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**Datasheet for the decision
of 30 July 2025**

Case Number: T 0016/24 - 3.2.01

Application Number: 17728657.2

Publication Number: 3458796

IPC: F41H1/02, F41H5/04

Language of the proceedings: EN

Title of invention:

FLEXIBLE LIGHTWEIGHT ANTIBALLISTIC PROTECTION

Patent Proprietor:

Seyntex NV

Opponent:

Mehler Vario System GmbH

Headword:

Relevant legal provisions:

RPBA 2020 Art. 13(2)

EPC Art. 56, 104(1)

RPBA Art. 16(1)

Keyword:

Amendment after summons - exceptional circumstances (no)

Inventive step - (yes)

Apportionment of costs - (no)

Decisions cited:

T 1848/12

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0016/24 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 30 July 2025

Appellant:

(Opponent)

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
11 October 2023 concerning maintenance of the
European Patent No. 3458796 in amended form.**

Composition of the Board:

Chairman

G. Pricolo

Members:

J. J. de Acha González

A. Jimenez

Summary of Facts and Submissions

I. The opponent's appeal is directed against the interlocutory decision of the Opposition Division, according to which the patent, as amended according to auxiliary request 2 filed during the oral proceedings (claim set filed on 9 September 2022), complied with the requirements of the EPC.

II. The following evidence is relevant for the present decision:

D1: US 6264289 B1;
D2: DE 102014006613 A1;
D3: EP 2254779 B1;
D4: EP 2454135 B1;
D5: US 2015/232075 A1;
D6: EP 2077215 B1;
D10: DE 102008003380 A1;
D15: EP 2077215 B1;
D17: DE 102008003380 A1;
D20: EP 2077215 B1;
D21: DE 102008003380 A1;
D22: EP 2077215 B1;
D23: DE 102008003380 A1; and
PU: prior use alleged and evidenced with documents filed with appellant's letter of 28 May 2025.

III. The Opposition Division decided among others that the subject-matter of claim 1 of the auxiliary request 2 involved an inventive step in view of the following combinations:

- D1 with D2 or alternatively with D2 and D5; and
- D3 with D4.

IV. Oral proceedings before the Board were held on 30 July 2025.

The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal of the opponent be dismissed as the main request , or, in the alternative, that the patent be maintained in amended form on the basis of one of the auxiliary requests 1 to 6, filed with their reply to the statement of grounds of appeal.

Further, the respondent requested apportionment of costs.

V. Claims 1 and 11 of the main request read as follows (feature numbering according to the contested decision, whereby the granted claim 12 has been renumbered to claim 11):

- 1.1 *Antiballistic protection (1) comprising a cover (2) with a stab and bullet resistant layer (3), and*
- 1.2 *and in which said antiballistic protection (1) comprises a central chest section (11) and at least two wing sections (12, 13),*
- 1.3 *whereby said stab and bullet resistant layer (3) is composed of a stab resistant layer (31) of polyamide and a bullet resistant layer (32) of ultra-high molecular weight polyethylene,*
- 1.3.1 *wherein said stab resistant layer (31) is composed of a plurality of polyamide textile layers in which at least one polyamide textile layer has a surface weight lower than 200 g/m²,*
characterised in that,

- 1.3.2** *said bullet resistant layer (32) is composed of a plurality of 10 to 100 ultra-high molecular weight polyethylene laminates with a surface weight of 70 to 90 g/m².*
- 11** *Method for fabricating an antiballistic protection (1), comprising the following steps:*
- 11.1.1** *providing a stab resistant layer (31) composed of a plurality of polyamide textile layers in which at least one polyamide textile layer has a surface weight lower than 200 g/m² and*
- 11.1.2** *bullet resistant layer (32) composed of a plurality of 10-100 ultra-high molecular weight polyethylene laminates , with a surface weight of 70 to 90 g/m²,*
- 11.1.3** *said stab resistant layer (31) and said bullet resistant layer (32) having a central chest section (11) and at least two wing sections (12, 13);*
- 11.2** *connecting said stab resistant layer (31) and said bullet resistant layer (32) at at least one contact point at the bottom of said central chest section (11) and at one or more contact points at the top of said central chest section (11), as a result of which a stab and bullet resistant layer (3) is obtained; and*
- 11.3** *enclosing said stab and bullet resistant layer (3) in a cover (1).*

