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**D E C I S I O N**  
**of 9 May 2003**

**Case Number:** T 0798/01 - 3.2.7

**Application Number:** 94307700.8

**Publication Number:** 0653512

**IPC:** D21F 1/00

**Language of the proceedings:** EN

**Title of invention:**  
Papermachine clothing

**Patentee:**  
SCAPA GROUP PLC

**Opponent:**  
Thomas Josef Heimbach Gesellschaft mit beschränkter  
Haftung & Co.

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56  
EPC R. 65(2)

**Keyword:**

"Correction of named appellant (allowed)"  
"Inventive step (no)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0798/01 - 3.2.7

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.7**  
**of 9 May 2003**

**Appellant:** Thomas Josef Heimbach Gesellschaft mit  
(Opponent) beschränkter Haftung & Co.  
An Gut Nazareth 73  
D-52353 Düren (DE)

**Representative:** Paul , Dieter-Alfred, Dipl.-Ing.  
Paul & Albrecht  
Patentanwaltssozietät  
Hellersbergstrasse 18  
D-41460 Neuss (DE)

**Respondent:** SCAPA GROUP PLC  
(Proprietor of the patent) Oakfield House  
93 Preston New Road  
Blackburn,  
Lancashire BB2 6AY (GB)

**Representative:** Goodwin, Mark  
Wilson, Gunn, M'Caw,  
41-51 Royal Exchange  
Cross Street  
Manchester M2 7BD (GB)

**Decision under appeal:** Interlocutory decision of the Opposition Division  
of the European Patent Office posted 8 June 2001  
concerning maintenance of European patent  
No. 0 653 512 in amended form.

**Composition of the Board:**

**Chairman:** A. Burkhart  
**Members:** P. A. O'Reilly  
C. Holtz

## Summary of Facts and Submissions

- I. The appellant (opponent) filed an appeal against the decision of the Opposition Division to maintain amended the European patent No. 0 653 512.
- II. Opposition was filed against the patent as a whole and based on Article 100(a) EPC (lack of novelty and lack of inventive step).

The Opposition Division held that the subject-matter of the amended claim 1 of the main request of the respondent was novel and involved an inventive step.

The most relevant prior art documents for the present decision are:

D1: EP-B-0 187 967

D2: EP-A-0 342 171

D8: EP-B-0 196 045

D9: EP-B-0 273 613

D14: EP-B-0 307 182

D24: US-A-3 617 442

- III. The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondent (proprietor) requested that the appeal be rejected.

IV. The independent claim 1 reads as follows:

"1. Paper machine clothing made from partially fused particles and comprising a reinforcing structure embedded wholly within the partially fused particle structure, the reinforcing structure comprising a nonwoven fabric."

V. The representative of the appellant filed an appeal in the name of the applicant ("Anmelderin"). In a communication the Board indicated that the applicant was not adversely affected by the decision and that there appeared to be an error in the notice of appeal. In a response dated 26 November 2001 the representative of the appellant indicated that the real intention had been for the opponent to appeal.

VI. The appellant argued in written submissions essentially as follows:

(i) Although mistakenly filed in the name of the applicant it is clear from the following that the opponent was the appellant: The representative has represented the opponent since the start of the opposition proceedings and therefore could not have represented the proprietor. Also, the appeal could not be in the name of the proprietor since the proprietor was not adversely affected by the appeal and hence not entitled to file an appeal. There is thus no doubt that the intention of the representative was to file an appeal on behalf of the opponent. This intention must also have been clear to the Board.

(ii) Either of documents D1 or D2 represent the closest

prior art. Claim 1 is distinguished from the disclosure of these documents in that the reinforcing structure is wholly embedded within the particles and comprises a nonwoven fabric. Wholly embedded means that the particles are provided on both sides of the paper clothing. It is however well-known in the paper clothing art to provide both sides with the same surface properties, cf. documents D3 to D7. In document D8 a single-sided coating was disclosed. In document D9 the single-sided coating was extended to a double-sided coating to embed the paper machine clothing.

The feature that the reinforcement is nonwoven is well-known in the art as shown in documents D10 to D29 wherein most of the documents show an embedded matrix. Therefore, this feature cannot be considered to be the basis of an inventive step as set out in the decision of the Opposition Division.

