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D E C I S I O N
of 11 October 2005

Case Number: T 0017/03 - 3.2.03

Application Number: 89308725.4

Publication Number: 0359436

IPC: E06B 9/386

Language of the proceedings: EN

Title of invention:
Window blinds

Patentee:
Poole, Philip John

Opponent:
Hoechst AG

Headword:
-

Relevant legal provisions:
EPC Art. 56, 111(2)

Keyword:
"Inventive step (yes) - binding effect of preceding decision T 0969/96"

Decisions cited:
-

Catchword:
-

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Case Number: T 0017/03 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 11 October 2005

Appellant: (Opponent)	Hoechst AG Zentrale Patentabteilung D-65926 Frankfurt am Main (DE)
Representative:	Greiber, Karl Dieter Luderschmidt, Schüler & Partner GbR Patentanwälte Postfach 3929 D-65029 Wiesbaden (DE)
Respondent: (Proprietor of the patent)	Poole, Philip John 13, Westfield Lightcliffe Halifax, West Yorkshire HX3 8AS (GB)
Representative:	Pidgeon, Robert John Appleyard Lees 15 Clare Road Halifax, West Yorkshire HX1 2HY (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted 11 December 2002 concerning maintenance of European patent No. 0359436 in amended form.**

Composition of the Board:

Chairman: U. Krause
Members: G. Ashley
J. P. B. Seitz

Summary of Facts and Submissions

I. The grant of European patent No. 0 359 436, which concerns window blind fabrics, was opposed by Hoechst AG (OI), Hunter Douglas Industries B.V. (OII) and Vrede Textiles Ltd. (OIII).

At the end of the proceedings before the opposition division, the patent was revoked. This decision was appealed by the patentee and was heard as T 969/96 by the Board in a different composition, during which opponents OII and OIII withdrew their oppositions (on 11 January 1999 and 16 December 1997 respectively), leaving opponent OI as the sole opponent.

During the oral proceedings before the Board of Appeal in T 969/96, the appellant (patentee) submitted three auxiliary requests. The Board concluded that the subject-matter of claim 1 of the main and first two auxiliary requests was lacking either novelty or inventive step. Concerning the third auxiliary request, the Board was of the view that the introduction into claim 1 of features that had only been disclosed in the description created a new case, and consequently the case was remitted under Article 111(1) EPC to the opposition division for further prosecution.

II. The patentee duly requested the opposition division to maintain the patent on the basis of claims essentially corresponding to those of the third auxiliary request remitted by the Board in T 969/96. Opponent OI objected to the request on the ground that it did not involve an inventive step. Oral proceedings were held on 20 November 2002, during which the patentee submitted a

further amended set of claims as his main request. At the end of the oral proceedings, the opposition division concluded that the main request of the patentee meets the requirements of the EPC; the written interlocutory decision was posted on 11 December 2002.

On 17 December 2002, opponent OI lodged an appeal against the above decision, paying the appeal fee on the same day, and filing the statement of grounds of appeal on 16 April 2003. Oral proceedings were held on 11 October 2005, during which the respondent (patentee) submitted yet a further set of amended claims as his sole request.

III. Claim 1 reads:

"1. A louvre window blind comprising a plurality of strips of woven fabric which comprises a yarn made up of a plurality of staple fibres or filaments, wherein said yarn provides a low melt component of the fabric, which low melt component melts at a temperature of at least about 110°C, the fabric further comprising a high melt component which is stable against melting or degradation at the temperature at which the low melt component melts but which undergoes heat setting at that temperature, wherein the temperature at which the high melt component melts or degrades is at least about 20°C above the temperature at which the low melt component melts, and wherein said yarn has about 20 to about 180 staple fibres or filaments per given cross-section and in that the low melt component comprises about 10 to 50 percent by weight of said yarn, the fabric having been subjected to a temperature above the melting point of the low melt component but below the

melting or degradation point of the high melt component, so as to cause the low melt component to adhere to the high melt component, wherein the edges of the fabric strips are formed by heat cutting to cause melting and enhanced stability along the edges, and wherein the fabric strips are shape stable and stiff, relative to equivalent untreated fabrics, and resistant to humidity, but retain a textile feel rather than the feel of a synthetic polymer; and are water washable under normal domestic or commercial conditions, without shrinkage or stretching."

Dependent claims 2 to 6 describe preferred embodiments of the window blind of claim 1. Independent claim 7 is directed to a method of making a louvre window blind as claimed in any preceding claim.

IV. The following prior art, considered during the opposition proceedings, is of relevance to this decision.

D0: US-A- 4 309 472
E1: DE-A- 1 922 803
E2: DE-A- 2 018 762
E4: Bekleidung und Wäsche, Volume 7, No. 23, pages 1484 to 1490, 1977.