Reasons for the Decision

Main request

1. The main request corresponds to auxiliary request 2, on which the contested decision is based. The claims

correspond to the granted claims, except for granted claim 2, which has been deleted. This has resulted in the remaining granted claims being renumbered.

2. *Admissibility of evidence and objections*

2.1 Pursuant to Article 13(2) of the Rules of Procedure of the Boards of Appeal (RPBA), the Board did not admit the following objections:

- lack of novelty in view of the prior use PU; and
- lack of inventive step over the following combinations of prior art:
 - D1 with D3; and
 - D1 with D2 together with D15 or D17.

2.2 These objections were filed for the first time during the appeal proceedings, following the communication under Article 15(1) RPBA in preparation for the oral proceedings before the Board. They therefore represent an amendment to the appellant's appeal case.

2.3 Under Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA, shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified by cogent reasons provided by the party concerned.

2.4 The appellant argued that the following reasons constituted exceptional circumstances.

Regarding the new lines of attack on inventive step, the documents in question were already present during the opposition proceedings. As such, no party was adversely affected, nor was it detrimental to procedural economy, as all parties were aware of and

familiar with the disclosure of these documents. Furthermore, the appellant wanted to avoid raising too many issues and submitting too many documents at the outset of the appeal proceedings and only did so after receiving a negative preliminary opinion from the Board. Also, under Article 114(2) EPC, the Board should have evaluated the case of inventive step of granted claim 1 thoroughly, taking into account document D1 as the closest prior art and the other evidence available in the proceedings.

What relates the new novelty objection in view of the newly filed alleged prior use, the appellant argued that searching for evidence of prior use was complex and tedious, as confirmed by the letter from the opponent's employee. This process could not be completed within the relatively short time frame between the decision of the Opposition Division and the filing of the statement of grounds of appeal. Consequently, the appellant was forced to omit the material proving the prior use from the statement of grounds of appeal. It was only in response to the Board's preliminary opinion that the appellant examined the available material proving prior use more closely, identifying the remaining documents and evidence to complete the material that finally proved prior use.

- 2.5 The Board judges that these circumstances do not qualify as exceptional as recited in Article 13(2) RPBA.

The subject-matter under discussion remains the granted claims 1 and 12 (renumbered to claim 11). Consequently, the opponent had no reason not to file the objections on inventive step based on documents filed with the notice of opposition already at the outset of the

opposition proceedings. The Board cannot recognize any exceptional circumstances that would justify admitting these objections at such a very late stage of the appeal proceedings.

First, it is established case law of the Boards of Appeal that a negative opinion of the Board in its preliminary opinion, prepared in anticipation of the oral proceedings and solely based on the parties' submissions as in the present case, does not constitute exceptional circumstances (see Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, V.A.4.5.5 f)).

As regards the argument of examination on its own motion under Article 114(1) EPC, it is true that this provision applies to the Board, but it is also limited by Article 114(2) EPC. This limitation is implemented in the RPBA, in particular by Article 13(2) RPBA (see Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, V.A.3.3). In fact, the appellant/opponent cannot expect that objections filed at a very late stage in appeal proceedings will be taken into account because the Board has at **any time a duty to examine** the objections as they might be prejudicial to the maintenance of the patent. This would be contrary to procedural fairness, might unduly delay the proceedings, and would certainly run counter the primary function of the appeal proceedings, which is to review decisions in a judicial, rather than administrative, manner.

