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**Datasheet for the decision
of 13 May 2025**

Case Number: T 0639/24 - 3.2.07

Application Number: 17397512.9

Publication Number: 3403791

IPC: B27L5/02, F26B9/04, B27D3/00

Language of the proceedings: EN

Title of invention:

A METHOD FOR MANUFACTURING VENEERS

Patent Proprietor:

UPM Plywood Oy

Opponent:

METSÄLIITTO OSUUSKUNTA

Relevant legal provisions:

EPC Art. 113(1), 100(b), 83, 100(c), 123(2), 100(a), 56, 84
EPC R. 111(2), 103(1)(a)
RPBA 2020 Art. 12(6) sentence 2, 13(2)

Keyword:

Substantial procedural violation - violation of the right to be heard (no) - appealed decision sufficiently reasoned (yes)
- reimbursement of appeal fee (no)

Grounds for opposition - insufficiency of disclosure (no) - added subject-matter (no) - lack of patentability (yes)

Late-filed objection - should have been submitted in first-instance proceedings (yes) - admitted (no)

Claims - clarity - auxiliary request (yes)

Inventive step - auxiliary request (yes)

Decisions cited:

T 0182/89, T 0019/90, T 0948/13, G 0003/14



Beschwerdekammern

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Case Number: T 0639/24 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 13 May 2025

Appellant:

(Opponent)

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Respondent:

(Patent Proprietor)

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 5 April 2024
rejecting the opposition filed against European
patent No. 3403791 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman

G. Patton

Members:

A. Cano Palmero

S. Fernández de Córdoba

Summary of Facts and Submissions

- I. The opponent (appellant) lodged an appeal within the prescribed period and in the prescribed form against the decision of the opposition division to reject the opposition filed against European patent No. 3 403 791.
- II. The opposition was filed against the patent in its entirety and based on the grounds for opposition pursuant to Articles 100(a), (b) and (c) EPC (lack of inventive step, insufficient disclosure and unallowable amendments).
- III. In preparation for oral proceedings, scheduled upon the parties' requests, the board communicated its preliminary assessment of the case to the parties by means of a communication pursuant to Article 15(1) RPBA. The appellant replied to this communication in the substance with letters dated 4 April 2025 and 17 April 2025.
- IV. Oral proceedings before the board took place on 13 May 2025. At the conclusion of the oral proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes thereof.
- V. The appellant requested

that the decision under appeal be set aside and
that the patent be revoked,
and that the appeal fee be reimbursed due to
substantial procedural violations.
- VI. The patent proprietor (respondent) requested

that the appeal be dismissed, *i.e.* that the patent be maintained as granted (main request),
or, in the alternative,
if the decision under appeal is set aside,
that the patent be maintained in amended form according to one of the sets of claims filed as auxiliary requests 1 to 7 during opposition proceedings and re-filed with the reply to the statement setting out the grounds of appeal.

VII. The following documents, which were part of the opposition proceedings, are referred to in this decision:

- D1: Shi S. and Walker J., "Wood-based composites: plywood and veneer-based products", in: "Primary Wood Processing Principles and Practice", second edition, Springer, Dordrecht, 2006, pages 391-426;
- D3: US 2014/0000464 A1;
- D5: FI 20155433 as filed;
- D5a: English translation of D5;
- D6: Lappalainen M., "Pre-drying of Kertopuu veneer: The benefits and effects on the final product", Thesis, Savonia University of Applied Sciences, 5 February 2015;
- D6t: English translation of D6;
- D7: Arvonen K., "Pre-drying of LVL veneers using compression", Master's thesis, Aalto University, 18 August 2015;
- D7t: English translation of D7;
- D10: RAUTE WOOD, "Roller Nose Bar Adjustments", 20 March 1998, 12 pages;
- D10t: English translation of D10;
- D12: Test report dated 16 November 2022: Opponent's peeling tests;

- D15: Spelter H., "Recent Developments in Veneer Peeling Confront Quality Variables", PANEL WORLD, May 1991, pages 54-65;
- D21: Chunping Dai and Yasuhide Murase, "An Overview of Recent Developments in Veneer Peeling Technology", 13th International Wood Machining Seminar, June 17-20, 1997, Vancouver, Canada, 10 pages.

