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**Datasheet for the decision  
of 25 March 2025**

**Case Number:** T 1419/23 - 3.2.03

**Application Number:** 17165499.9

**Publication Number:** 3239434

**IPC:** E04F15/04

**Language of the proceedings:** EN

**Title of invention:**

FLOOR COVERING AND FLOOR ELEMENT

**Applicant:**

Unilin, BV

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2), 76(1) sentence 2, 111(1)  
RPBA 2020 Art. 11, 13(2)

**Keyword:**

Amendments - allowable (yes) - extension beyond the content of the application as filed (no)

Divisional application - added subject-matter (no) - after amendment

Appeal decision - remittal to the department of first instance (yes)

Remittal - special reasons for remittal

Amendment after summons - exceptional circumstances (yes)

**Decisions cited:**

G 0010/93

**Catchword:**



**Beschwerdekammern**

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**Case Number:** T 1419/23 - 3.2.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.03**  
**of 25 March 2025**

**Appellant:** Unilin, BV  
(Applicant) Ooigemstraat 3  
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**Representative:** Valea AB  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 29 March 2023  
refusing European patent application No.  
17165499.9 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairwoman** J. Hoppe  
**Members:** B. Miller  
R. Baltanás y Jorge

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the examining division to refuse European patent application No. 17 165 499.9 based on the main request and auxiliary request 1, as both filed on 31 January 2023.

In its decision the examining division concluded that the subject-matter of the respective claim 1 of the main request and auxiliary request 1 lacked inventive step when starting from US 2006/0070332 A1 (D1) as the closest prior art and further taking into account US 2003/0224147 A1 (D2).

- II. The applicant ("the appellant") filed an appeal against the decision to refuse the application, thereby requesting that the decision be set aside and that the application be granted on the basis of the claims as considered by the examining division (main request) or, alternatively, on the basis of any of auxiliary requests 1 to 6 filed with the grounds of appeal.

- III. In a communication pursuant to Article 15(1) RPBA the Board presented to the appellant its preliminary, non-binding opinion in the present case and raised a new objection under Article 76(1), second sentence, EPC.

- IV. With a letter dated 19 December 2024 the appellant submitted a new main request and new auxiliary requests 1 to 3 which replaced the previous requests.

- V. During the oral proceedings before the Board on 25 March 2025 the objection under Article 76(1), second sentence, EPC, raised by the Board in its

communication pursuant to Article 15(1) RPBA, was further elaborated and discussed with the appellant in detail. In particular, the Board concluded that the main request filed on 19 December 2024 did not overcome this objection. As a consequence of the Board's conclusion, the appellant filed a new set of claims as new main request, which was labelled "March 2025".

At the end of the oral proceedings, the appellant requested that the decision under appeal be set aside and the case be remitted to the examining division for further prosecution on the basis of the new main request labelled "March 2025".

All further requests were withdrawn during the oral proceedings. The main request labelled "March 2025" constitutes therefore the only remaining claim-request of the appellant and will be referred to simply as "the main request" below.

VI. Claim 1 of the main request reads (feature labelling a)-f) by the Board):

- a) Floor covering, consisting of rectangular floor elements (1), which,

- b) at a first pair of two opposite sides (7-8), comprise coupling parts (9-10), which substantially are performed as a male coupling part (9) and a female coupling part (10), which are provided with vertically active locking portions (11-12), which, when the coupling parts (9-10) of two of such floor elements (1) cooperate with each other, effect a locking in vertical direction (V1), perpendicular to the plane of the floor elements (1), and also are provided with horizontally active locking portions (13-14), which, when the coupling parts (9-10) of two of such floor elements (1) cooperate with each other, effect a locking in horizontal direction (H1), perpendicular to the respective sides (7-8) and in the plane of the floor covering (23),
- c) wherein said coupling parts (9-10) are of the type allowing that two of such floor elements (1) can be connected to each other at said sides (7-8) by pushing one of these floor elements (1) with the associated male coupling part (9), by means of a downward movement (15), home into the female coupling part (19) of the other floor element (1),
- c1) the floor elements (1) having a second pair of opposite sides (41-42) which also are provided with mutually cooperating coupling parts (9-10), which substantially are made as a male (9) and a female coupling part (10), which are provided with vertically active locking portions (11-12) and horizontally active locking portions (13-14);

- c2) the coupling parts (9-10) of the second pair of opposite sides (41-42) allowing that two of such floor elements (1) can be interconnected at this pair of sides (41-42) by providing one of these floor elements (1) with the associated male coupling part (9), by means of a turning movement (W), in the female coupling part (10) of the other floor element,
- d) wherein said coupling parts of said first and second pairs of opposite sides are made of an
  - d1) extruded
  - d2) filled synthetic material composite,
- e) wherein as a synthetic material, polyethylene, polypropylene, polystyrene, polycarbonate, PET or polyvinylchloride is applied,
- f) and the coupling parts are formed as milled profiles.

