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**D E C I S I O N**  
**of 6 May 2004**

**Case Number:** T 1054/02 - 3.2.3

**Application Number:** 95900213.0

**Publication Number:** 0728048

**IPC:** B09B 1/00, E02D 31/00

**Language of the proceedings:** EN

**Title of invention:**  
Waste treatment

**Patentee:**  
Geohess (UK) Limited

**Opponent:**  
Jute Manufacturers Development Council (India)

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 56

**Keyword:**  
"Inventive step - obvious combination of known features"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1054/02 - 3.2.3

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.3  
of 6 May 2004

**Appellant:** Geohess (UK) Limited  
(Proprietor of the patent) Blackpit Farm  
Silverstone Road  
Stowe  
Buckingham MK18 5LJ (GB)

**Representative:** Luckhurst, Anthony Henry William  
MARKS & CLERK  
57-60 Lincoln's Inn Fields  
London WC2A 3LS (GB)

**Respondent:** Jute Manufacturers Development Council (India)  
(Opponent) 3A Park Plaza  
71, Park Street  
Calcutta 700016 (IN)

**Representative:** Roberts, Timothy Wace  
13 Spring Meadow  
Bracknell  
Berkshire RG12 2JP (GB)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office dated 13 June 2002,  
posted on 12 August 2002, revoking European  
patent No. 0728048 pursuant to Article 102(1)  
EPC.

**Composition of the Board:**

**Chairman:** C. T. Wilson  
**Members:** F. Brösamle  
J. P. Seitz

## Summary of Facts and Submissions

I. In the oral proceedings of 13 June 2002 the opposition division revoked European patent No. 0 728 048 in the light of

(D3) US-A-4 909 667

(D5), also Annexure B, Handbook and directory of the Indian jute industry, published in the Indian Jute Mills Association, Calcutta, 1967, *inter alia* pages 243 and 245 and

(D13), also Annexure II, "First Indian Geotextiles Conference on Reinforced Soil and Geotextiles", 1988, pages G 25 to G 29.

The written decision was issued on 12 August 2002.

II. Granted claim 1 reads as follows:

"1. A method of handling refuse at a landfill site or the like, in which the refuse is deposited in successive layers and a layer of sheet material is used to cover the refuse between successive deposits, characterised in that the sheet material which is used is hessian."

III. Against the above decision of the opposition division the patentee - appellant in the following - lodged an appeal on 11 October 2002, paying the fee on 14 October 2002 and filing the statement of grounds of appeal on 17 December 2002.

IV. Following the board's Communication pursuant to Article 11(2) RPBA in which the board expressed its provisional assessment of the case the appellant with letter of 6 April 2004 filed an **auxiliary request**. In claim 1 thereof the words "or the like" of granted claim 1 (see lines 1/2) were deleted.

V. In the oral proceedings before the board held on 6 May 2004 the appellant and the opponent - respondent in the following - essentially argued as follows:

(a) appellant

- (D3) as the nearest prior art teaches the use of canvas as daily cover either in the form of heavy duty canvas or as open mesh or net-like;
- according to claim 1 canvas is replaced by hessian which is not waterproof and has a limited lifetime;
- the advantages of hessian could be seen from the patent specification; none of the prior art documents rendered obvious the use of hessian; its use is the result of an inventive selection out of a multitude of materials including all kinds of canvas and geotextiles;
- for a skilled person hessian is in itself a clear defined term as emphasized by M Rankilor present as a technical expert in the oral proceeding before the board; in the row of canvas/hessian/geotextiles there existed no overlap with respect to their specific weights so that a skilled person would not have simply

replaced canvas by hessian and used hessian for a different previously unknown purpose;

- from (D13) - or Annexure II - it was known to use cheap jute sacking cloth in civil engineering, however, not as a daily cover of a landfill so that even a combination of prior art documents could not lead a skilled person to the subject-matter claimed; this is also true for (D5) and its applications of jute goods in combination with dumps and prevention of soil erosion.

(b) respondent:

- the issue of novelty of the subject-matter of claim 1 of both requests depends on the definition of hessian seen in its context; (D3) could be seen as a novelty destroying document in the case that an open mesh or net-like canvas is accepted as hessian;
- if not the claimed use of hessian was obvious since (D3) was only restricted to the use of canvas if legal requirements had to be considered; if not there was no reason to restrict (D3) to canvas;
- from (D13), last page, setting out the key applications it was known to use natural fibres of jute in the form of cheap jute sacking cloth; since (D13) dealt with uses such as waste tips there could not be seen an inventive step using hessian in combination with a cover for a landfill,

since hessian in itself is quite unspecified for a skilled person;

- applying the so-called problem - solution - approach claim 1 of both requests does not define patentable subject-matter.

