

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 29 April 2025**

Case Number: T 0965/23 - 3.2.04

Application Number: 17916461.1

Publication Number: 3570714

IPC: A47K3/40

Language of the proceedings: EN

Title of invention:

INCLINED CERAMIC SHOWER TILE

Patent Proprietor:

Seranit Granit Seramik Sanayi Ve
Ticaret Anonim Sirketi

Opponent:

Easy Sanitary Solutions B.V.

Headword:

Relevant legal provisions:

EPC Art. 123(2), 123(3)

EPC R. 139

Keyword:

Amendments

Extension of protection (yes)

Correction of error (not obvious)

Decisions cited:

G 0003/89, G 0011/91

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 0965/23 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 29 April 2025

Appellant:

(Patent Proprietor)

Seranit Granit Keramik Sanayi Ve
Ticaret Anonim Sirketi
Akabe Ticaret Merkezi Buyukdere Cd.
Likor Yani Sk. No:1 Kat: 4 D:401-402
Sisli/Istanbul (TR)

Representative:

Spachmann, Holger
Stumpf Patentanwälte PartGmbB
Alte Weinsteige 73
70597 Stuttgart (DE)

Respondent:

(Opponent)

Easy Sanitary Solutions B.V.
Nijverheidsstraat 60
7575 BK Oldenzaal (NL)

Representative:

Nederlandsch Octrooibureau
P.O. Box 29720
2502 LS The Hague (NL)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 14 March 2023
revoking European patent No. 3570714 pursuant to
Article 101(2) EPC.**

Composition of the Board:

Chairman

G. Martin Gonzalez

Members:

S. Oechsner de Coninck

C. Heath

Summary of Facts and Submissions

- I. The proprietor appeals against the decision of the opposition division revoking European patent No. 3570714 pursuant to Article 101(2) EPC.
- II. The Board issued a communication in preparation for oral proceedings and setting out its provisional view on the relevant issues.
- III. Oral proceedings were held on 29 April 2025 per videoconference.
- IV. The appellant requests that the decision be set aside and the patent be maintained as granted (main request) or alternatively on the basis of one of the auxiliary requests 1a,1b,1c, 2 to 5, with auxiliary requests 2 to 5 new in appeal filed together with the appellant's grounds of appeal.
- V. The respondent requests dismissal of the appeal.
- VI. The independent claim 1 of the relevant requests is as follows

- Main request (as granted - with feature numbering used in the decision under appeal added by the Board):

"M1a *An integrally manufactured self-inclined ceramic shower tile (1) for using in indoor/outdoor shower areas comprising*

M1b *a shower tile edge height (H1) letting waste water to flow into drainage hole (2) without accumulating on the shower floor and*

M1c a drainage hole height (H2) lower than said shower tile edge height (H1);

and characterized in that

M1d said shower tile (1) is manufactured via dry press method

M1e from clay, kaolin and feldspar raw materials

M1f which provide a water absorption value of lower than 3%."

- Claim 1 according to auxiliary requests 1a,1b,1c,2 to 5 deletes or substitutes the expression in feature **M1f** "which provide".

VII. The relevant arguments of the parties are addressed in the following reasons.

Reasons for the Decision

1. Main request-added subject-matter

1.1 Claim 1 as granted (main request) contains the following added features with respect to claim 1 as filed:

"said shower tile (1) is manufactured via dry press method (M1d) from clay, kaolin and feldspar raw materials (M1e) which provide a water absorption value of lower than 3% (M1f)"

1.2 The decision under appeal came to the conclusion that these two features as above imply that the combination of the raw materials used in feature M1e as such provide the water absorption value lower than 3% expressed in feature M1f. Further, that the above feature M1e in dependency from the further feature M1f was not derivable from the disclosure of the application as filed.