VII. The appellant's arguments in relation to the main request can be summarised as follows.

(a) Admittance

The main request should be admitted into the proceedings because the Board raised an objection for the first time under Article 76(1) EPC, which had not been raised by the examining division and which was discussed in detail for the first time during the oral proceedings before the Board. Therefore, exceptional circumstances existed which justified the admittance of the main request.

(b) Amendments

The application was a divisional application of European patent applications EP14188952.7 and EP07734183.2.

The subject-matter of claim 1 was based on the seventh aspect as described in paragraphs [0005], [0023], [0071], [0073], [0080] to [0082] and [0157] of the earlier application EP14188952.7 (published as EP 2 843 155 A1). Since the relevant parts of the description of EP14188952.7, that of the earlier application EP07734183.2 and that of the application as originally filed were identical, the amendments in claim 1 fulfilled the requirements of Articles 123(2) and 76(1) EPC.

(c) Request for remittal

In response to the objections under Article 76(1) EPC raised by the Board for the first time in appeal proceedings, the subject-matter of claim 1 had changed considerably compared to the subject-matter discussed during the examination proceedings. Unlike the subject-matter discussed during the examination proceedings, claim 1 of the main request now related to a floor covering obtained by floor elements of the "folding-down" type, which comprised one pair of coupling elements engaging by a turning movement and a second pair of coupling elements engaging by a pushing-down movement.

D1 related to floor elements having a different joining mechanism, which required different coupling parts from those required according to claim 1 of the main request. The floor elements according to D1 were joined



by means of a vertical movement, whereas claim 1 of the main request focused on floor elements wherein adjacent floor elements were joined to each other by means of a folding-down movement. D2 related to an extrusion process for forming floor elements. However, D2 did not disclose a folding-down type of floor element, since it did not disclose that the side edges were joined by a push-down locking connection or even comprised a pair of coupling parts.

Therefore, neither D1 nor D2 was relevant for assessing the requirements of Articles 54 and 56 EPC as regards the the subject-matter of claim 1 of the main request because neither of these documents, which were cited by the examining division, addressed a floor covering formed by floor elements of the "folding-down" type.

In view of the considerable change in the claimed subject-matter, it was likely that the claimed subject-matter had not been considered and hence not been completely examined (or even searched) by the examining division.

Therefore, the case should be remitted for further assessment of novelty and inventive step.

## **Reasons for the Decision**

### **1. Admittance of the main request**

- 1.1 Under Article 111(1), second sentence, EPC, the Board has the power to examine whether the application or the invention to which it relates meets the requirements of the EPC. This also holds true for requirements the examining division has not considered in the examination proceedings or has regarded as being fulfilled.

In the communications issued by the Examining Division Article 123(2) and Article 76(2) EPC were not even mentioned. In the impugned decision (reasons 14), the Examining Division found that "Support for this amendment is to be found on page 61, lines 15 to 19, in conjunction with page 27, lines 10 to 14" and concluded that the requirements of Article 123(2) and 76(1) EPC were met.

The Board did not support these findings and therefore decided to raise objections under Article 76(1), second sentence, EPC and to rule on the case itself in this matter (see G 10/93, Order). The objections were raised for the first time by the Board in its communication under Article 15(1) RPBA and discussed in detail with the appellant for the first time during the oral proceedings before the Board.

Confronted with these exceptional circumstances, the appellant filed a new main request, labelled "March 2025", during the oral proceedings in order to address

the objections under Article 76(1), second sentence, EPC as raised by the Board.

As is evident from the detailed reasoning below, the main request overcame the objections under Article 76(1), second sentence, EPC, which the Board had raised against all previous requests on file and also complies with Article 123(2) EPC.

Making use of its discretion, the Board decided to admit the main request into the proceedings due to the exceptional circumstances of the case (Article 13(2) RPBA).

## 2. Amendments (Articles 76(1) and 123(2) EPC)

2.1 The application was filed on 7 April 2017 as a divisional application of European patent applications EP14188952.7 (published as EP 2 843 155 A1 and referred to herein as "the earlier application") and EP 07734183.2 (published as WO 2007/141605 A2 and referred to herein as "the earliest application").

In line with the requirements of Article 76(1) EPC the subject-matter of the claims of the main request does not extend beyond the content of the earlier application for the following reasons.

2.2 Claim 1 of the main request comprises features a) to f), which were originally disclosed in the claimed combination.

2.3 The subject-matter as defined by claim 1 of the main request is based on the "seventh independent aspect" of the earlier application (references below relate to its

publication: EP 2 843 155 A1), the description of which starts in paragraph [0071].

