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**Datasheet for the decision
of 23 June 2006**

Case Number: T 1444/04 - 3.2.04

Application Number: 95930782.8

Publication Number: 0793435

IPC: A47G 9/02

Language of the proceedings: EN

Title of invention:
Low friction bed sheet

Patentee:
Lindberg, Eva

Opponents:
Ross Medical Equipment AB
Nordring AB

Headword:
-

Relevant legal provisions:
EPC Art. 84, 123(3)
EPC R. 71(2)

Keyword:
"Extension of the protection conferred (yes)"
"Clarity (no)"

Decisions cited:
-

Catchword:
-



Case Number: T 1444/04 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 23 June 2006

Appellant:
(Patent Proprietor)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 26 November 2004
revoking European patent No. 0793435 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
T. Bokor

Summary of Facts and Submissions

- I. By its decision dated 26 November 2004 the Opposition Division revoked the European patent No. 0 793 435. On 20 December 2004 the Appellant (patent proprietor) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 17 March 2005.
- II. The patent was opposed on the grounds based on Articles 100(a) (54 and 56), 100(b) and 100(c) EPC. The Opposition Division held that claim 1 as granted did not meet the requirements of Article 123(2) EPC.
- III. Claim 1 according to the main request reads as follows:
- "1. Low friction bed sheet for facilitating changing the position of a person or part of a person in prone position including at least a low friction surface (4) consisting of a washable low friction material and adjacent high friction surfaces (5) with high friction, said low friction surface (4) and said high friction surfaces (5) consisting of different cloths and being attached to each other by means of seams (7), wherein the low friction surface (4) is equipped with a high friction surface on its backside such that the low friction surface of the bed sheet is applied only on the side against the person in bed and characterized in that wherein the low friction surface (4) and the high friction surfaces (5) at least lengthwise are joined by seams (7) at which at least one of the high and low friction materials has been provided with a hem in that the seams (7) form small raised parts providing transition zones (8) which can be sensed by the person

in bed and which functions as stops minimising the risk of the person slipping out of the bed in that the width of said low friction surface (4) is 20–30 cm narrower than the width of the bed for which it is intended to be used, such that corridors of high friction surfaces can be exposed on distance from the long sides of the bed, whereby said transition zones (8) give the person lying on the low friction bed sheet an indication when near the side of the bed and that the low friction surface material (4) is consisting of a cloth which is washable at bacteria killing temperatures of at least 70°C and that said high friction surfaces (5) which form said corridors consist of several one-part high friction surfaces (5)."

Independent claim 10 of the main request reads as follows:

"10. Low friction bed sheet for facilitating changing the position of a person or part of a person in prone position including at least a low friction surface (4) consisting of a washable low friction material and adjacent high friction surfaces (5) with high friction, said low friction surface (4) and said high friction surfaces (5) consisting of different cloths and being attached to each other by means of seams (7), wherein the low friction surface (4) is equipped with a high friction surface on its backside such that the low friction surface of the bed sheet is applied only on the side against the person in bed and characterized in that wherein the low friction surface (4) and the high friction surfaces (5) at least lengthwise are joined by seams (7) at which at least one of the high and low friction materials has been provided with a hem in that

the seams (7) form small raised parts providing transition zones (8) which can be sensed by the person in bed and which functions as stops minimising the risk of the person slipping out of the bed in that the width of said low friction surface (4) is 30–60 cm narrower than the width of the bed when used in a bed with the width of 120 cm, such that corridors of high friction surfaces can be exposed on distance from the long sides of the bed, whereby said transition zones (8) give the person lying on the low friction bed sheet an indication when near the side of the bed and that the low friction surface material (4) is consisting of a cloth which is washable at bacteria killing temperatures of at least 70°C and that said high friction surfaces (5) which form said corridors consist of several one-part high friction surfaces (5)."

Claims 1 and 10 according to the first auxiliary request differ from claims 1 and 10 according to the main request in that "temperatures of at least 70° C" has been modified to read "temperatures above 70° C".

Claims 1 and 10 according to the second auxiliary request differ from claims 1 and 10 according to the first auxiliary request in that it is further specified that the low friction surface material is made of polyester.

IV. Oral proceedings before the Board took place on 23 June 2006.

Respondent II (opponent II), who has been duly summoned, informed the Board by letter of 9 June 2006 that he would not attend the oral proceedings.

Pursuant to the provisions of Rule 71(2) EPC the proceedings were continued without him.

The Appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the sets of claims according to a main request filed during the oral proceedings, a first or second auxiliary requests, both comprising claims 1 to 8 and 10 to 17 filed with the grounds of appeal and claims 9 and 18 corresponding to those of the main request.

He mainly argued as follows: The expression "which are physically and distinctly perceptible by the person in bed as well as providing an actual slide hindrance" has been amended to read "which can be sensed by the person in bed and which functions as stops minimising the risk of a person slipping out of the bed". These amendments do not contravene the requirements of Article 123(3) EPC because the scope of the amended expression in conjunction with the claimed shape of the transition zone is the same as that of the wording as granted.

Respondent I (opponent I) countered the Appellant's arguments and mainly argued as follows:

It is possible that something can be sensed without being distinctly perceptible. Therefore, "zones which are physically and distinctly perceptible" are a subgroup of "zones that can be sensed". Furthermore, an "actual slide hindrance" is undoubtedly a stronger barrier than something that "functions as stops minimising the risk ..." Thus, the scope of the amended expression is broader than that of the wording as

granted and thus, the requirements of Article 123(3) EPC are not met.

Respondent II (opponent II) did not make submissions with respect to Article 123 EPC, but solely with respect to lack of inventive step.