Analogous considerations apply to the novelty objection in view of the newly filed prior use. As the allegation of prior use relates to a product manufactured by the appellant themselves, it could and should have been submitted at the outset of the opposition proceedings. The appellant seeks to justify the belated submission

based on an alleged internal burden in retrieving documentary evidence. However, this does not discharge the appellant from its duty of submitting the allegation of prior use at the earliest possible time; as stated in the Guidelines for Examination at the EPO D-IV, 1.2.2.1(v), the evidence itself does not necessarily have to be filed with the notice for opposition, only an indication thereof. Furthermore, as argued by the respondent, the appellant had ample time available to search for evidence of the prior use since the date of publication and the mention of the grant of the patent in suit and during the opposition proceedings. Finally, exceptional circumstances should be of objective nature and not as in the present case subjective and based on vague indications of difficulties in retrieving internal documents.

3. *Inventive step*

3.1 The subject matter of independent claims 1 and 11 is not rendered obvious by any of the following combinations of prior art (Article 56 EPC):

- D1 with D2 and common general knowledge evidenced by D5, D6, D10 and D20;
- D3 (citing D21 and D23, which cites D22) with D4; and
- D4 with D3, D5, D6 or D2.

3.2 Starting from D1 as the closest prior art, all parties agree with the Opposition Division that the subject matter of claim 1 differs from the antiballistic protection of D1 by features 1.3.1 and 1.3.2, namely:

- one of the polyamide textile layers of the stab resistant layer has a surface weight lower than 200 g/m²; and

- a plurality of 10 to 100 laminates of the bullet resistant layer are of ultra-high molecular weight polyethylene (UHMWPE) and have each a surface weight of 70 to 90 g/m².

- 3.2.1 The appellant did not dispute the Opposition Division's formulation of the objective technical problem, which is the same as that of the respondent: to improve the comfort of wear without deteriorating protection. The Board sees no reason to deviate from this formulation.
- 3.2.2 The arguments put forward by the appellant in the statement of grounds of appeal were duly considered by the Opposition Division in its decision, and the Board adopts the Opposition Division's reasoning in this respect. The differences between the subject matter of claim 1 and the device in D1 must be considered together, as they provide the solution to the objective technical problem posed: specifically, the combination of features that constitute the bullet-resistant layer, namely 10 to 100 UHMWPE laminates with a surface weight each of 70 to 90 g/m².
- 3.2.3 In particular, the appellant argued that the skilled person would modify the missing features in the device of D1 independently of each other because combining these features did not produce a synergistic effect. An additional synergistic effect obtained by combining the surface area weights of features 1.3.1 and 1.3.2 and the use of UHMWPE, which went beyond the independent optimization of these parameters, allegedly did not exist.
- 3.2.4 However, although high-density polyethylene (HDPE, disclosed in D1) and UHMWPE are both types of polyethylene, they differ significantly in their

molecular structure, properties, and applications due to differences in molecular weight and chain length. In effect, they are different materials with different properties. Therefore, when selecting a specific material, its surface weight density must be considered, particularly when producing a bulletproof layer.

Thus, even if D5, D6, D10 and D20 were to suggest substituting HDPE for UHMWPE in bulletproof vests, as argued by the appellant, none of the documents discloses or hints at selecting the claimed surface weight of 70 to 90 g/m² for layers made out of this specific material. D2 also does not disclose a UHMWPE layer with 10 to 100 laminates having a surface weight of between 70 and 90 g/m². Therefore, the appellant's assumption that a skilled person replacing spun polyethylene fibres with UHMWPE in D2 would also apply the surface weight disclosed in D2 is based on hindsight. Such a replacement involves using a different material, meaning that the surface weight properties do not need to be the same in order to achieve the same effect.

3.3 The same applies to document D3, which does not disclose the use of UHMWPE to form a bulletproof layer made out of 10 to 100 laminates, each having a surface weight from 70 to 90 g/m².

