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**Datasheet for the decision
of 28 August 2025**

Case Number: T 0252/24 - 3.2.01

Application Number: 11810836.4

Publication Number: 2654482

IPC: A43B13/36, A43B5/04, A43B3/24

Language of the proceedings: EN

Title of invention:
SKI BOOT

Patent Proprietor:
La Rocca Sas di Rosato Edoardo e Demis

Opponents:
Skis Rossignol-Club Rossignol
Fischer Sports GmbH

Headword:

Relevant legal provisions:
EPC Art. 100(c), 123(2)
RPBA 2020 Art. 13(2)

Keyword:

Grounds for opposition - subject-matter extends beyond content
of earlier application (yes)

Amendment after summons - exceptional circumstances (no)

Decisions cited:

G 0002/10

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 0252/24 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 28 August 2025

Appellant:
(Opponent 2)

Fischer Sports GmbH
Fischerstraße 8
4910 Ried/Innkreis (AT)

Representative:

SONN Patentanwälte GmbH & Co KG
Riemergasse 14
1010 Wien (AT)

Respondent:
(Patent Proprietor)

La Rocca Sas di Rosato Edoardo e Demis
Viale E. Fermi 8
31011 Asolo (TV) (IT)

Representative:

Modiano, Micaela Nadia
Modiano & Partners
Via Meravigli, 16
20123 Milano (IT)

Party as of right:
(Opponent 1)

Skis Rossignol-Club Rossignol
98 Rue Louis Barran
38430 Saint-Jean-de-Moirans (FR)

Representative:

Alatis
3, rue Paul Escudier
75009 Paris (FR)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 20 December
2023 rejecting the opposition filed against
European patent No. 2654482 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	J. J. de Acha González
	A. Jimenez

Summary of Facts and Submissions

- I. The opponent 2's appeal is directed against the decision of the Opposition Division rejecting the opposition against European patent number 2654482.
- II. The Opposition Division decided, among other things, that the subject matter of claim 1 did not extend beyond the content of the application as originally filed. Accordingly, the ground for opposition under Article 100(c) EPC did not prejudice the maintenance of the patent as granted.
- III. Oral proceedings before the Board were held on 28 August 2025, without the opponent 1, who had notified the Board of their absence in a letter dated 8 August 2025.

The appellant (opponent 2) requested that the decision of the Opposition Division be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal of the opponent 2 be dismissed (main request), or, in the alternative, that the patent be maintained in amended form on the basis of any of the auxiliary requests 1 to 11 filed with the letter of 14 July 2025.

Apart from notifying that they would not be attending the oral proceedings before the Board, the party as of right opponent 1 did not make any submissions in these appeal proceedings.

IV. Granted claim 1 (main request) reads as follows
(feature numbering according to the contested
decision):

- F1** *A ski boot comprising:*
- F2** *- a hull (1),*
- F2.1** *- a shaped plate (2) belonging to said hull (1) and
being fixedly constrained to said ski boot,*
- F3** *comprising a set of removable soles, comprising*
- F3.1** *a first (6) and a second (7) removable sole,*
- F3.2** *suited to be removed from said hull (1) and
interchangeable with each other,*
- F3.3** *each sole (6, 7) of said set of removable soles
comprising a front portion and a back portion that are
separated from each other and constrained to said hull
(1) via fixing screws (5) coupled in seats (4) provided
on a bottom of said shaped plate (2),*
- F4** *said first removable sole (6) of the set of removable
soles being suitable for boots for uphill ski touring
and*
- F4.1** *compatible with ski bindings provided with a plurality
of pins integral with the ski and inserted in
corresponding shaped recesses (3)*
- F5** *said second removable sole (7) of said set of removable
soles being a sole suitable for boots for downhill ski
touring, and*
- F5.1** *compatible with ski bindings provided with a plurality
of pins integral with the ski and inserted in
corresponding shaped recesses, so to allow a
transformation of said ski boot (1) for uphill and
downhill ski touring,*
- characterized in that**
- F6** *said shaped recesses (3) are constituted by bushings
positioned on the front of said shaped plate (2). on
the sides of said plate (2),*
- F2.1'** *said shaped plate (2) belonging to said hull (1).*

Claim 1 of auxiliary request 1 differs from granted claim 1 in that it further includes the following feature at the end of feature F3.3:

"...wherein the seats (4) are uniformly distributed on the bottom of said shaped plate (2),".

Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that it further includes the following feature before the characterising part of the claim:

"wherein the first and the second removable soles (6, 7) are provided with through holes (8) oriented perpendicularly to the soles (6, 7), whose number, size and position correspond to those of the seats (4) for the fixing screws (5),".

Claim 1 of auxiliary request 3 differs from granted claim 1 in that feature F1 reads as follows:

F1 *A ski boot consisting of:*

Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 3 in that it further includes the following feature at the end of feature F3.3:

"...wherein the seats (4) are uniformly distributed on the bottom of said shaped plate (2),".

Claim 1 of auxiliary request 5 differs from claim 1 of auxiliary request 4 in that it further includes the following feature before the characterising part of the claim:

"wherein the first and the second removable soles (6, 7) are provided with through holes (8) oriented perpendicularly to the soles (6, 7), whose number, size and position correspond to those of the seats (4) for the fixing screws (5),".

Claim 1 of auxiliary request 6 differs from granted claim 1 in that feature F3 reads as follows:

F3 *comprising a set of removable soles, consisting of*

Claim 1 of auxiliary request 7 differs from claim 1 of auxiliary request 6 in that it further includes the following feature at the end of feature F3.3:

"...wherein the seats (4) are uniformly distributed on the bottom of said shaped plate (2),".

Claim 1 of auxiliary request 8 differs from claim 1 of auxiliary request 7 in that it further includes the following feature before the characterising part of the claim:

"wherein the first and the second removable soles (6, 7) are provided with through holes (8) oriented perpendicularly to the soles (6, 7), whose number, size and position correspond to those of the seats (4) for the fixing screws (5),".

Claim 1 of auxiliary request 9 differs from granted claim 1 in that feature F1 reads as follows:

F1 *A ski touring boot comprising:*

Claim 1 of auxiliary request 10 differs from claim 1 of auxiliary request 9 in that it further includes the following feature at the end of feature F3.3:

"...wherein the seats (4) are uniformly distributed on the bottom of said shaped plate (2),".

Claim 1 of auxiliary request 11 differs from claim 1 of auxiliary request 10 in that it further includes the following feature before the characterising part of the claim:

"wherein the first and the second removable soles (6, 7) are provided with through holes (8) oriented perpendicularly to the soles (6, 7), whose number, size and position correspond to those of the seats (4) for the fixing screws (5),".

Reasons for the Decision

1. *Main request - granted patent - Inadmissible extension*
- 1.1 The subject matter of claim 1 extends beyond the content of the application as originally filed (Article 100(c) EPC)
- 1.2 Claim 1 as granted is based on claim 1, as well as the disclosure of the preferred embodiment of the invention according to figures 5 to 8 of the application as originally filed (see also page 4, line 26 to page 5, line 27 of the description as originally filed).

- 1.3 The Opposition Division concluded that the subject matter resulting from the addition of feature F3.3 to the originally filed claim 1 did not constitute an unallowable intermediate generalisation of the aforementioned preferred embodiment's disclosure. In particular, the Division found that omitting the uniform distribution of the screws and seats constituted an allowable intermediate generalisation, given that other seat arrangements were also known from figure 7.

The respondent agreed with this view and further argued that page 5, lines 3 to 4, directly and unambiguously supported feature F3.3, particularly "*...via fixing screws (5) coupled in seats (4) provided on a bottom of said shaped plate (2)*". This was due to the fact that the skilled person would readily appreciate that the uniformly distributed seats were not an essential feature of the invention. Moreover, the uniform distribution of screws and seats, as described in the paragraph spanning pages 4 and 5, was irrelevant to the anchoring function. This paragraph emphasised the anchoring of the front element of the removable soles 6 and 7 via fixing screws, and did not limit the number of screws or corresponding seats. In fact, the application's disclosure required fixing screws and seats (plural), thus disclosing a minimum of two fixing screws and seats as sufficient. Consequently, the uniform distribution was not related to or inextricably linked with the other features of the embodiment. Additionally, support for feature F3.3 in isolation was also found in the introductory part of the description as originally filed (reference was made to the page 3, lines 9 to 18). The "*fixing means*" in the form of "*fixing screws*" were unambiguously disclosed in the original application. Furthermore, the skilled person