In paragraph [0071], the earlier application sets out that the seventh aspect also aims at a floor covering of the type mentioned in "the first aspect". This first aspect is explained in paragraph [0005], which provides a basis for features b) (coupling parts on a first pair of two opposite sides effecting a locking in vertical and horizontal direction) and c) (connection of the coupling parts by downward movement) of the main request.

The fact that the floor elements of the seventh aspect may be rectangular (feature a) of the main request) is disclosed in paragraph [0081] of the earlier application. This paragraph also provides a basis for features c1) (second pair of opposite sides provided with coupling parts with vertically and horizontally active locking portions) and c2) (connection of coupling parts of the second pair of opposite sides by means of a turning movement) of the main request.

Features d) and d2) (all coupling parts made of a filled synthetic material composite) can be derived from paragraphs [0071], [0080] and [0081] of the earlier application. Paragraphs [0071] and [0080] disclose filled synthetic material composite for the first pair of male and female coupling parts. For the second pair of male and female coupling parts paragraph [0081] refers to the characteristics of the first pair of coupling parts.

The synthetic materials according to feature e) of the main request are disclosed in paragraph [0073] of the earlier application.

Paragraphs [0023] and [0082] of the earlier application disclose extrusion and milling to obtain the coupling parts according to features d1) and f) of the main request.

The subject-matter of claim 1 therefore does not extend beyond the disclosure of the earlier application.

- 2.4 The relevant parts of the description of the earliest application, that of the earlier application and that of the application as filed (referred to herein as EP 3 239 434 A1) are identical - see below:

application as filed paragraph	earlier application paragraph	earliest application
[0005]	[0005]	page 2, lines 10 to 32
[0024]	[0023]	page 9, line 24 to page 10, line 9
[0072]	[0071]	page 26, lines 10 to 24
[0074]	[0073]	page 27, lines 16 to 33
[0081] to	[0080] to	page 29, line 31 to
[0083]	[0082]	page 31, lines 16

Therefore, the subject-matter of claim 1 does not extend beyond the disclosure of the earliest application and the application as originally filed for the same reasons as set out above.

- 2.5 Concerning the floor elements according to claim 2, the same arguments apply as for the floor covering according to claim 1.

2.6 In summary, the Board concluded that the amendments in claims 1 and 2 of the main request fulfil the requirements of Articles 76(1) and 123(2) EPC.

3. Remittal to the examining division

3.1 The Board decided to remit the application in accordance with Article 111(1) EPC and Article 11 RPBA to the examining division for further prosecution for the following reasons.

3.2 Under Article 11 RPBA the Board has discretion to remit the case to the department whose decision was appealed in accordance with Article 111(1) EPC if, as in the present case, there are special reasons for doing so.

3.3 Following the amendments in the claims made in reaction to the objections under Article 76 EPC in appeal proceedings, the subject-matter of claim 1 has changed considerably compared to the subject-matter discussed during the examination proceedings.

Claim 1 of the main request now defines a floor covering consisting of floor elements comprising a specific combination of coupling parts according to the seventh aspect of the application as filed. The floor elements addressed by claim 1 are joined by a so-called "folding-down" movement (one pair of coupling parts is joined by a turning movement and, at the same time, a second pair is joined by a pushing-downwards movement), which is illustrated in Figures 5 and 6 of the application as filed.

The claims considered by the examining division did not specifically relate to floor elements of this type, since the second pair of coupling parts was not defined

therein. Moreover, the material of the coupling parts has also changed. The floor elements considered by the examining division were defined by an excess of inorganic filling material, a limitation which is not present in claim 1 of the main request.

- 3.4 In view of the considerable change of the claimed subject-matter, neither D1 nor D2 represents a promising closest prior art.

D1 relates to floor elements with a different joining mechanism, which requires different coupling parts from those defined by claim 1 of the main request. The floor elements according to D1 are joined by means of a vertical movement (see Figures 4a, 4b and paragraph [0039] of D1), whereas claim 1 of the main request relates to a floor covering wherein adjacent floor elements are joined to each other by means of a folding-down movement (see Figures 5 and 6 of the application as filed).

D2 relates to an extrusion process for forming floor elements - see Figure 1 of D2. However, D2 does not disclose a folding-down type of floor element, since it does not disclose that the side edges of the extruded elements comprise a second pair of coupling parts which can be joined by a push-down locking connection.

- 3.5 Since none of the claim requests considered by the examining division addressed floor elements of the "folding-down" type and neither of the cited documents discloses floor elements of this type, the Board agrees with the view of the appellant that it is likely that the aspect of the application as defined by claim 1 of the main request was not considered and hence not completely examined by the examining division.

Thus, the Board concluded that special reasons exist for remitting the case, and it decided, in line with the request of the appellant, to remit the case to the examining division for further prosecution.



## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution.

The Registrar:

The Chairwoman:



C. Spira

J. Hoppe

Decision electronically authenticated