VIII. The following **document** was filed for the first time with the statement setting out the grounds of appeal:

D12a: Affidavit of Mr J. Pusa. Test report dated 29 July 2024.

IX. The following **document** was filed for the first time by the appellant with letter dated 4 April 2025:

D12b: Affidavit of Mr J. Pusa dated 28 March 2025.

X. The lines of argument of the parties relevant for the present decision are dealt with in detail in the reasons for the decision.

XI. **Independent claim 1** of the **main request** (*i.e.* according to the patent as granted) with the feature labelling used by the parties reads as follows:

- "F1.1 A method for manufacturing veneers (120), the method comprising
- F1.2 - receiving a wood block (100),
- F1.3 - producing veneer (110) by peeling the wood block (100) with a veneer lathe (200) comprising
- F1.4 • a rotor (205) for rotating the wood block (100),

- F1.5 • a knife (220) for peeling veneer (110) from the wood block (100), and
 - F1.6 • a roller nose bar (230) configured to press the wood block (100) and rotate in a manner independent of the knife (220), wherein
 - F1.7 • a knife gap (222) is left in between the roller nose bar (230) and the knife (220) and
 - F1.8 • the veneer (110) is configured to exit through the knife gap (222),
- characterized in that the method comprises
- F1.9 - cutting the veneer (110) to form veneer sheets (120),
 - F1.10 - arranging at least one of the veneer sheets (120) into a stack (130) of veneer sheets,
 - F1.11 - pressing the stack (130) of veneer sheets to dry the veneer sheets of the stack (130), and
 - F1.12 - rotating the wood block (100) with a first peripheral velocity (v_1), wherein
 - F1.13 - the wood block (100) rotates about a first axis (AX1) of rotation,
 - F1.14 - the roller nose bar (230) rotates about a second axis (AX2) of rotation that is parallel to the first axis (AX1) of rotation,
 - F1.15 - an edge (221) of the knife (220) is arranged at a height (ΔH) apart from a plane (P1) comprising the first axis (AX1) of rotation and the second axis (AX2) of rotation,
 - F1.16 - the height (ΔH) is from 5 % to 20 % of a diameter (d_1) of the roller nose bar (230),
 - F1.17 - the diameter (d_1) of the roller nose bar (230) is from 50 mm to 150 mm
 - F1.18 and the height (ΔH) is from 5 mm to 25 mm, and
 - F1.19 - the first peripheral velocity (v_1) is from 150 m/min to 350 m/min."

XII. **Independent claim 1 of auxiliary request 1** corresponds to claim 1 of the main request with the following features added at the end of the claim:

"..., and

- pressing the roller nose bar (230) against the wood block (100) such that

- the knife gap (222) has a width (GW) and
- the veneer (110) or the veneer sheet (120) has a first thickness (t1), wherein
- the first thickness (t1) is less than the width (GW) of the knife gap (222); preferably
- the first thickness (t1) is at least 1 % less than the width (GW) of the knife gap (222)."

XIII. Since the wording of the further auxiliary requests is not relevant for the present decision, there is no need to reproduce it here.

Reasons for the Decision

1. *Alleged substantial procedural violation due to a violation of the right to be heard, Article 113(1) EPC*

1.1 The appellant contested the opposition division's reasoned finding on inventive step of claim 1 as granted in view of D5/D5a. According to the opposition division document D12 did not provide sufficient information on how the tests presented therein have been performed, for example whether the veneer properties (e.g. moisture %, temperature) for each test were the same. Furthermore, still according to the opposition division, the number of tests in D12 was small rendering the statistical significance of the results questionable. The opposition division found that the appellant did not convincingly demonstrate

that the distinguishing features did not have the technical effect set out in paragraph [0004] of the patent, which was considered in finding that the subject-matter of claim 1 was inventive (see decision under appeal, in particular, page 16, first complete paragraph).

- 1.1.1 The appellant further indicated that these doubts concerning the statistical significance of the results of D12 and/or the provision of sufficient information in D12 had never been raised at any stage of the opposition proceedings, neither by the opposition division nor by the respondent. Since the appellant did not have an opportunity to present its comments with regard to these doubts, its right to be heard in the sense of Article 113(1) EPC was violated. Furthermore, the ultimate finding of the opposition division that the subject-matter of claim 1 as granted was inventive was based on these doubts. Consequently, this violation of the appellant's right to be heard resulted in a substantial procedural violation.
- 1.2 The respondent on the other hand argued that they did indeed point out at the oral proceedings before the opposition division that the appellant failed to indicate all relevant settings of the experiments of D12 and that the results appeared to suffer from a selection bias. The opposition division took these doubts up in point 15.3 of the reasons for the decision under appeal.
- 1.3 The board is not convinced that the appellant did not have an opportunity to present its comments on the test results of D12 at the oral proceedings before the opposition division, for the following reasons.

