

Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non

Aktenzeichen / Case Number / N° du recours : T 145/88 - 3.2.2

Anmeldenummer / Filing No / N° de la demande : 81 201 215.1

Veröffentlichungs-Nr. / Publication No / N° de la publication : 0 050 904

Bezeichnung der Erfindung: Revetment grids and mats

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : E 02 B 3/14

**ENTSCHEIDUNG / DECISION**

vom / of / du 27 October 1989

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :

NICOLON B.V.

Einsprechender / Opponent / Opposant :

01 GEBROEDERS ROOK BEHEER B.V.  
02 WEEGELS BETONFABRIEK B.V.

Stichwort / Headword / Référence : Statement of Grounds/NICOLON

EPU / EPC / CBE Article 108, 3rd sentence, Rule 65(1)

Schlagwort / Keyword / Mot clé : "Admissibility of appeal - Statement of Grounds  
- Substantiation - must be reasoned"

**Leitsatz / Headnote / Sommaire**

A Statement of Grounds of Appeal should state the legal and factual reasons why the decision under appeal should be set aside and the appeal allowed. Whether a document complies with Article 108 EPC, third sentence, is considered to depend on its substance and not upon its heading or form.

Beschwerdekammern  
Boards of Appeal  
Chambres de recours  
Geschäftsstelle /Registry/Greffe

Versteht man 11.12.89

ROTCs, E, F DEC 89.

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TE 14588X  
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In der Anlage erhalten Sie eine Kopie des Leitsatzes der  
Entscheidung \_\_\_\_\_ / \_\_\_\_\_

Please find enclosed a copy of the headnote of the decision  
T 145 / 88 - 3.2.2

Veillez trouver en annexe une copie du sommaire de la  
décision \_\_\_\_\_ / \_\_\_\_\_

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### ENTSCHEIDUNG / DECISION

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01 GEBROEDERS ROOK BEHEER B.V.  
02 WEEGELS BETONFABRIEK B.V.

Stichwort / Headword / Référence :

Statement of Grounds/NICOLON

EPÜ / EPC / CBE

Article 108

Schlagwort / Keyword / Mot clé :

"Statement of Grounds of Appeal - must be  
reasoned"

Leitsatz / Headnote / Sommaire

Headnote follows

Europäisches  
Patentamt

Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



Case Number : T 145/88

D E C I S I O N  
of the Technical Board of Appeal 3.2.2  
of 27 October 1989

Appellant :  
(Patentee)

NICOLON B.V.  
Sluiskade N.Z. 14  
NL-7602 HR Almelo

Representative :

Schumann, Bernard Herman Johan  
OCTROOIBUREAU ARNOLD & SIEDSMA  
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Respondents :  
(Opponents)

01 GEBROEDERS ROOK BEHEER B.V.  
Ijsseidijk 351  
NL-2922 BK Krimpen a/d Ijssel

02 WEEGELS BETONFABRIEK B.V.  
NL-Weert

Representative :

Vollebregt, Cornelis Jacobus, Ir.  
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NL-5600 AP Eindhoven

Decision under appeal :

Decision of the Opposition Division of the  
European Patent Office dated 4 February 1988  
revoking European patent No. 0 050 904 pursuant to  
Article 102(1) EPC.

Composition of the Board :

Chairman : G. Szabo

Members : P. Ford

J. de Nadailac

## Summary of Facts and Submissions

- I. On 28 March 1988, the Appellant gave notice of appeal against the Decision of the Opposition Division of the European Patent Office dated 4 February 1988 by which the Appellant's European patent EP-0 050 904 was revoked. The appeal fee was duly paid.
  
- II. A document headed "Grounds of Appeal" was filed on behalf of the Appellant on 2 June 1988. A new set of amended claims was filed therewith. It was stated that the new independent Claim 1 was a combination of Claims 1, 2 and 3 of the granted patent and that the remaining claims, renumbered 2 to 16, were dependent from it. In connection with the new independent claim, attention was drawn to a passage in the description but no submissions were made in support of the allowability of the claim, despite the fact that, in the Decision under appeal, the Opposition Division had held that Claim 1 of the granted patent did not involve an inventive step and that the actual features in, inter alia, Claims 2 and 3 were either known from the prior art or were mere constructional modifications which fell within the scope of customary practice, so that those claims also did not contain inventive subject-matter.
  