Both Respondents requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.
2. *Article 123(3) EPC:*
 - 2.1 The independent claims 1 and 10 according to all requests differ from claim 1 as granted *inter alia* in that:
 - "which are physically and distinctly perceptible" has been amended to read "which can be sensed",
 - "providing an actual slide hindrance" has been amended to read "functions as stops minimising the risk of a person slipping out of the bed", and
 - "at which at least one of the high and low friction materials has been provided with a hem".
 - 2.2 It is well established by the case law of the Boards of Appeal that the claims should be read giving the words the meaning and scope which they normally have in the relevant art, unless the description gives the words a special meaning by an explicit definition. Thus, in the absence of any special definition the meaning of the

words is their "dictionary meaning", i.e. that they normally have as defined in commonly used dictionaries. Examples of such dictionaries may be the Cambridge Dictionary online (CD), WordNet 2.0 (WN) or the Collaborative International Dictionary of English V.0.48 (CID).

According to these dictionaries:

- "sensed" means: ability to understand, recognize, value or react to something (CD), or: detected by instinct or inference rather than by recognized perceptual cues (WN);
- "perceptible" means: capable of being perceived, cognizable, discernible, perceivable, large enough to be perceived, not so small as to be incapable of perception (CID); or: something that can be seen, heard or noticed (CD); or: something that can be easily perceived by the senses, easily seen or detected (WN).

- 2.3 Thus, "sensed" is a rather vague and indefinite term, which has to be interpreted in its broadest meaning. Therefore, the term "sensing" in the expression "transition zones (8) which can be sensed by the person in bed and which functions as stops minimising the risk of the person slipping out of the bed" has to be construed as "information concerning the transition that can be detected by instinct or inference rather than by recognized perceptual cues and so that the person in bed is enabled to react against slipping out of the bed". In contrast thereto "transition zones (8) which are physically and distinctly perceptible by the person in bed, as well as providing an actual slide hindrance" has to be construed as implying that the transition zones must not only be clearly detectable

(distinctly and physically perceptible and not only inferred) but also that further displacement is rendered more difficult (hindered) in that crossing the transition zone cannot be ignored.

It follows that the replacement of the terms in granted claim 1 "which are physically and distinctly perceptible" by the less restrictive wording "which can be sensed" broadens the protection conferred and is thus not admissible under Article 123(3) EPC.

The same applies to the replacement of " providing an actual slide hindrance" by the less restrictive wording "functions as stops minimising the risk of a person slipping out of the bed" which also broadens the scope of protection.

- 2.4 The Appellant argued that the feature in the granted claim that the transition zone is physically and distinctly perceptible by the person in bed is fulfilled by the now claimed shape of the transition zone and that "slide hindrance" had to be understood as meaning that the risk that the person slips out of the bed is minimised.

However, the independent claims as amended read "... low friction surface (4) and the high friction surfaces (5) at least lengthwise are joined by seams (7) at which at least one of the high and low friction materials has been provided with a hem in that the seams (7) form small raised parts providing transition zones (8)..." Thus according to this passage, the transition zones are formed by small raised parts of the seams.

A seam being normally a line of stitches, it is unclear how the raised parts formed by stitches could be

physically and distinctly perceptible such as to form a hindrance, i.e. something that cannot be ignored.

The Appellant held in this respect that the hem is also part of the seam, rendering it physically and distinctly perceptible. However, this cannot be derived either from the wording of the amended independent claims or from the patent specification.

2.5 At column 2 of the patent specification, lines 35 to 41 (description as filed, page 4, line 35 to page 5, line 5) it is stated:

"... which low friction material has been sewn with hems 7 together with the high friction surfaces 5 ... The seams thus form two transition zones in the form of small raised parts that can be sensed by the person in bed and which function as stops minimising the risk of the person slipping out of the bed. Alternatively the said raised parts - the stops - can be made of for example a tape or the like sewn on or otherwise fastened to the low friction bed sheet".

The above passage which specifies that the seams form transition zones in the form of raised parts which function as stops, does not indicate that the hem is part of the seam and accordingly, it cannot be inferred from this passage that the amended independent claims should be interpreted in the sense that the hem is part of the seam.

Hence, if the transition zones are solely formed by small raised parts of the stitches that can be "sensed" in the meaning of "detected by instinct or inference

rather than by recognized perceptual cues" (see section 2.2 above), a special attention from the user is required in order to detect said transition zone. In contrast thereto, something that is physically and distinctly perceptible and provides a hindrance must be such that it can be detected without any particular effort, even if the user is not particularly attentive to, i.e. an indication which cannot be ignored.

Consequently, when interpreting the claims according to this passage, a bed sheet comprising low and high friction surfaces that are sewed together and wherein the seam presents stitches that can only be felt when groping for, would fall within the scope of claim 1 of all requests now on file but not within the scope of claim 1 as granted.

Therefore, the amendments made in the independent claims of all requests now on file extend the scope of protection (Article 123(3) EPC).

In the amended claims the transition zones should be formed such that they can be sensed by the person in bed. However, there is no clear definition of the nature of these transition zones which are an essential feature of the claimed invention. It is unclear whether the transition zones in the form of small raised parts are formed by the stitches of the seams or by a hem in the seam between the low and high friction surfaces. Moreover as has already been explained, there is also no clear definition of the nature of the claimed seam between this low and high friction surfaces since it is in particular not possible to assess with certitude whether the hem is part of the seam or not.

2.6 Thus, the amended claims do not comply with the requirements of Article 84 EPC or with the requirements of Article 123(3) EPC. Therefore, all requests on file must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte