

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

D E C I S I O N
of 10 December 2004

Case Number: T 0432/01 - 3.2.6

Application Number: 96107617.1

Publication Number: 0743025

IPC: A44B 19/34

Language of the proceedings: EN

Title of invention:
Knit slide fastener

Patentee:
YKK CORPORATION

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54(1), 83, 84, 123(2)

Keyword:
"Admissibility of amendments (main request) - no"
"Admissibility of amendments and clarity (auxiliary request) - yes"
"Novelty (auxiliary request) - yes"

Decisions cited:
-

Catchword:
-



Case Number: T 0432/01 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 10 December 2004

Appellant:

YKK CORPORATION
No. 1, Kanda Izumi-cho
Chiyoda-ku
Tokyo (JP)

Representative:

Patentanwälte
Leinweber & Zimmermann
Rosental 7
D-80331 München (DE)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 22 September 2000
refusing European application No. 96107617.1
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: G. C. Kadner
Members: G. L. De Crignis
M. J. Vogel

Summary of Facts and Submissions

- I. European patent application No. 96 107 617.1 published under No. 743 025 was refused by the Examining Division by decision dated 22 September 2000. This decision was based on claim 1 reading as follows:

"A knit slide fastener comprising:

a pair of fastener tapes (1, 1a, 1b) each composed of a warp-knit ground structure having a fastener element attaching portion (2, 2a, 2b) at a longitudinal edge portion thereof, and a pair of continuous fastener element rows (5) each knitted in said fastener element attaching portion (2, 2a, 2b) simultaneously with the knitting of the respective fastener tape (1, 1a, 1b);

a plurality of binding stitches (10, 10b) knitted in each said fastener element attaching portion (2, 2a, 2b) to bind said fastener element row (5) to the ground structure of each said fastener element attaching portion (2, 2a, 2b); and

a plurality of laid-in weft yarns (17, 17a, 18, 19) laid in said fastener element attaching portion (2, 2a, 2b) said knit slide fastener being characterized by

chain stitches composed of a succession of knit loops extending along an outermost edge of said fastener element attaching portion (2, 2a, 2b) to form the ground structure thereof to support the fastener element row (5), every one of said knit loops being interlaced with one of said laid-in weft yarns (17, 17a, 18) to form the ground structure of said fastener element attaching portion."

II. The Examining Division held that the subject-matter of claim 1 was not novel when compared with the teachings of document:

D1: DE-C-30 26 487.

Furthermore claim 1 violated Articles 84 and 83 EPC since a misleading expression "chain stitches composed of a succession of knit loops" was used and no clear teaching was given how the chain stitches according to the characterising portion of claim 1 were formed in a different manner than the binding chain stitches disclosed in D1 which bound the fastener element row to the ground structure along the edge of the fastener element attaching portion.

The following prior art documents had also been considered during examination:

D2: DE-A-21 03 774

D3: FR-A-2 188 976

D4: US-A-5 035 125

D5: JP-A-38-11 673

III. On 23 November 2000 the Appellant (Applicant) lodged an appeal against this decision and paid the appeal fee. On 29 January 2001 together with the statement setting out the grounds of appeal the Appellant filed new documents for the grant of a patent according to a main and an auxiliary request.

IV. In an annex to the summons for oral proceedings pursuant to Article 11(1) of the Rules of procedure of the Boards of Appeal the Board expressed the preliminary opinion that it would appear that the invention could be carried out by a skilled person. Furthermore, the board stated that also when considering the new claims the lack of novelty objection remained unchanged.

V. Oral proceedings were held on 10 December 2004, in which the Appellant requested grant of a patent on the basis of claim 1 and 2 according to the main request, auxiliarily on the basis of claim 1 and 2 according to the auxiliary request, both filed during the oral proceedings, together with the description and the figures as originally filed.