- 1.3 In their written submissions and during oral proceedings before the Board, the appellant invited the Board to apply a different understanding of the literal meaning of the above features. In particular, the features M1d and M1e should be read together and the dry press method that uses clay, kaolin and feldspar as raw materials should be understood as the process providing the required water absorption of the finished tile rather than the raw materials listed in M1e as such. The wording "said shower tile (1) is manufactured via dry press method (M1d) from clay, kaolin and feldspar raw materials (M1e) which provide a water absorption value of lower than 3% (M1f)" should thus be understood in the sense that the *dry press method* rather than the *composition* of the three materials provided for the water absorption rate, such that a correct understanding of the above features would be: *"said shower tile (1) is manufactured from clay, kaolin and feldspar raw materials (M1e) via a dry press method (M1d) which provides a water absorption value of lower than 3% (M1f)."* Such reading should follow from both a linguistic and technical point of view.
- 1.4 The appellant's representative, albeit not an English native speaker, submitted that from a linguistic point of view, the water absorption ratio referred to the dry press method. The Board is unable with this interpretation. The Board concedes that in a list of nouns, a subsequent "which" may at times render it unclear to which of the nouns this refers to. In this case, however, the "provide" clearly cannot refer to the dry press manufacturing method, as otherwise the drafter would have written "which provides". The "which provide" must thus refer to a plurality or list of nouns. As such list directly precedes the "which

provide", a mere linguistic analysis would point to an understanding that clay, kaolin and feldspar provide the absorption rate.

- 1.5 The Board is equally not convinced that from a technical point of view, the only sensible interpretation of the claim in light of the description is the one as submitted by the appellant. The passages referred to as support for this amendment all disclose the properties of the ceramic/porcelain tile itself. The last but one paragraph on page 4 concerns manufacturing steps of the shower tile. More particularly, lines 28 to 31 disclose that the shower tile is made from high form ceramic materials and manufactured from clay, kaolin, feldspar raw materials. In the last sentence of this paragraph, some maximum water absorption values are disclosed that the skilled person associates with the finished shower tile. Likewise, the same maximum water absorption values using certain classification are repeated in the last paragraph on page 5, alongside to the dry pressed ceramic/porcelain tile, but without indicating that these values result from the dry pressing process. Finally, claim 5 is dependent on claim 1 alone and defines the absorption value of said shower tile lower than 3%, whereas in dependent claim 8 (also only dependent on claim 1) it is recited that the shower tile according to claim 1 is manufactured from clay, kaolin, feldspar raw materials. Thus all these passages referred to by the appellant contain the same consistent disclosure: that the shower tile should have the required water absorption as such, without clarifying whether this property arises from the manufacturing method or from other conditions or factors. It is therefore also not derivable that the property results from the combination of raw materials

as such, as now defined in the characterising portion of the contested claim.

- 1.6 Finally, the Board finds no indication that the skilled person's common general knowledge would contradict the literal understanding of the claim or the technical teaching as disclosed in the application to such an extent that they would arrive at the interpretation of the features as submitted by the appellant based on technical common sense. The Board finds that the reading of feature M1f as referring to the water absorption properties of the tile, in connection with the raw materials used clay, kaolin and feldspar makes indeed technical sense and would be interpreted as such by the skilled reader. Such reading is not a misinterpretation as submitted by the appellant. As correctly observed on page 4, second paragraph of the decision, while it is known that the water absorption of a ceramic product depends on several factors, including the raw materials used but also their manufacturing process, including firing temperature and pressure applied, the application as filed only discloses the water absorption values of the shower tile as a finished product. The person skilled in the art would thus understand the teaching that the absorption rate exclusively depends on the three materials clay, kaolin and feldspar as not known in prior art, but as a new teaching as provided in the patent. If patent applications only provided teachings known in prior art, no such application could be granted. That patent applications disclosed teachings not known in prior art is an inherent feature of patent applications and the patent system as a whole.