- 1.3.1 The board notes that the minutes of the oral proceedings before the opposition division and the decision under appeal are silent about a discussion of the tests results of D12 during the oral proceedings before the opposition division, so that neither the minutes nor the decision can clarify this aspect. The board is therefore confronted with contradictory allegations of the parties. During the oral proceedings before the board, the parties confirmed they had different recollections as to whether or not the relevance of evidence D12 was indeed disputed and discussed.
- 1.3.2 The appellant however did state that during the oral proceedings before the opposition division, it had presented arguments in favour of the position that the use of a roller nose bar with a setup as defined in claim 1 did not lead to checks and/or roughness which further did not result in the effect reflected in paragraph [0004] of the patent, this being the very purpose of the tests of D12. It therefore appears that the appellant had the opportunity to discuss the relevant matter which included the tests of D12.
- 1.3.3 In view of the above considerations, the board cannot definitively conclude that the above doubts on the tests of D12 were not presented and discussed at the oral proceedings before the opposition division and that the appellant was not given an opportunity to present its comments in this regard. In consequence, contrary to the appellant's allegations, a violation of its right to be heard cannot be affirmed.

2. *Alleged substantial procedural violation due to inadequate reasoning, Rule 111(2) EPC*
- 2.1 The appellant argued that the simple statement in the reasons for the decision under appeal that *"the number of tests in D12 is small rendering the statistical significance of the results questionable"* and that *"[d]ocument D12 does not provide sufficient information on how the tests have been performed, for example whether the veneer properties (e.g., moisture %, temperature) for each test were the same"* did not enable the appellant to draw any conclusion as to why the experiments of D12 were insufficient in terms of the sampling and/or boundary conditions.
- 2.2 The board disagrees. According to the established jurisprudence (see the Case Law of the Boards of Appeal, 10th edition 2022, hereafter "CLB", III.K.3.4.3 and III.K.3.4.4) a decision should consider the essential facts, evidence and arguments in detail and contain the logical chain of reasoning which led to the conclusion drawn. As correctly argued by the respondent, the opposition division's findings are not ambiguous and give clear reasons as to why the test results of D12 cannot show the absence of an alleged technical effect. The board notes that whether these findings are convincing or not has no bearing on the question of whether the decision has been sufficiently reasoned in accordance with Rule 111(2) EPC. In consequence, the above findings of the opposition division are considered to be sufficiently reasoned, so that the board concludes that no procedural violation occurred, let alone a substantial one.

3. *Request for reimbursement of the appeal fee,
Rule 103(1)(a) EPC*

In the absence of a substantial procedural violation (see points 1. and 2. above), the appellant's request for reimbursement of the appeal fee under Rule 103(1)(a) EPC is refused.

4. *Main request (patent as granted) - Sufficiency of
disclosure, Articles 100(b) and 83 EPC*

4.1 The appellant argued that claims 6 to 11 according to the patent as granted could not be carried out by the skilled person.

4.1.1 Claims 6 to 10 are directed to characteristics of the veneer produced by the method. The appellant argued that, in the absence of a lathe-setup by means of which the veneers of claims 6 to 10 could be obtained, the skilled person would have to perform a research program in order to obtain an appropriate lathe configuration (in terms of *inter alia* the roller nose diameter, height of the nose bar, peripheral velocity, gap width, knife angle and temperature) in order to obtain the claimed veneers. The absence of any guidance in the patent in suit constituted an undue burden for the skilled person, which went beyond any routine measures resulting in the requirements of Article 83 EPC not being met.

