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# D E C I S I O N
# of 3 May 2005

**Case Number:** T 0996/03 - 3.2.4

**Application Number:** 99928103.3

**Publication Number:** 1091669

**IPC:** A47C 27/06

**Language of the proceedings:** EN

**Title of invention:**
Spring units

**Applicant:**
A Harrison (Bedding) Limited

**Opponent:**
-

**Headword:**
-

**Relevant legal provisions:**
EPC Art. 54(1), 54(3), 54(4), 84, 123(2)

**Keyword:**
"Non appearance at oral proceedings"
"No comments on the objections raised on the Board's communication"
"Novelty - no"
"Amendments (not allowable)"

**Decisions cited:**
-

**Catchword:**
-

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**Case Number:** T 0996/03 - 3.2.4

# D E C I S I O N
## of the Technical Board of Appeal 3.2.4
## of 3 May 2005

**Appellant:** A Harrison (Bedding) Limited
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West Yorkshire LS11 5SN (GB)

**Representative:** Watson, Anthony Stephen
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted 6 May 2003 refusing European application No. 99928103.3 pursuant to Article 97(1) EPC.**

**Composition of the Board:**

**Chairman:** M. Ceyte
**Members:** M. Hatherly
T. Bokor

## Summary of Facts and Submissions

I. The examining division's decision refusing the European patent application No. 99 928 103.3 (International publication No. WO-A-00/00065) was posted on 6 May 2003.

The appellant (applicant) filed an appeal on 1 July 2003, paid the appeal fee on 4 July 2003 and filed the statement of grounds of appeal on 30 August 2003.

II. Claims 1 and 2 filed with the statement of grounds of appeal read:

"1. A spring unit (2) comprising a pocket (4) of fabric or other suitable material and having at least two sub-pockets (8,10) each containing a resilient spring member (12,14), said resilient spring members (12,14) being mutually co-axial, said sub-pockets (8,10) being formed in said pocket (4) by a length or web (6) of fabric or other material which is integral with the material of the pocket (4), characterised in that said web (6) is formed by heat welding, sonic welding, or stitching during the formation of the spring unit (2).

2. A spring unit according to Claim 1, characterised in that the sub-pockets (8,10) are connected together by said web (6) in a manner such that the web is movable with said resilient spring members (12,14) but not relative to said resilient spring members (12,14) such that the position of said web (6) relative to said resilient spring members (12,14) does not change, the resilient spring member (12) in the upper sub-pocket (8) having no effect on the resilient spring member (14) in

the lower sub-pocket (10) during non-use of the spring unit (2)."

III. The appellant argued in the statement of grounds of appeal that the above-cited claim 1 and also the dependent claim 2 contained patentable subject-matter which was not disclosed or taught by any of the cited prior art specifications, taken singly or in combination.

IV. In section 2 of the communication accompanying the summons to oral proceedings, posted on 21 February 2005, the board objected to claim 1 as follows:

"2. Claim 1 and WO-A-99 35081 (henceforth called D1)

2.1 D1 is a conflicting application under Articles 54(3) and 54(4) EPC for those designated states it has in common with the present patent application.

2.2 Figure 2 and page 2, line 30 to page 4, line 25 of D1 disclose a spring unit comprising a common external cover 4 (i.e. a pocket) of textile or other material (see page 3, lines 6 to 9). The pocket has two sub-pockets each containing a spring 1, 2 which are mutually co-axial. The sub-pockets are formed in the pocket 4 by a partition wall 3 (i.e. a length or web) of said textile or other material which is integral with the material of the pocket 4 (see page 4, lines 17 to 20).

2.3 Lines 17 to 20 of page 4 of D1 state that "The external cover and the partition wall thus are formed from the same continuous piece of material".

Thus in D1 the partition wall 3 (i.e. the length or web) is integral with the material of the pocket.

2.4 Lines 4 and 5 of page 3 of D1 state that there is "one partition wall 3, which is joined to the external cover." Lines 12 to 17 of page 4 add that "The material ends 6 and 7, respectively, externally of the springs, are then carried round their respective spring of the pair and are attached to the piece of material on the opposite side in overlap areas 8 and 9, respectively, as clearly illustrated in Fig 2."

Thus in D1 the partition wall 3 (i.e. the length or web) is attached to the pocket.

2.5 The present claim states that "that said web (6) is formed by heat welding, sonic welding, or stitching during the formation of the spring unit (2)."

2.5.1 Lines 8 to 25 on page 4 of D1 explain that material 3 extends between the springs 1 and 2, the ends 6 and 7 of the material are carried round the respective spring 1 and 2 and attached in the overlap areas 8 and 9.