VII. The respondent argued in written submissions essentially as follows:

- (i) The respondent accepts the decision of the Board regarding the admissibility of the appeal.
- (ii) The paper clothing known from Documents D1 and D2 only has fused particles on one side of the fabric. The step of providing the particles also on the other side is not practical as it would mean exposing the clothing twice to heat as each layer is sintered. The first layer would thus be sintered twice which would reduce its

permeability.

There is a danger of delamination in the clothing known from document D1 due to poor adhesion of the sintered layer to the base fabric. This problem is solved in the invention by a reinforcement structure wholly embedded in the fused particle structure. The embodiments of the reinforcement structure all have porosity or void space which allows the clothing to form a unified structure and not simply two layers separated by a reinforcing structure. The coating on both sides also achieves a rivetting effect through the reinforcing structure. This was not obvious from the prior art.

The fact that embedded reinforcements are known does not mean that it would be obvious to coat both sides of a structure with sintered material as there are practical difficulties in effecting this.

VIII. In a communication accompanying an invitation to oral proceedings the Board set out their provisional opinion that the subject-matter of claim 1 did not involve an inventive step. The respondent subsequently withdrew his request for oral proceedings and made no further submission.

## **Reasons for the Decision**

### **1. *Admissibility of the appeal***

The response dated 26 November 2001 of the appellant is

considered by the Board to be a request for remedy under Rule 65(2) EPC.

The Board notes (i) that there was no applicant but a proprietor party to the proceedings, (ii) that only the opponent was adversely affected and hence entitled to file an appeal, (iii) that the representative filing the appeal was the representative of the opponent in the opposition proceedings of first instance, and (iv) that the file references of the representative are (with the exception of two letters) identical on the Notice of Appeal and as used in the opposition proceedings. It is therefore self-evident from the notice of appeal itself that a mistake had been made and that only the offered substitution of the opponent's name could establish the correct and intended appellant (see Case Law, 4th Edition, 2001, point VII.D.7.4.1(a) and the cases mentioned therein). On this basis the Board allows the change of name of the appellant and considers that the appeal is admissible in the name of the opponent.

*Inventive step*

2.1 Closest prior art

The closest prior art is represented by document D1 or D2 which each discloses a paper machine clothing made from partially fused particles and comprising a reinforcing structure.

2.2 Problem to be solved

According to the patent the claimed fabrics can be made more quickly and hence cheaply than those of document

D2, see column 1 lines 43 to 47 of the patent. The problem to be solved therefore might be seen to be in the provision of a paper clothing material that may be manufactured more quickly. The Board however, cannot see how the features of claim 1 contribute to solving this problem. The Board cannot therefore identify a problem to be solved by the distinguishing features of claim 1.

2.3 Solution to the problem

The distinguishing features of claim 1 are that (i) the reinforcing structure is embedded wholly within the partially fused particle structure and (ii) that the reinforcing structure comprises a nonwoven fabric.

2.4 The subject-matter of claim 1 is obvious for the following reasons:

With respect to feature (i) the Board understands the term "embedded", as used for a paper machine clothing, to mean coated on both sides. The Board does not consider that the term implies any further meaning, in particular there is no implication that there can be communication between the sides of the structure to allow, for instance, a rivetting effect to be achieved. It is known *per se* to provide a reinforcing structure embedded in a paper machine clothing, cf. document D9. Furthermore, with respect to feature (ii) it is well-known that such a reinforcing structure can be embedded as a nonwoven fabric, as is shown, for example, in documents D14 and D24. Therefore, features (i) and (ii) are also disclosed in combination in each of documents D14 and D24.



The respondent has presented a number of arguments which do not seem to be reflected by corresponding features in claim 1. Reference has been made to the difficulties of providing a second partially fused layer. Claim 1 however does not however specify any features related to how this difficulty is overcome. The problem of delamination in the prior art has been mentioned. However, claim 1 does not contain any features which solve this problem. Furthermore, reference has been made to nonwoven structures which provide porosity or void space. Again, the Board has not been able to identify a corresponding feature in claim 1. Therefore, the arguments of the respondent cannot be the basis for showing that the subject-matter of claim 1 involves an inventive step.

Claim 1 therefore comprises no more than an aggregation of well-known features acting in the their normal manner, so that an inventive step is not involved in the subject-matter of the claim.

- 2.5 Therefore, the subject-matter of claim 1 does not involve an inventive step in the sense of Article 56 EPC.

## **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. Spigarelli

A. Burkhardt