3.3.1 The appellant's inventive step objection starting from D3 is based on the assumption that D3 discloses these features and therefore it cannot succeed. In particular, the appellant concluded that the multitude of layers disclosed in D3 (see column 5, lines 58 to 61) included a plurality of 10 to 100 laminates. Additionally, D20, quoted in D3, described a

laminate of UHMWPE for antiballistic protection comprising several layers, i.e. 10 to 100 layers. D3 also disclosed a surface weight of the fabric ranging from 55 to 300 g/m².

- 3.3.2 However, D3 only discloses the production of flat fabrics made from filaments of UHMWPE, among other possible materials, and unspecified combinations of fabrics disclosed therein to produce a ballistic body armor (see col. 9, lines 48 ff.). The passages cited by the appellant do not directly and unambiguously disclose a bullet resistant layer that combines a plurality of 10 to 100 UHMPE laminates with a surface weight each of 70 to 90 g/m². Such a combination is not present.
- 3.4 Regardless of whether the attack starting from D4 is admissible, it cannot succeed since it is also based on the appellant's assumption that D3, D5, D6 and D2 disclose 10 to 100 UHMWPE laminates having each a surface weight from 70 to 90 g/m², i.e. feature 1.3.2.
- 3.5 As recognised by the Opposition Division in its decision, which the Board judges to be correct, the appellant's arguments are tainted by hindsight.
- 3.6 Since the method according to claim 11 provides an antiballistic protection according to claim 1, the subject matter of claim 11 is not rendered obvious by any of the attacks mentioned under point 3.1 above for the same reasons as those presented above for the subject matter of claim 1.
- 3.7 In their letter of 28 May 2025, the appellant requested that the case be remitted to the Opposition Division if the Board was unable to decide in view of the prior use

itself. However, as the prior use was found inadmissible, the request for remittal is moot.

4. The above implies that the opponent's appeal is not allowable.

5. *Apportionment of costs*

5.1 The respondent's requests for the apportionment of costs is rejected (Article 104(1) EPC, Article 16(1) RPBA).

5.2 The respondent requested an apportionment of costs on the grounds that addressing the lines of attack forming the appellant's appeal case in their statement of grounds of appeal demanded excessive resources, significantly more than would have been needed to raise them. The appellant's conduct increased the procedural costs of the respondent in rebutting the arguments, considering that the attacks on inventive step started from three different documents identified as the closest prior art, did not use the problem solution approach, and some referred to documents that were either filed late or not discussed at any point during the opposition proceedings.

The respondent further argued that, in view of the new novelty objection over the alleged prior use filed after the communication of the Board under Article 15(1) RPBA and before the oral proceedings, the appellant's behaviour lacked respect and fairness towards the respondent. This is because the ground of novelty was fresh and filed very late, and the prior use was complex and required excessive preparation as to the substance in case the evidence was admitted into the proceedings. Consequently, the respondent had to

incur additional costs and effort to prepare for these new issues from a formal and legal perspective, as well as in terms of their merits.

- 5.3 The principle regarding costs in proceedings before the European Patent Office is that each party bears its own costs, except in cases of abusive conduct in which it is equitable to make an award of costs against one of the parties (see Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, III.R).

The respondent's arguments do not justify such an apportionment. Filing new lines of attack, presenting new evidence and not arguing inventive step objections with the problem solution approach does not in itself constitute abusive procedural behaviour by a party filing an appeal. The Rules of Procedure of the Boards of Appeal establish the rules for the admittance of amendments to a party's case. Preparing to discuss the admissibility of such amendments - and, if admitted, their relevance to the claimed subject-matter - is a standard part of the work expected from any party (see for instance T 1848/12, point 2). The fact that the respondent would need more resources (i.e. workload) to deal with them does not render the appellant's conduct abusive, nor does it justify an award of costs.

There is also no proof that the public prior use was filed at such a late stage in an abusive manner. The appellant presented the evidence in support of the public prior use as soon as it had been compiled, and there is no evidence to suggest that it was intentionally withheld or backloaded in the procedure.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for apportionment of costs is rejected.

The Registrar:

The Chairman:



D. Grundner

G. Pricolo

Decision electronically authenticated