Claim 1 according to the main request reads as follows:

"A knit slide fastener comprising:

a pair of fastener tapes (1, 1a, 1b) each composed of a warp-knit ground structure having a fastener element attaching portion (2, 2a, 2b) at a longitudinal edge portion thereof, and a pair of continuous fastener element rows (5) each knitted in said fastener element attaching portion (2, 2a, 2b) simultaneously with the knitting of the respective fastener tape (1, 1a, 1b);

a plurality of binding stitches (10, 10b) knitted in each said fastener element attaching portion (2, 2a, 2b) to bind said fastener element row (5) to the ground structure of each said fastener element attaching portion (2, 2a, 2b); and

a plurality of laid-in weft yarns (17, 17a, 19) laid in said fastener element attaching portion (2, 2a, 2b) said knit slide fastener being characterized by a plurality of reinforcing laid-in weft yarns (18) laid in said fastener element portion (2, 2a, 2b) and one wale of chain stitches composed of a succession of knit loops extending along an outermost edge of said fastener element attaching portion (2, 2a, 2b) to form the ground structure thereof on which the fastener element row (5) extends,

said reinforcing laid-in weft yarn (18) is laid in the ground structure so as to turn and to be interlaced with every other chain stitch (15) which is not interlaced with said laid-in weft yarn (17) to form the ground structure of said fastener element attaching portion (2, 2a, 2b)."

In claim 1 according to the auxiliary request the term "extends" (underlined above) is replaced by "is supported".

VI. The Appellant's arguments can be summarized as follows:

The amendments to claim 1 were literally taken from the description in the disclosed relation and therefore the amended claim was admissible under Article 123(2) EPC.

By the introduction of the feature that the reinforcing weft yarn 18 was interlaced with the chain stitch wale but was not interlaced with the other laid-in weft yarn 17 into the characterizing portion it was clarified that the chain stitches 15 were part of the warp-knit ground structure and could not be understood as binding

stitches like those with reference number 10 which bound the faster element rows to the ground structure.

The subject-matter now claimed was novel when compared with the teachings of all prior art documents because none of them disclosed an edge portion of the ground structure having chain stitches interlaced with reinforcing weft yarn and where the fastener elements were only supported by but not bound to the ground structure.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request*

Admissibility of amendments

The second feature of the characterizing portion of claim 1 includes the term "... one wale of chain stitches ... to form the ground structure ... on which the fastener element row (5) extends ...". However, the documents according to the originally filed application do not disclose the expression "extends" in connection with the "fastener element row". All text passages relating to that feature (see page 8, line 17; page 11, line 7; page 15, line 20; page 20, line 7) indicate that the fastener element row (5) is "supported" on or by the ground structure. The technical meaning of "extends" is different from that of "supported" in that it implies a lateral extension whereas "support" means that the fastener element row (5) is borne on the

ground structure without defining a geometrical attribute. The replacement of an expression by another one which is not disclosed and has a different meaning represents the introduction of an "*aliud*" and results in a violation of Article 123(2) EPC. For this reason that amendment to claim 1 is not admissible.

3. *Auxiliary request*

3.1 Admissibility of amendments

In claim 1 the expression "supported" in connection with the "fastener element row (5)" is used as it is originally disclosed in the description (see page 8, line 17; page 11, line 7; page 15, line 20; page 20, line 7). Therefore this amendment is admissible.

3.2 Further on an additional feature relating to the reinforcing weft yarn and its interlacing with the chain stitches was introduced in its meaning as disclosed in the originally filed description (page 9, lines 4 to 8). Consequently claim 1 meets the requirements of Article 123(2) EPC.

3.3 Article 83 EPC

As already stated in its communication, the Board is of the opinion that the application documents include sufficient information so that a skilled person having general knowledge in the relevant technical field is enabled to carry out the invention.

3.4 Article 84 EPC

The Examining Division's objection concerning the feature "a chain stitch having a succession of knit loops" is overcome by reformulation of that feature supported by the description (page 17, 2nd paragraph).

3.5 Novelty

3.6 The Board agrees with the Appellant's opinion that the subject matter is novel when compared with the cited prior art documents. None of these documents discloses the features of the characterizing portion of claim 1 because no additional reinforcing laid-in weft yarns are laid in the fastener element portion, and the chain stitch wale extending along the outermost edge of the fastener element attaching portion does not only form the ground structure on which the fastener element row is supported, but binds the fastener elements to the ground structure. Thus the subject-matter of claim 1 meets the requirement of novelty (Article 54(1) EPC).

3.7 Claim 2 relates to a preferred embodiment of the slide fastener according to claim 1 and is therefore also formally admissible and novel.

4. Since claim 1 was amended by the introduction of features which are taken from the description and have not been examined up to now, the case has to be remitted to the department of first instance for continuation of the examination proceedings on the basis of the auxiliary request in respect of inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The main request is rejected.
3. The case is remitted to the first instance for further prosecution on the basis of the auxiliary request.

The Registrar:

The Chairman:

M. Patin

G. Kadner