In addition, the appellant argued that, even when selecting a lathe equipped with a roller nose with a setup as defined in claim 1, veneer sheets could be obtained that did not necessarily meet the features in claims 6 to 10 according to the patent as granted. In particular, claims 9 and 10 as granted further required

veneer properties such as roughness average, average distance between elevations of the profile which were not present in any embodiment of the patent in suit. These claims were therefore not limited by the lathe setup of claim 1, which resulted in that some parameters were missing in claim 1. There was no teaching in the patent how to obtain these parameters, nor any teaching which features of the disclosed method controlled these parameters. It followed that the invention was not sufficiently disclosed over the whole range of the claims.

- 4.1.2 The board disagrees. As correctly indicated by the respondent, it is established jurisprudence of the Boards of Appeal that an objection of lack of disclosure presupposes that there are serious doubts substantiated by verifiable facts. **The burden of proof is upon the opponent** to establish on the balance of probabilities that a person skilled in the art, using their common general knowledge, would be unable to carry out the invention (see the CLB, II.C.9, first two paragraphs, in particular in relation to T 19/90 and T 182/89). Furthermore, in the case at hand the comparative results carried out by the appellant in D12 show that the production of veneers with an average value of the proportional depths and an average value of the distances between checks is achievable with the lathe setup requirements of claim 1 as granted. As put forward by the respondent during the oral proceedings, the appellant has not filed any experiments showing that the parameters provided in said claims 6 to 10, *i.e.* including claims 9 and 10, could not be achieved or reproduced when putting in practice the detailed disclosure of, for instance, paragraphs [0054] and [0064] of the contested patent. Instead the appellant relied only on non-convincing allegations.

- 4.1.3 With respect to claim 11, the appellant argued that the term "first thickness (t1)" was not defined in the patent in suit. In particular, it remained undefined at which position this first thickness of the veneer was to be determined. Even in the case that the skilled person would know where to determine this thickness t1, the existence of elevations and valleys being as high as 0.5 mm according to claim 10 as granted could result in that the further requirement of the first thickness t1 being at least 1% less than the width of the knife gap is not met. In summary, the skilled person is unable, without undue burden, to carry out the feature of claim 11 of the ratio between the first thickness and the width of the knife gap.
- 4.1.4 The board is not persuaded by the appellant's arguments regarding claim 11. It can be agreed with the appellant and with the opposition division (see point 14.6.2 of the reasons for the decision under appeal) that it is undefined where the first thickness t1 is actually to be determined and that the thickness of the veneer might vary along the veneer length. However, the board is of the view that this merely constitutes a broad feature which, in the absence of serious doubts, can be carried out by the skilled person within the breadth of this feature.
- 4.1.5 In sum, the board concludes that the appellant has not convincingly demonstrated the incorrectness of the decision under appeal that the invention according claims 6 to 11 as granted is sufficiently disclosed.
- 4.2 In paragraph (98) of its letter dated 27 January 2025 the appellant further argued that claim 1 as granted did not limit the maximum diameter of the wood log to

be peeled and thus also encompassed embodiments of a peeling process in which the very same amount of veneer was produced in a certain time frame. Since the skilled person would not know how to handle such high amounts of veneer, this would give rise to a further objection under Article 83 EPC.

- 4.2.1 The board notes that this objection has been submitted for the first time in appeal. According to Article 12(6), second sentence, RPBA, the board shall not admit objections which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.
- 4.2.2 Considering that the main aim of appeal proceedings is that of reviewing the decisions of the administrative departments of the EPO (cf. Article 12(2) RPBA) the board does not consider it appropriate that the opponent submits a new objection in appeal with regard to the patent as granted, thereby avoiding having a decision from the competent EPO department.
- 4.2.3 Taking into account that the objection is directed to the patent as granted, the board is of the opinion that this objection should have been submitted in opposition proceedings to allow the respondent to take position on it and the opposition division to decide on the matter. In the absence of any justifying circumstances submitted by the appellant, the board does not admit the above objection of paragraph (98) of the appellant's letter dated 27 January 2025 into the proceedings pursuant to Article 12(6) RPBA.