would inherently understand that fixing screws would be necessarily accommodated in respective seats, as a screw required a counter element (i.e. a seat) for fastening. This passage also emphasised the anchoring function of the fixing screws in conjunction with the corresponding seats. Even if one would consider the seats as being nuts, these would be embedded in the plate for attachment because otherwise the nuts would protrude to the inner side of the boot, which would not make any technical sense. This would thus result in a seat on the shaped plate as claimed.

Additionally, perpendicular through holes in the sole were implicit in claim 1. Without these holes, it would not be possible to fix the sole to the plate with the screws, and it was self-evident that the through holes corresponded in number, size and position to the seats. Inclined seats and holes did not fall under feature F3.3, as this would mean that the head of the screws might stick out and they would result in a complex and unnecessary attachment solution.

The overall disclosure therefore justified the generalised isolation of feature F3.3 and its inclusion in the claim.

- 1.4 The Board judges that the subject matter resulting from added feature F3.3 represents an unallowable intermediate generalisation of the disclosure of the preferred embodiment of the application as originally filed because the features of uniform distribution of the seats and screws, as well as through holes oriented perpendicularly to the sole, whose number, size and position correspond to those of the seats for the fixing screws, have been omitted (see Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, E. 1.9).

Claim 1 as originally filed recites "*at least one sole (6, 7) comprising a front portion and a back portion that are separated from each other and constrained to said hull (1) via fixing means (5)*". Neither claim 1 nor the other claims as originally filed specify any feature of the fixing means. Feature F3.3 of granted claim 1 however states that the soles (front and back portions) are constrained to the hull via fixing screws coupled in seats provided on a bottom of the shaped plate. This combination of features is only disclosed in the preferred embodiment of the invention, so the preferred embodiment is the only possible basis for this subject matter.

The passage in the introductory part of the application as originally filed, to which the respondent referred, cannot form the basis for the subject matter of claim 1 as granted. As the appellant correctly pointed out, the cited passage (page 3, lines 9 to 18) does not implicitly disclose a counter element (i.e. a seat) specifically provided on the bottom of the shaped plate, because other types of counter elements than seats provided on the bottom of the plate are possible. For example, seats could be provided on the top of the plate, or nuts could be provided inside the boot. The latter also make technical sense, as they can be covered by an inner soft sole of the boot after fixation to receive the foot, as argued by the appellant.

In the preferred embodiment, the distribution of seats 4 in figure 7 does not appear to be uniform as specified in the description (page 4, lines 31 ff.), but is only symmetrical with respect to the plate's centerline and clustered near the rear edge, with a larger gap between the middle seats and the front

seats. The arrangement appears thus symmetrical (mirrored across the centerline of the plate), but not uniform because the seats seem to be not evenly spaced across the entire plate. However, the figures of a patent are schematic and the description as originally filed specifies that the seats are distributed uniformly in the plate's bottom. The description together with the figures disclose the invention as originally filed. Even if one were to consider that there exists indeed a contradiction between figure 7 and the description, as argued by the appellant, the application as originally filed would only disclose a uniform distribution of the seats or that shown in figure 7. A basis for a general distribution of the seats as claimed does not derive directly and unambiguously from the description of the preferred embodiment as originally filed.

The seats 4, uniformly distributed across the plate 2 or distributed as shown in figure 7, ensure consistent attachment of the removable soles, providing improved sole-to-plate attachment, stability and force distribution. Therefore, there is a functional and structural relationship between the distribution of the seats and screws of the removable soles as disclosed, and the shaped plate of the ski boot hull.

The respondent's allegation that the uniform distribution is not an essential feature of the invention is irrelevant, since under established case law of the Boards of Appeal, essentiality is not the issue when examining the ground for opposition under Article 100(c) EPC or the requirements of Article 123(2) EPC. The *gold standard* is the criterion (see G2/10 and Case Law of the Boards of Appeal of the EPO, 10th edition, 2022, II.E.1.4.4.c)), namely whether the claimed subject matter is derivable directly and

unambiguously for the skilled person from the application as originally filed. Accordingly it also applies when assessing whether there is an allowable intermediate generalisation of a preferred embodiment of the application as originally filed.

