment of the claims of the requests then on file led to the respondent filing a new, eventually main request. Therefore, further information on the earlier requests that were not put up for decision is not considered essential to the case in hand.

In other words, what is essential for the case in hand is that certain points, as indicated, were discussed. They were deliberated upon by the board in between and, as a consequence of the board's opinion announced by the chairman, a new request was filed. Therefore, the board, which intended to provide short and concise minutes including the essential information, cannot understand why additional information should be added to the minutes of the oral proceedings of 18 September 2024.

**Order**

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

The request for correction of the minutes of the oral proceedings is refused.

The Registrar:

The Chairman:



C. Vodz

P. Guntz

Decision electronically authenticated