5. *Main request (patent as granted) - Amendments, Articles 100(c) and 123(2) EPC*

- 5.1 The appellant contested the reasoned finding of the opposition division in point 13.2 of the reasons for the decision under appeal that the subject-matter of claim 1 did not extend beyond the original application. In particular, the appellant indicated that the amended claim according to the main request resulted in the selection of ranges pertaining to two different lists, namely a first selection for the peripheral velocity v_1 from 150 m/min to 350 m/min (feature F1.19) and a second selection for the diameter d_1 of the roller nose bar from 50 mm to 150 mm (feature F1.17). The appellant argued, making reference to T 948/13, that a combination of two numerical ranges of different levels of preference for various aspects of the subject-matter is not allowable under Article 123(2) EPC.
- 5.2 The board disagrees and rather concurs with the opposition division that claim 1 as granted is the result of the combination of original claims 1, 12 and 17 with the further limitation for v_1 to the narrower range of 150 m/min to 350 m/min, which is disclosed in original paragraph [0054]. The board therefore agrees with the opposition division that the two-list principle is not applicable to the case at hand.
- 5.3 In sum, the board is of the view that the appellant has not convincingly demonstrated the incorrectness of the decision under appeal that the subject-matter of claim 1 according to the patent as granted does not extend beyond the original application.

6. *Main request (patent as granted) - Inventive step starting from either D6 or D7 as closest prior art, Articles 100(a) and 56 EPC*
- 6.1 The respondent argued that the inventive step objections starting from D6 or D7 as closest prior art were raised for the first time during the oral proceedings before the board. In the absence of any exceptional circumstances the amendment of the appellant's appeal case should not be taken into account under Article 13(2) RPBA.
- 6.1.1 The board disagrees. As correctly indicated by the appellant, the objections starting from documents D6 or D7 as closest prior art were admissibly raised and maintained in opposition proceedings (see point 15.4 of the decision under appeal) and were also raised and substantiated in point 2.2 of the statement setting out the grounds of appeal, so that they are not to be regarded as an amendment. These objections are therefore taken into consideration.
- 6.2 It was undisputed among the parties at the oral proceedings before the board that the subject-matter of claim 1 as granted differs from the known method of D6 or D7 in the features relating to a roller nose bar (features F1.6 to F1.8 and F1.14) and in the features relating to the lathe setup (features F1.15 to F1.19).
- 6.3 The appellant stated that the subject-matter of claim 1 according to the patent as granted was obvious starting *inter alia* from either D6 or D7 as closest prior art. The appellant contested the **objective technical problem** posed by the opposition division, namely to make the drying process more efficient. In contrast, the

appellant was of the view that the objective technical problem should rather be seen as **to provide a suitable setup for the lathe** used in the process of D6 or D7, which was allegedly the same problem considered by the patent proprietor during the opposition proceedings.

6.3.1 In particular, the appellant indicated that neither the veneer check features in terms of depth and distance nor the veneer roughness were defined in claim 1. In addition, correlating the veneer properties of the veneer surface with the efficiency of the drying process was hypothetical, especially in view of the broad and general statements of the description of the patent in suit. The subject-matter of claim 1 furthermore covered a large number of configurations, so that it could not be plausibly assumed by the skilled person that each and every lathe setup fitting the wording of claim 1 could deliver the alleged technical effects. In addition, the claim also covered the possibility that a stack of veneer sheets that were not produced by a lathe comprising a roller nose bar was subjected to the pressure pre-drying (see features F1.10 and F1.11).

6.3.2 The experiments described in the patent in suit could not demonstrate, according to the appellant, the presence of a technical effect because it was not clear whether a lathe setup as required by claim 1 as granted had been used and furthermore the whole breadth of the claim including the upper and lower limits of the required parameters had not been tested. Finally, a large difference in initial water amount could be the reason for the difference in the amount of water pressed out in the tests of the patent in suit, so that the mere use of a roller nose bar instead of a fixed

nose bar could not be directly linked to the alleged technical effect.

6.3.3 The appellant further argued that the experiments of D12 proved that deeper checks were not necessarily correlated with an increased efficiency of the pressure pre-drying process. Indeed, in the two 12 mm nose bar experiments the higher average depth delivered less water by pressing out. The respondent's argument in its reply to the statement setting out the grounds of appeal that the experiments of D12 suffered from a "selection bias" was to be seen as an unsubstantiated allegation. In addition, and in response to the doubts expressed by the opposition division in the reasons for the decision under appeal, the appellant submitted affidavits D12a and D12b which confirmed that the moisture content and the temperature of the wood logs used were the same for all the tests performed in D12. In view of the above, and considering that the respondent never contested during the opposition proceedings the suitability of the tests of D12 to show that the effect of paragraph [0004] of the patent in suit was not delivered, the appellant was of the view that it was not *prima facie* plausible that the advantageous effect was actually achieved over the entire breadth of claim 1 and that consequently **the objective technical problem could only be seen as to provide a suitable setup.**