3. By letter dated 21 November 1988, the Respondent Opponents objected that the document headed "Grounds of Appeal" did not contain any statement refuting the grounds for revocation of the patent and submitted that, as no written statement "setting out" the Grounds of Appeal had been filed within the relevant time limit, the appeal was inadmissible. As the Appellant had not given any arguments for refuting the correct decision of the Opposition Division, the Respondents were unable to refute them and

could only ask for rejection of the appeal on the basis of the documents on file.

4. On 24 July 1989, the Board of Appeal sent a Communication to the parties, inviting their observations and pointing out that:

- "1. If an appeal does not comply with the requirements of inter alia Article 108 EPC, the Board of Appeal shall reject it as inadmissible unless each deficiency has been remedied before the relevant time limit laid down in Article 108 EPC has expired: cf. Rule 65(1) EPC.
2. Article 108 EPC provides (last sentence) that within four months after the date of notification of the decision under appeal "a written statement setting out the grounds of appeal must be filed."
3. In the Official "Guidelines for Appellants and their Representatives", originally published in 1981 and republished in 1984 (OJ EPO 1981, 176; OJ EPO 1984, 376), at Section 1.3 it is pointed out that a Statement of Grounds of Appeal should contain reasoning that is full but concise. This observation was approved by the Legal Board of Appeal in Case J 22/86, "Disapproval/MEDICAL BIOLOGICAL", OJ EPO 1987, 280, which added (paragraph 2 of the Reasons for the Decision) that "... in general, it is obvious that the less reasoning that a Statement contains, the greater will be the risk that the appeal will be rejected as inadmissible for non-compliance with Article 108 EPC."

The same approach has been followed by Technical Boards of Appeal: cf., e.g., Case T 220/83, Grounds for Appeal/HÜLS, OJ EPO 1986, 249 ("... grounds of appeal should state the legal and factual reasons why the decision should be set aside ...").

4. In the present case, it is noted that the document dated 2 June 1988 headed "Grounds of Appeal" gives no reasons whatsoever why the Opposition Division was wrong to hold that inter alia Claims 1, 2 and 3 of the patent in suit were invalid as none of them involved an inventive step. Accordingly, it is not shown why the amendments sought should be allowed. The Opponents' representative has raised objection that the appeal is not admissible because no written statement setting out the Grounds of Appeal has been filed within the relevant time limit.
5. No reasons can at present be seen why the appeal should not be rejected as inadmissible."

V. By letter dated 31 July 1989, the Respondents replied that they agreed with the opinion that the appeal filed was inadmissible.

VI. By letter dated 22 September 1989, the Appellant replied that it must be clear that the combination of Claims 1, 2 and 3 was an allowable combination and that the Opposition Division should have maintained the patent on the basis of such a claim. It was a sufficient reasoning of the "Statement of Grounds" that the document filed on 2 June 1988 stated clearly that the writer was of the opinion that the combination of claims would be patentable.

## Reasons for the Decision

1. As was pointed out in the Board's Communication dated 24 July 1989, it is the established case law of the Boards of Appeal that grounds of appeal should state the legal and factual reasons why the decision under appeal should be set aside and the appeal allowed. Whether a document complies with the requirements of Article 108, last sentence, is, therefore, considered to depend upon its substance and not upon its heading or form.
  
2. What was filed in the present case was headed "Statement of Grounds", but the Board is not able to find that, as a matter of substance, it contained even the minimum of reasoning in support of the appeal. The reference made to the description of the European Patent Specification does not appear to provide such support; nor does the mere unreasoned opinion of the writer of the "Statement" that the combination of claims (which had already been found to be invalid) was patentable.
  
3. Accordingly, as no written statement setting out the grounds of appeal has been filed in conformity with Articles 108 EPC, last sentence, the Board is required to reject this appeal as inadmissible, in accordance with the provisions of Rule 65(1) EPC.



Order

For the foregoing reasons, it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

*S. Fabiani*

S. Fabiani

*G. Szabo*  
G. Szabo