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**D E C I S I O N**  
**of 31 March 2006**

**Case Number:** T 1436/05 - 3.2.04

**Application Number:** 02716124.9

**Publication Number:** 1367913

**IPC:** A41D 13/002

**Language of the proceedings:** EN

**Title of invention:**

Three-dimensional fabric with porous layer

**Applicant:**

Lamination Technologies Limited

**Opponent:**

-

**Headword:**

Cross fibres/LT

**Relevant legal provisions:**

EPC Art. 54, 123(2), 111(1)

**Keyword:**

"Novelty - main request (no)"

"Added matter - first auxiliary request (yes)"

"Novelty - second auxiliary request (yes)"

"Remittal for consideration of undecided issues"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1436/05 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 31 March 2006

**Appellant:** Lamination Technologies Limited  
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**Representative:** Lyons, Andrew John  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 30 May 2005  
refusing European application No. 02716124.9  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** P. Petti  
T. Bokor

## Summary of Facts and Submissions

I. The European patent application No. 02 716 124.9 was refused by a decision of the examining division posted on 30 May 2005.

In its decision the examining division held that the claimed subject-matter lacked novelty with respect to document WO-A-98/45505 (D1).

II. The applicant (hereinafter appellant) lodged an appeal against this decision on 27 July 2005 and paid the appeal fee on 28 July 2005. The statement setting out the grounds of appeal was filed on 29 September 2005.

III. Oral proceedings before the board were held on 31 March 2006.

During the oral proceedings the appellant submitted four sets of claims upon which a main request and three auxiliary requests were based.

Claim 1 of the main request reads as follows:

"1. A fabric (10) comprising a porous layer (15) that is porous in the direction along the layer, the porous layer including fibres (16) extending across the layer, whereby, in use, fluid is arranged to be driven along the porous layer, characterized in that the cross fibres are arranged in a pattern to provide one or more channels (44, 46) through the fabric for preferential fluid flow through the one or more channels in the direction along the layer."

Claim 1 of the first auxiliary request reads as follows:

"1. A fabric (10) comprising a porous layer (15) that is porous in the direction along the layer, the porous layer including fibres (16) extending across the layer, whereby, in use, fluid is arranged to be driven, along the porous layer, characterized in that the cross fibres are arranged in a pattern to provide one or more channels having less cross fibres (44, 46) through the fabric for preferential fluid flow through the one or more channels in the direction along the layer."

Claim 1 of the second auxiliary request reads as follows:

"1. A fabric (10) comprising a porous layer (15) that is porous in the direction along the layer, the porous layer including fibres (16) extending across the layer, whereby, in use, fluid is arranged to be driven along the porous layer, characterized in that cross fibres are omitted to provide one or more channels (44, 46) through the fabric for preferential fluid flow through the one or more channels in the direction along the layer."

IV. The appellant requested that the appealed decision be set aside and a patent be granted either on the basis of the set of claims filed as main request during oral proceedings or on the basis of one of the sets the

claims according to first, second and third auxiliary requests filed during oral proceedings.

## **Reasons for the Decision**

1. The appeal is admissible.

2. *Main request*

2.1 Document WO-A-98/45505 (D1) discloses an article comprising a fabric having a porous layer that is porous in the direction along the layer, the porous layer including fibres extending across the layer, whereby, in use, fluid is arranged to be driven along the porous layer. According to the passage bridging pages 4 (line 30) and 5 (line 1), by means of lines of stitching preferential paths ("chemins préférentiels") are provided through the fabric.

Furthermore, Figure 7, which is a side cross section through a three dimensional fabric representing a preferential path (see page 6, lines 4 and 5), shows a fabric made of cross fibres extending between upper and lower sides of the fabric, wherein a continuous line of stitching 18 as well as a discontinuous line of stitching 19 are formed by means of additional cross fibres which extend between the upper side of the fabric and a tissue 22 added on the lower side of the fabric so as to provide a preferential path through the fabric (see page 7, lines 23 to 29). Thus, the cross fibres extending between upper and lower sides of the fabric together with the additional cross fibres forming the lines of stitching can be considered as

being arranged in a pattern to provide a channel for preferential fluid flow through the channel in the direction along the porous layer.