6.4 The respondent, in line with the reasoned findings of the decision under appeal, argued that paragraph [0004] of the patent in suit stated the claimed invention and defined the technical effect provided by the distinguishing features of claim 1, this technical effect was delivered by a lathe setup including a roller nose bar. Therefore the fact that the spacing

between checks and the depth of checks are absent in the method claim was not relevant. This technical effect delivered by the use of a roller nose bar rather than a fixed nose bar was also supported by tests in the patent in paragraphs [0038] to [0044] with the conclusion in paragraph [0045] that compressive drying was much more efficient for the veneers manufactured with a lathe having a roller nose bar. The argument of the appellant that the description used broad and general statements such as "it seems" could not amount to a convincing allegation that the skilled person would in this case regard the results as not being plausible.

- 6.4.1 The respondent also concurred with the finding of the opposition division that the results of the tests of D12 were at least questionable in showing that the technical effect according to paragraph [0004] and [0045] of the patent in suit were not plausible. As correctly found by the opposition division there were at least doubts about the veneer properties used in those tests. For the respondent the number of tests performed in D12 was clearly too small to be statistically significant, with for instance only three values for the fixed nose bar compared to ten in the contested patent, and there was also a lack of information with respect to where on the stack the tests were performed.
- 6.4.2 In consequence, according to the respondent, the objective technical problem was to be seen as improving the efficiency of the drying of the veneers as stated in paragraph [0004] of the patent in suit.
- 6.5 The board does not concur with the respondent and with the finding of the opposition division and rather

follows the appellant in that, starting from D6 or D7 as closest prior art, the **objective technical problem** is to be seen as to **provide a suitable setup for lathe**, for the following reasons.

6.5.1 The board is of the view that the tests carried out in D12 constitute sufficient proof that casts doubt as to whether the alleged technical effect of paragraph [0004] of the patent is indeed achieved over the whole range of the subject-matter claimed. Regarding the lack of statistical relevance as found by the opposition division and the "selection bias" alleged by the respondent, the board finds that these are statements that are lacking sufficient and convincing reasoning. The board is indeed not presented with any convincing reason to concur with the opposition division that the number of tests of D12 is "small" or that the results suffered from a "selection bias". D12 already provides a plausible indication of the veneers' behaviour even though the number of tests could possibly be considered as small and wherever the veneers are taken from the stack. With respect to the finding of the opposition division that there was no information of the moisture content and temperature of the veneers used in the experiments, the board again has no reason to believe that these properties were different for the different setups of D12. In this respect, there is therefore no need to assess the admittance and the content of the affidavits of D12a and D12b.

6.5.2 In sum, the board is of the view that the content and the results of D12 are not to be disregarded, at least not for the reasons present in point 15.3 of the decision under appeal, nor by the arguments presented by the respondent. With regard to its content, the board concurs with the appellant and finds that D12

casts doubt on whether the effect of paragraph [0004] of the patent in suit is plausibly delivered by the features of claim 1 and that consequently **the objective technical problem**, starting from any of D6 or D7 **is to be seen as to provide a suitable setup**.

- 6.6 The appellant further argued that, starting from either D6 or D7 as closest prior art, the skilled person, in an attempt to provide a suitable lathe-setup would be taught by document D21 of the North American standard for lathe-setups in the plywood industry, which is mainly directed to increasing efficiency. Such a lathe setup contemplated the use of a roller nose bar according to features F1.6 to F1.8 and F1.14. Furthermore, according to the North American standard in table 1 of D21, a diameter of the roller nose bar ("Big Roller Bar" according to the recent developments, see page 2 of first and second paragraphs) was in the range of around 64 mm to around 95 mm (2.5 inches to 3.75 inches) in accordance with feature F1.17. Still in table 1 of D21, taking into account that the vertical gap (VG) used in this configuration was in the range of around 10 mm to around 15 mm (0.4 to 0.6 inches) and considering that the formula for calculating the height or ΔH -value provided by the appellant in paragraph (69) of the statement setting out the grounds of appeal is $\Delta H = VG * (r_{log} / (r_{log} + r_{roller\ bar}))$, the resulting height (ΔH) was between around 7.7 mm and around 12.6 mm (features F1.15 and F1.18) and being in the range of around 8% to around 19% of the diameter of the roller nose bar (feature F1.16), thereby teaching features F1.15 to F1.18. In addition, table 2 of D21 taught as a suitable speed for the full sheet between around 168 to around 183 m/min (550 to 600 feet/min) as in feature F1.19.