- 1.7 The Board also finds no support for the appellant's submission that the skilled person would consider the raw materials unable to be associated with water absorption capabilities because they are used in a powder state in conventional dry press methods. Assuming the skilled person would consider that the dry press method necessarily implies a step of a mixing these raw materials as a powder, which however is not required by the claim, each one of these materials, clay, kaolin or feldspar has certain physical properties that include water absorption properties. Once mixed together in the submitted powder state, the mixture will achieve a water absorption value credibly associated with the composition of the mixture of these raw materials, clay, kaolin or feldspar. Indeed, it has not been disputed that mixed with different relative proportions and then compressed at a given pressure and fired at a certain temperature, the finished tile may exhibit different values of water absorption, even if such value may be unpredictable. Thus, the skilled does not immediately and unambiguously recognise that the water absorption value expressed in M1f should be from the dry press method as such or be applicable to the tile obtained by this sole method.
- 1.8 The opposition division was thus correct to establish that claim 1 as granted expressed a connection between the raw materials themselves as expressed in feature M1e and the resultant water absorption maximum value in feature M1f. Yet no such connection was directly and unambiguously derivable from the content of the application as filed, especially lines 28 to 31 of page 4, the last paragraph of page 5, dependent claims 5 and 8, as was not contested by the appellant.

1.9 The Board therefore confirms the opposition division's findings on Article 123(2) EPC that the subject-matter of granted claim 1 has been extended beyond the content of the application as filed.

2. Request for correction according to Rule 139 EPC

2.1 On this question, the Board has expressed its preliminary opinion under point 3 of its communication pursuant to article 15(1) RPBA as follows:

"In chapter II.1.B of their grounds, the appellant request a correction of an obvious error based on Rule 139 EPC.

According to case law to allow such a request, it must be established (i) that it is obvious that an error is in fact present in the document filed with the EPO, the incorrect information having to be objectively recognisable by the skilled person using common general knowledge (G 3/89, OJ 1993, 117 and G 11/91, OJ 1993, 125, point 5 of the Reasons), and (ii) that the correction of the error is obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction (CLBA, 10th edition 2022, II.E.4.2).

As already observed here above, the first criteria is not met, as the skilled person knows that raw materials used to manufacture ceramic products contribute to water absorption characteristics. Furthermore, the second criteria also is not met, especially as the appellant proposes several alternative drafting of the amended feature M1f as different attempts to correct the alleged obvious mistake."

- 2.2 During oral proceedings before the Board, the appellant focused on the sole request to amend the verb "provide" to its singular form "provides", in alignment with the amendments made in auxiliary request 2. According to their view, it was clear that the water absorption values was meant to apply to the full tile. Furthermore, the proposed correction was small and immediately evident.
- 2.3 The Board disagrees, as explained here above in relation to the main request, the characterising portion as it is drafted makes technical sense. Absent any doubt on its meaning, the skilled reader is unable to recognise any error of an obvious nature. The fact that the correction would only be minor (that is, adding an "s") does not convince the Board, either. In case **T 1473/19**, the Board revoked a patent for added subject-matter due to a missing comma. And in the "Hitchhiker's Guide to Galaxy", the Guide mistakenly stated that "ravenous Bugblatter beasts often make a very good meal for visiting tourists". The small error being that "for" should have read "of". While the error was small, it was not immediately apparent, yet made all the difference (to the tourists, at least).
- 2.4 Since this recognition of an obvious error is lacking, however simple the proposed correction would be, a first prerequisite for a correction under Rule 139 EPC is not fulfilled.
- 2.5 As no obvious error is evident, the Board thus refused the request for correction under Rule 139 EPC.

3. Auxiliary requests 1a, 1b, 1c and 2 to 5
- 3.1 Independently of the question of their admission into the proceedings none of these requests is allowable under the provisions of Article 123(3) EPC.
- 3.2 According to the appellant's own submission, claim 1 of all these requests deletes the relationship between the raw materials of feature M1e and the water absorption value of feature M1f. This removal of a limitation present in granted claim 1 gives rise to an extension of the scope of protection contrary to Art 123(3) EPC, because according to the amended wording, the water absorption rate can now also be attributable to other factors than a combination of the three materials clay, kaolin and feldspar
- 3.3 The Board thus confirms the decision's findings that the scope of claim 1 according to the auxiliary requests 1a, 1b and 1c is larger than the one that was granted and thereby infringes Article 123(3) EPC. It furthermore finds that this infringement also applies to the scope of claim 1 according to the auxiliary requests 2 to 5.
4. As no allowable requests remains, the Board can but confirm the impugned decision to revoke the patent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

G. Martin Gonzalez

Decision electronically authenticated