V. Submissions of the Parties

The appellant argued that the step of heat setting the high melt component in window blind fabric would be obvious to the skilled person. D0 explains that in order to render flat articles stiff, they are exposed to plastification in a thermofixation means (see

column 2, lines 50 to 66); example 1 of D0 states that the fabric is exposed to a heat treatment for 30 seconds in a tenter frame at a temperature of 240°C. E1, which concerns a two-component system, contains numerous references to stabilising or fixing the shape. According to E1, the material is heated to a temperature in region of 230 to 250°C, this being a temperature below the melting point of the high melting point polymer (see page 9, first paragraph, page 15, third paragraph, page 23 third paragraph and claim 12). Likewise, E2 (page 7, second paragraph) teaches that good stiffness is obtained by heating for 5 to 60 seconds at a temperature of 220 to 260°C, preferably 230 to 250°C. Consequently, the feature of heat setting adds nothing over and above the disclosures of D0, E1/E2 and E4 and there can be no inventive step in light of these documents.

The respondent explained that, although the process of heat setting causes changes in a polymer, it does not cause melting or plastification; it is conducted 15 to 20°C below the melting point and at a temperature lower than that at which plastification occurs. D0 specifically refers to "plastification", and E1/E2 do not distinguish between the different temperatures of heat setting and plastification. In addition, E1/E2 concern a material containing polymer fibrils having a size of 2 µm, and heat setting fibres of this size is not realistic in practice.

None of the cited documents discloses the combination of melting the low temperature component and heat setting the higher one. In order to derive the subject-matter of claim 1, the skilled person has to cherry

pick features from D0, E1/E2 and E4 in expectation of achieving the desired objectives, and there is no indication in the prior art to do so, the claimed window blind is therefore inventive.

VI. Requests

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

The respondent requested that the decision under appeal be set aside and that the patent be maintained on the basis of the request filed during the oral proceedings of the present case.

Reasons for the Decision

1. The appeal is admissible.

2. *Binding Nature of T 969/96*

According to the first decision of the Board of Appeal in T 969/96, the subject-matter of claim 1 of the main request was considered to lack novelty. The second auxiliary request before that Board was held to lack an inventive step, essentially because the step of heat cutting a material containing monofilament yarn, as disclosed in E1/E2, was considered to be obvious. The Board then remitted the case to the opposition division for them to consider the merits of the third auxiliary request, which was restricted to a yarn made up of a plurality of staple fibres or filaments.

The decision taken by the Board in T 969/96 is final, and as such has a binding effect, as stipulated in Article 111(2) EPC, not only for the department of first instance, but also for a subsequent appeal (see the Case Law of the Boards of Appeal, 4th edition 2001, pages 536 and 537). The Board in the present hearing is not entitled to reconsider facts and requests which have already been decided. The present Board is also bound by the ratio decidendi of the case, which provided the necessary support for the order to remit the case for further prosecution. This means that, as regards the then pending third auxiliary request, the present Board is bound by the conclusions reached in T 969/96 in respect of the obviousness of the step of heat cutting the material, and in identifying the technical features that distinguished the claimed window blind from that of the prior art.

3. *Claim 1*

Compared with claim 1 that was remitted to the opposition division, claim 1 in the present case contains the further restriction that the high melt component of the yarn undergoes heat setting at the temperature at which the low melt component melts.

The feature of heat setting the high melt component at the temperature at which the low melt component melts is disclosed in the application as originally filed at column 3, line 56 to column 4, line 3, and so the amendment meets the requirements of Article 123(2) EPC.

None of the cited prior art documents provides an indication that the polymer components must be selected

to achieve heat setting of the higher melt fibres at the melt temperature of the low melting point component. The appellant argues that D0 and E1/E2 teach heat treating the material in order to stiffen it. However, D0 stabilises the fabrics by plastification at 220 to 255°C, preferably 230 to 250°C. Similarly, E1/E2 treat the material in the range 230 to 250°C, with examples at 240°C. All of these heat treatments take place at higher temperatures than those of the disputed patent, which describes heat setting at 150°C and 180°C (see column 6, lines 11 to 15 and 30 to 39).

Heat setting has the effect that stiffness is increased, without the fabric losing its textile feel. Whereas the prior art teaches plastification as a means of achieving stiffness, there is no disclosure of a heat setting process, and in particular one with high and low melting components as defined in claim 1. Consequently the window blind of claim 1 is novel and has an inventive step; likewise dependent claims 2 to 6 and the method of claim 7 are novel and inventive.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of the first instance with the order to grant a patent with the following documents:

   Claims 1 to 7 filed during the oral proceedings held on 11 October 20005;

   Description columns 1 to 7, also filed during the oral proceedings.

The Registrar: The Chairman:

A. Counillon U. Krause