6.6.1 The respondent argued that starting from D6 or D7, the skilled person would have no motivation to apply the North American standard of D21. Indeed, starting from D6 or D7, the skilled person would be aware that certain quality requirements are still needed (see page 11, point 3.3 of D6t and page 17, point 2.4.3 of D7t). In contrast to the Asian and European standard, in which emphasis was placed on veneer quality, the North American standard was focused on productivity and not on veneer quality (see last paragraph of page 1 of D21). Furthermore, the respondent pointed out that D21 did not explicitly mention a value for the claimed height ΔH , although did not contest that a value of the height could be derived from the vertical gap and the diameters of the roller and log according to the formula provided by the appellant. The respondent further argued that the figures provided in tables 1 and 2 of D21 could not be seen as being disclosed in combination, in particular since they were presented in two different tables. Furthermore, a selection had to be performed among several possibilities for the speed in table 2.

6.6.2 The board is not persuaded by the respondent's arguments and rather concurs with the appellant. In particular, the board notes that D6 and D7 do not rule out the production of veneers with different quality grades, and rather foresee the defect-based sorting of the veneers. The board thus concurs with the appellant that, starting from any of documents D6 or D7 as closest prior art, the skilled person would not be taught away from implementing the North American standard lathe setup of D21 when solving the technical problem of providing a suitable setup for the lathe. In addition, the North American standard taught by D21 provides an increased efficiency. The board further

agrees with the appellant that D21 teaches a setup in accordance to features F1.15 to F1.19 in combination, including the value of ΔH and speed. The fact that the values are presented in two tables do not change the fact that they all concern the North American standard lathe setup for big roller bar at full sheet speed, *i.e.* close to the average speed applied of between around 183 to around 213 m/min (600 to 700 feet/min; see D21, page 2, third paragraph). Thus, no selection of the velocity is performed. The board thus concludes that the skilled person would arrive at the subject-matter of claim 1 of the main request in an obvious manner starting from either document D6 or D7 as closest prior art in view of the teaching of D21.

6.7 In sum, the board is of the view that the appellant has convincingly demonstrated the incorrectness of the decision under appeal that the subject-matter of claim 1 according to the patent as granted fulfils the requirements of inventive step.

7. *Auxiliary request 1 - Objections under Articles 83, 84 and 123(2) EPC*

7.1 The appellant, referring only to its written submissions, argued that the subject-matter of claim 1 of auxiliary request 1 did not meet the requirements of Articles 83 and 123(2) EPC for the same reasons as for the main request. In addition, the appellant argued that claim 11 as granted, forming part of the subject-matter of claim 1 of auxiliary request 1, was not clear in the sense of Article 84 EPC.

7.2 The board finds that, for the same reasons as for the main request (see points 4. and 5. above), the subject-matter of claim 1 of auxiliary request 1 meets the

requirements of sufficiency of disclosure and added subject-matter. With respect to the alleged lack of clarity, the board notes that amended claim 1 is the result of a combination of granted claims. The alleged lack of clarity is not introduced by the amendment and therefore not open to examination under Articles 101(3) and 84 EPC, in accordance with the decision of the Enlarged Board of Appeal G 3/14.

8. *Auxiliary request 1 - Inventive step, Article 56 EPC*

8.1 The appellant, referring only to its written submissions, argued that the subject-matter of claim 1 of auxiliary request 1 was not inventive starting from any of documents D5/D5a, D3, D6, D7 or D1 as closest prior art, in view of the features added to claim 1.

8.1.1 According to the appellant, "*the only effect of increasing the ratio between the 'knife gap (GW)' and the 'first thickness (t1)' of the veneer or the veneer sheet is (...) to provide as ma[n]y cracks/checks as possible and to obtain a veneer surface being as rough as possible, the objective problem to be solved vis-à-vis D5 (or D3, D6 or D7) as well as vis-à-vis D1 as the closest prior art would thus not even be the 'provision of a practical setup of the lathe in D5', but would actually be the 'provision of a setup of the lathe in D5 with which veneers with the poorest possible surface quality can be obtained'*" (point (168) of the grounds of appeal).