2.5.2 Claim 9 of D1 sets out this method, including "the steps of placing a piece of material between

corresponding springs in the two layers, wrapping the external ends around the respective spring, joining said ends to the piece of material at the opposite side of the respective one of the springs, and attaching the piece of material along the longitudinal sides, i.e. in the longitudinal direction of the springs."

Thus the term used in claim 9 for the connection of the ends 6 and 7 in the overlap areas 8 and 9 is "joining".

2.5.3 Claim 13 is directly appendant to claim 9 and states that "the material that is used preferably is a weldable textile material, and in that the joining together of the material is effected by gluing or welding."

Thus, according to claims 9 and 13 of D1 the joining of the ends 6 and 7 in the overlap areas 8 and 9 is "effected by gluing or welding."

2.5.4 Thus D1 discloses that the partition wall 3 (i.e. web) is formed by welding during the formation of the spring unit.

2.5.5 D1 discloses "welding" whereas the present claim 1 specifies "heat welding, sonic welding, or stitching".

In claim 13 of D1 "textile material" is being welded together. Heat welding and sonic welding are the only two types of welding that could be used in D1. Other types of welding which are

suitable only e.g. for welding blocks of metal together are excluded. Therefore the skilled person reading claim 13 of D1 knows that by "welding" heat or sonic welding is meant.

Thus two of the three connection alternatives in claim 1 are known from D1.

2.6 Thus the subject-matter of claim 1 is not novel (Articles 54(1), 54(3) and 54(4) EPC) and so the claim is unallowable (Article 52(1) EPC)."

V. In section 3 of the communication accompanying the summons to oral proceedings the board objected to claim 2 as follows:

"3. Claim 2 filed with the statement of grounds of appeal

3.1 Claim 2 states that "the sub-pockets (8,10) are connected together by said web (6)".

The board does not see an unambiguous basis for this feature in the original patent application. Moreover it seems that the sub-pockets are held together because they are parts of the pocket rather than by the web.

3.2 Claim 2 states that "the web is movable with said resilient spring members (12,14) but not relative to said resilient spring members (12,14) such that the position of said web (6) relative to said resilient spring members (12,14) does not change".

3.2.1 This wording is not to be found in the original patent application and is not unambiguously derivable therefrom.

Moreover the board cannot see that the statement is correct. The tip of each spring will locally depress the web as the spring is loaded and so change the position of part of the web relative to part of the spring.

Further, the loading in practice will not be perfectly axial and so e.g. load on the right-hand side in Figure 1 will tilt the web 6 right hand down so that a different spring-web orientation will result.

3.2.2 Claim 2 seems to describe a situation in which the web 6 is attached to the cylindrical wall of the pocket in such a way that there is never any slack in the web. This is in contrast to D1 where slack in the web (partition wall 3) is deliberately provided.

However the present patent application does not disclose in detail a spring unit with pocket, sub-pockets and web of integral material. The appellant seems to be trying to draw information from the Figures. The Figures are however schematic and technically unrealistic and so cannot be used in this way.

3.2.3 Thus the feature of claim 2 set out in the above section 3.2 is objectionable under Article 123(2) EPC.

3.3 Claim 2 refers to "the resilient spring member (12) in the upper sub-pocket (8) having no effect on the resilient spring member (14) in the lower sub-pocket (10) during non-use of the spring unit (2)."

The board does not see an unambiguous basis in the original patent application for this statement. Moreover the statement is apparently incorrect since the weight of the upper spring compresses (preloads) the lower spring slightly even during non-use.

3.4 Accordingly claim 2 is unallowable because it contravenes Article 123(2) EPC and because it is at variance with the description (Article 84 EPC)."

VI. The appellant replied by letter of 19 April 2005 stating that "the Applicant will not be represented at the oral proceedings to be held on 3rd May 2005", without submitting further arguments or requests.

VII. The oral proceedings were held on 3 May 2005 in the appellant's absence, in accordance with Rule 71(2) EPC.

VIII. The appellant's requests are to set the examining division's decision aside and to grant a patent on the basis of claims 1 and 2 filed with the statement of grounds of appeal.

## Reasons for the Decision

1. The appeal is admissible.

2. The board has reconsidered its provisional negative opinion expressed in the communication accompanying the summons to oral proceedings but has reached the same conclusion, namely that:

   (i) in view of D1 (WO-A-99 35081) which is a conflicting application under Articles 54(3) and 54(4) EPC for those designated states it has in common with the present patent application, the subject-matter of claim 1 is not novel (Articles 54(1), 54(3) and 54(4) EPC) and so the claim is unallowable (Article 52(1) EPC); and

   (ii) claim 2 is unallowable because it contravenes Article 123(2) EPC and because it is at variance with the description (Article 84 EPC).

3. The board therefore cannot allow the appeal.

## Order

## For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis M. Ceyte