VI. The appellant requested that the decision under appeal be set aside and that the patent be maintained either as granted (**main request**) or on the basis of the **auxiliary request** filed with letter dated 6 April 2004.

VII. The respondent requested that the appeal be dismissed.

### **Reasons for the Decision**

1. The appeal is admissible.

2. *Novelty*

2.1 Claim 1 of the **main** and the **auxiliary request** being closely related can both be dealt with simultaneously with respect to the issues of novelty and inventive step.

2.2 Respondent's findings with respect to (D3) and novelty cannot be accepted by the board since the board was convinced by appellant's arguments that a skilled person was aware of the differences of canvas - hessian - geotextiles, also supported by samples of them submitted by the appellant in the oral proceedings.

M. Rankilor set out that there existed no overlap of specific weights between canvas and hessian if the **width** of any web is duly considered and if both kinds of webs are made from **the same material** - not always exactly considered in handbooks and literature.

2.3 It is of importance that (D3) is not only based on heavy - duty canvas but also on "an open mesh or net-like construction". What exactly is meant thereby is not so clear for a skilled reader that he would **necessarily** conclude therefrom that hessian and nothing else is meant.

2.4 Summarizing, the subject-matter of claim 1 therefore is novel within the meaning of Articles 54 and 100(a) EPC.

### 3. *Inventive step*

3.1 Starting from (D3) and its teaching according to column 3, lines 10 to 16, a method of handling refuse at a landfill site according to the preamble of claim 1 is known.

3.2 The objectively remaining problem to be solved was therefore to find a suitable, lightweight and cheap material for the sheet to cover the refuse between successive deposits.

3.3 The solution to this problem according to claim 1 of both the main and the auxiliary request is based on hessian as the sheet material which is lightweight and cheap and which is suited for the purpose of a daily cover i.e. sufficiently permeable for water and gasses

and on the other hand sufficiently strong to be handled repeatedly.

- 3.4 The crucial issue to be decided is now whether or not the provision of hessian is obvious for a skilled person under the presumption that he does not know the claimed invention.
- 3.5 Basically it has to be considered that the first step to be carried out by any skilled person being confronted with the above problem to be solved is to look into the technical field of the claimed invention, in the present case to landfills "or the like" according to the **main request** - and for instance to **waste tips** being closely related thereto, to get an idea of what was already used as a cover sheet previously.
- 3.6 From (D13) - numbering as in the impugned decision - geotextiles based on natural fibres are known in two alternatives, either as "heavy woven jute matting", see page G 28, third paragraph, having a specific weight between 500 to 800 g/m<sup>2</sup> or as a "cheap jute sacking cloth", see page G 26 below the subtitle "Separation, filtration...".
- 3.7 What had to be carried out by a skilled person before this background was to test the suitability of the "cheap jute sacking cloth" in combination with a method of handling refuse at a landfill or the like which had to be covered periodically.

A simple test of the "cheap jute sacking cloth" according to (D13) - being a synonym of the claimed



term "hessian" - was sufficient to achieve the subject-matter of claim 1 of the **main** and the **auxiliary request** without affording an inventive endeavour, Articles 56 and 100(a) EPC.

3.8 Starting from (D3) and bearing in mind the above problem to be solved there was a clear reason for a skilled person to consider (D13) **without knowing the claimed invention** since from (D13) the use of natural fibres such as jute was known in combination with a similar use to the claimed use - waste tip instead of landfill (or the like) - and since (D13) already literally disclosed a material which is lightweight and cheap and which is suited for the purpose of a daily cover as required by the problem to be solved, see above remark 3.2.

3.9 Summarizing the above considerations, there existed an incentive for a skilled person to consider (D3) and (D13) **in combination** resulting in the teaching of claim 1 of the **main** and the **auxiliary request** without an inventive endeavour beyond the normal skills of a person familiar with normal technical capabilities i.e. simply by investigating the two alternatives disclosed in (D13) for a known purpose, the subject-matter claimed could be achieved.

3.10 Appellant's findings that a selection out of a multitude of materials including all kinds of canvas and geotextiles was necessary to achieve the claimed subject-matter does not acknowledge the teaching of (D13) and is not to be accepted by the board. For a skilled person it was clear that the "cheap jute sacking cloth" according to (D13) was a **synonym of**

**hessian** so that the selection problem was limited when considering (D13) correctly.

Under these circumstances it was sufficient to combine only **two** prior art documents to achieve the claimed subject-matter since (D5) is less relevant than (D13) and was not required when assessing the issue of inventive step.

3.11 For the above reasons claim 1 of the **main** and the **auxiliary request** are not valid and cannot serve as the basis for maintaining the patent.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chariman:

A. Counillon

C. T. Wilson