8.1.2 The person skilled in the art would know from manuals such as D10, but also from publications such as D15, that a low nose bar pressure allows the thickness of the veneer to be smaller than the gap width of the lathe, resulting in a rougher surface as well as in a

strong variation of thickness of the veneer. Selecting such a low pressure of the roller is clearly a foreseeably disadvantageous modification of the closest prior art in so far as it worsens the properties of the veneer and which furthermore is not accompanied by any advantageous effect, particularly not by an increase in the efficiency of the pressure pre-drying process. The conclusion of the opposition division of the paragraph bridging pages 16 and 17 of the decision under appeal that the presence of a disadvantage of a rougher surface did not exclude the presence of another advantage such as a more efficient drying was therefore not justified and was also unfounded in view of the experimental results of D12. Finally, the appellant remarked that the screen print of figure 6 of D21 showed an exit gap (which corresponds to the gap width) of 0.174 inches and an average thickness of the veneer of 0.133 inches, which resulted in about 24% less of the gap width.

8.2 The board is not persuaded by the appellant's written submission with regard to lack of inventive step of claim 1 of auxiliary request 1 for the following reasons.

8.2.1 The board is satisfied with the respondent's view that the added features originating from claim 11 as granted facilitate crack propagation ensuring an increased roughness as stated in paragraph [0064] of the patent in suit. Contrary to the appellant's allegations, the board does not necessarily see this effect as an disadvantageous one. The problem to be solved can be therefore seen as making the drying process more efficient by providing the veneers with an increased roughness.

- 8.2.2 The board notes that, as correctly argued by the respondent, D5/D5a is directed to the prevention of splitting in veneer production (see D5a, page 22, lines 5 to 9 and lines 33 to 37). Therefore, the skilled person would not wish to implement the North American lathe setup standard when consulting D21, but rather the Japanese one, which is focused on quality of the veneers. The subject-matter of claim 1 of auxiliary request 1 is therefore not obvious starting from D5/D5a in combination with D21.
- 8.2.3 Starting from D1, the board concurs with the patent proprietor that this document teaches away from increasing the roughness of the veneers, since this would increase the amount of glue needed and results in an undesired glue spread (see for instance point 5.1.1, in particular pages 398 to 400). Therefore, the subject-matter of claim 1 of auxiliary request 1 is also not obvious starting from D1 as closest prior art.
- 8.2.4 In any case, irrespective of the starting point, *i.e.* D5/D5a, D3, D6, D7 or D1, the claimed relationship between the gap width and the first thickness of the veneer is neither taught, nor hinted at by documents D10/D10t, D15 or D21, as has been convincingly argued by the respondent. Indeed, the teaching of D10 (and also of D15) does not relate to the ratio of the gap width to the thickness of the veneer, but rather to an inadequate pressing by the roller nose bar (see page 3 of D10t and Table 1 on page 54 of D15). Furthermore, as put forward by the respondent at the oral proceedings figure 6 of D21 is schematic and corresponds to a simulation from which it is impossible to derive any unambiguous value or geometry. It does not amount to a practical or suitable method for manufacturing veneers

and it is not unambiguous that "EG" actually stands for exit gap as alleged by the appellant.

In sum, starting from any of documents D5/D5a, D3, D6, D7 or D1 as closest prior art, the skilled person would not arrive at the subject-matter of claim 1 of auxiliary request 1 in an obvious manner.

9. *Conclusions*

9.1 In view of the above considerations, the board concludes that the appellant has convincingly demonstrated the incorrectness of the decision under appeal that the ground for opposition under Articles 100(a) and 56 EPC did not prejudice the maintenance of the patent as granted. The decision under appeal is thus to be set aside.

9.2 In addition, the board concludes that the set of claims according to auxiliary request 1 meets the requirements of the EPC, so that the patent can be maintained on that basis.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in amended form with the claims according to auxiliary request 1 filed during opposition proceedings and re-filed with the reply to the statement setting out the grounds of appeal and a description to be adapted thereto if necessary.

The Registrar:

The Chairman:



S. Lichtenvort

G. Patton

Decision electronically authenticated