The same as for the uniform distribution of the seats applies to the sole's through holes 8 oriented perpendicularly to the sole, whose number, size and position correspond to those of the seats 4 for the fixing screws, since they are disclosed in combination in the preferred embodiment and are functionally and structurally related to the seats 4 (see page 5, lines 4 to 8). Contrary to the respondent's allegations, inclined through holes and seats are technically feasible and encompassed by feature F3.3, irrespective of them being more complex than perpendicular ones. However, they do not derive directly and unambiguously from the application as originally filed.

2. *Auxiliary requests 3, 6 and 9 - inadmissible extension*

2.1 The subject matter of claim 1 of auxiliary requests 3, 6 and 9 extends beyond the content of the application as originally filed (Article 123(2) EPC).

2.2 The auxiliary request 3, 6 and 9 correspond to the auxiliary requests 1 to 3 filed with the patent proprietor's reply to the appellant's statement of grounds of appeal.

2.3 Claim 1 of each request includes feature F3.3 and lacks the conflicting features above regarding the uniform distribution of the screws and seats and the sole's perpendicular through holes.

Consequently, for the same reasons as explained above for the subject matter of granted claim 1, the subject matter of claim 1 of these requests represents an unallowable intermediate generalisation of the preferred embodiment of the invention of the application as originally filed.

3. *Auxiliary requests 1, 2, 4, 5, 7, 8, 10 and 11 - admissibility*

3.1 The auxiliary requests 1, 2, 4, 5, 7, 8, 10 and 11 are not admitted into the appeal proceedings under Article 13(2) RPBA.

3.2 These requests were filed for the first time after the Board's communication pursuant to Article 15(1) RPBA.

3.3 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.

3.4 The respondent argued that, in this case, the new auxiliary requests complied with the exceptional circumstances required for their admission. In particular, the Examining Division and the Opposition Division confirmed support for feature F3.3 in four instances. Additionally, the objection concerning the fixing screws of the entire sole (front and back portions) was first raised by the Board in its provisional opinion under Article 15(1) RPBA. The appellant merely objected that a back element, rather than a back portion, had a basis in the application as originally filed, and did not raise an objection

regarding the omission of uniform distribution and perpendicular through-holes for the soles. The amendments were also considered to be straightforward and clearly supported by the application as filed. Furthermore, filing auxiliary requests that addressed all possible combinations of each appellant's objection would result in a very high number of requests, which would be a significant procedural burden. Finally, the amendments made did not have an impact on the discussion of other issues such as novelty and inventive step. Accordingly, filing the requests at this stage did not cause any delay, which clearly contributed to procedural economy.

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

Firstly, as the appellant argued, positive decisions on an issue in favour of the patent proprietor, made either by the Examining Division or the Opposition Division, which are not followed by the Board in its preliminary opinion, do not constitute exceptional circumstances. The purpose of the appeal is indeed to challenge the decisions of the Examining and Opposition Divisions by reviewing them in a judicial instance. Accordingly, the respondent should have expected that the Board might differ from the divisions' conclusions wholly or partly, and might follow the other party's view.

Furthermore, the objection concerning the omission of the uniform distribution of seats and soles, as well as the perpendicular through holes, was already raised at the outset of the opposition proceedings (see opponent 2's notice of opposition, point IV), and was maintained in the appellant's statement of grounds of appeal, in

particular in points II.4 to II.6. These latter points clearly contest the conclusions on allowable intermediate generalisation underlying the contested decision, rather than the distinction between a back portion and a back element. The objection was therefore not new. The respondent chose not to file any amendments to the claims that addressed the issue of intermediate generalisation at all.

Finally, the amendments do not promote procedural economy, as they present the appellant for the first time with a new subject matter arising from new features taken from the description, which would have to be assessed on its merits at a very late stage.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



D. Grundner

G. Pricolo

Decision electronically authenticated