- 2.1.1 The appellant argued that the present application shows how preferential fluid flow channels may be created by adjusting the density of cross fibres in certain areas, while document D1 does not disclose a pattern of fibres to create channels for preferential flow as defined in claim 1 because it shows a uniform distribution of cross fibres.

The board cannot accept this argument because the terms (in claim 1) "arranged in a pattern to provide one or more channels for preferential fluid flow ..." do not clearly define any adjustment of the density of the cross fibres in certain areas and thus, having regard to section 2.1 above, do not permit the claimed subject-matter to be clearly and unambiguously distinguished from the prior art according to document D1.

- 2.2 Therefore, the subject-matter of claim 1 according to the main request is not novel over this prior art (Article 54 EPC).

3. *First auxiliary request*

- 3.1 Claim 1 of the main request differs from claim 1 of the auxiliary request in that the channels have been defined as "having less cross fibres".

This feature also covers a fabric comprising areas defining the channels in which cross fibres are present

with a density which is less than the density of cross fibres in the remaining areas of the fabric.

However, according to the description (see particularly page 21, lines 7 to 22) and to the drawings (Figures 6A, 6B and 6C) of the application as filed, the fabric has "areas 42 where cross fibres 16 are of normal density" and "areas 44 in which the fibres have been missed out".

- 3.2 The appellant referred to some passages in the description of the application (page 5, line 5; page 6, line 31 to page 7, line 6; page 11, lines 6 to 19) as disclosing this feature.

However, none of these passages represents a clear and unambiguous basis for this feature. In particular, the passage on page 11, lines 16 to 19, which explicitly refers to a layer "formed for example by programming a knitting machine to **miss out** fibres in defined areas to provide a channel through the fabric in that area" (emphasis added), makes it clear that there are no fibres in the channels.

The application as filed thus does not contain any further passage from which the feature "having less cross fibres" can be clearly and unambiguously derived.

- 3.3 Therefore, the amended claim 1 of the first auxiliary request contravenes the requirements of Article 123(2) EPC.

4. *Second auxiliary request*

4.1 Claim 1 of this request clearly defines a fabric comprising a porous layer comprising areas in which cross fibres extend across the layer and further areas where no cross fibres are present so as to define channels for preferential fluid. Thus, claim 1 complies with the requirement of clarity specified in Article 84 EPC.

4.2 Namely, Claim 1 differs from claim 1 of the application as filed by addition of the characterising feature that "cross fibres are omitted to provide one or more channels (44, 46) through the fabric for preferential fluid flow through the one or more channels in the direction along the porous layer".

This characterising feature can be clearly and unambiguously derived from the above mentioned passage on page 11, lines 16 to 19 which refers to a layer "formed **for example** by programming a knitting machine to miss out fibres in defined areas to provide a channel through the fabric in that area" (emphasis added). This passage - although it specifically refers to the programming of a knitting machine - generally defines the channels as areas in which the cross fibres have been omitted. The specific reference to the knitting machine is clearly not essential because of the terms "for example" as well as because of claim 14 of the application as filed according to which the fibres of the fabric may be not only knitted but also needled or woven.



Therefore, the amended claim 1 of the second auxiliary request does not contravene the requirement of Article 123(2) EPC.

- 4.3 Having regard to the considerations in section 2.1 above, document D1 does not disclose a fabric having areas in which "cross fibres are omitted to provide one or more channels".

Therefore, the subject-matter of claim 1 of the second auxiliary request is novel (Article 54 EPC).

5. In the present case, the application was rejected solely on the ground of lack of novelty of the claimed subject-matter over document D1, the issue of inventive step having not been dealt with by the examining division.

In such circumstances the case is normally remitted back to the department of first instance for consideration of the undecided issues.

Accordingly the Board, in exercising its discretion under Article 111(1) EPC, considers it appropriate to remit the case to the department of first instance, for a decision on the remaining issues concerning the second auxiliary request.

**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 first instance for further prosecution on the basis of the second auxiliary request.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte