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**Datasheet for the decision
of 24 July 2009**

Case Number: T 1104/07 - 3.2.06

Application Number: 00202475.0

Publication Number: 1072705

IPC: D03D 27/10

Language of the proceedings: EN

Title of invention:

Method for face-to-face weaving false bouclé fabrics with cut pile, and fabrics woven according to this method

Patentee:

NV Michel van de Wiele

Opponent:

STAUBLI FAVERGES

Headword:

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Relevant legal provisions:

-

Relevant legal provisions (EPC 1973):

EPC Art. 54(2),(3), 56

Keyword:

"Novelty (Main and first auxiliary requests) - no"
"Novelty and inventive step (second auxiliary request) - yes"
"Prohibition of *reformatio in peius* - yes"

Decisions cited:

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Catchword:

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Case Number: T 1104/07 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 24 July 2009

Appellant: NV Michel van de Wiele
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
3 May 2007 concerning maintenance of European
patent No. 1072705 in amended form.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. Kadner
K. Garnett

Summary of Facts and Submissions

- I. The mention of grant of European patent No. 1 072 705 in respect of European patent application No. 00202475.0, filed on 13 July 2000 and claiming a Belgian priority from 19 July 1999, was published on 20 October 2004 with 14 claims.

Claim 1 reads as follows:

"Method for weaving fabrics with a rib structure, whereby on a weaving machine a backing fabric is woven with weft yarns (1-6); (31-36) and warp yarns(9-20); (37-47), and whereby warp yarns (15-18); (43-46) are alternately woven in the backing fabric and are rib-formingly passed round over at least one weft yarn (4), (5); (32), (35) extending on the backing fabric surface characterised in that two fabrics (22), (23); (49), (50) are woven one above the other with a rib structure according to a face-to-face weaving method, while warp yarns (19), (20); (47) are alternately interlaced in the top (22); (49) and bottom fabric (23); (50) round at least one weft yarn (1), (2), (3); (31), (36), and that these warp yarns (19), (20); (47) are split between the two fabrics so that each fabric (22), (23); (50) with a rib structure also comprises at least one area with cut pile yarn."

- II. Notice of opposition was filed against the granted patent, according to which revocation of the patent on the grounds of Article 100(a) EPC was requested.

By decision posted on 21 February 2007, the Opposition Division maintained the patent in amended form

according to the Patentee's second auxiliary request in a version for the contracting states DE and FR, and in another version for IT, holding that the subject-matter of the independent claims met the requirements of the EPC.

III. Notice of appeal was filed against this decision by the Appellant (Patentee) on 5 July 2007 and the appeal fee was paid on the same day. With its statement of the grounds of appeal filed on 5 September 2007 the Appellant filed 14 auxiliary requests.

IV. In a communication dated 14 May 2009 accompanying the summons to oral proceedings to be held 24 July 2009 the Board expressed its preliminary view that the Opposition Division's decision in respect of the what was now the main request in the appeal proceedings (maintenance of the patent as granted) appeared correct. Most of the auxiliary requests did not seem to be admissible since the amended claims did not appear to meet the requirement of Article 123(2) EPC. The seventh auxiliary request concerned the versions of the claims as maintained by the Opposition Division.

V. With letter dated 17 June 2009 the Appellant withdrew its request for oral proceedings and stated that it would not be present at the oral proceedings. The former first to sixth and eighth to fourteenth auxiliary requests were no longer pursued.

The Appellant's remaining requests are:

(1) Main request: Maintenance of the patent as granted

(2) First auxiliary request: Maintenance of the patent for DE, FR in which claims 13 and 14 as well as paragraphs [0002], [0022] and [0023] of the granted version are deleted, for IT as granted.

(3) Second (renumbered seventh) auxiliary request:

Maintenance of the patent in the versions as maintained by the Opposition Division.

VI. With letter dated 10 January 2008 the Respondent (Opponent) requested that the appeal be dismissed.

Auxiliarily it requested oral proceedings to be held.

After having received the summons to oral proceedings the Respondent submitted that its representative could not attend on that date because he was absent on holiday. The oral proceedings were cancelled by the Board.

VII. The documents relied upon in the appeal and relevant for the decision are:

D1: EP-A-1 046 734 (Article 54(3)-document)
D2: EP-A-0 119 184
D3: DE-C-175 757
D4: DE-A-43 12 235
D5: DE-C-127 300
D10: DE-A-199 18 171 (Priority document of D1)

VIII. In support of its requests the Appellant essentially relied upon the following submissions:

In order to understand the subject-matter of claim 1 the description and the figures should also be taken into consideration. On this basis it was apparent that the two features as claimed in the patent in suit according to which the warp yarns extend onto the backing fabric surface and that each fabric with a rib structure also comprises at least one area with cut pile yarn were not disclosed in D1. The claim had to be understood in the sense that the area with cut pile yarn extended into the location where the warp yarns formed the rib structure. According to D1 (Figure 3) these areas PB and PF were situated at different locations, and thus could not bring the novelty of claim 1 into question. Furthermore D1 (Figure 1) did not disclose the feature that the weft yarn over which warp yarns are rib-formingly passed extends onto the backing surface because the weft yarns S2 and S4 were part of the backing fabric. Therefore the method according to claim 1 was novel over D1.

IX. The arguments of the Respondent (Opponent) can be summarized as follows:

The subject-matter of claim 1 according to the main request lacked novelty when compared to the disclosure of D1. At least in zone PB the weft yarns extended onto the backing surface. According to the wording of claim 1 the fabric had an area with a rib structure and an area with cut pile yarn. It could not be derived from its disclosure that these two areas should be situated at the same location. Since the Opposition Division's view was correct the appeal should be dismissed.

Reasons for the Decision

1. The appeal is admissible.
2. *Main Request (Novelty)*

It is true that, if there is any potential unclarity, a claim has to be interpreted in the light of the description and the drawings. However, in its communication the Board indicated that the wording of claim 1 as such was clear and that no additional interpretation on the basis of the description and drawings was necessary as argued by the Appellant. The wording is clear in that each fabric with a rib structure also comprises at least one area with cut pile yarn (at any location). The term "while" is not to be understood as meaning that the rib structure and the cut pile yarn are necessarily formed at the same location. On the contrary, "while" can also be understood to mean that they are formed at generally the same time but at different locations, for example side by side as is shown in D1 (Figure 3).

The Board also cannot follow the Appellant's view that D1 does not disclose the feature that the weft yarn over which warp yarns are rib-formingly passed extends onto the backing surface because the weft yarns S2 and S4 were part of the backing fabric. At least in Figure 3 it is clearly shown that the weft yarns S4" are situated on the backing surface.

Therefore the Opposition Division correctly concluded that the subject-matter of claim 1 as granted lacks novelty when compared to the disclosure of D1.

3. *First auxiliary request (Novelty)*

The first auxiliary request includes claims 1 to 12 of the main request, granted claims 13 and 14 being deleted. Since claim 1 is identical with that of the main request, this request is not allowable for the same reason of lack of novelty.

4. *Conclusion*

The appeal must therefore be dismissed. The claims according to the appellant's second auxiliary request correspond to the set of claims upheld by the Opposition Division. The Opponent has not appealed and the request is therefore inadmissible (Article 107 EPC). The effect of the appeal being dismissed will be that the order of the Opposition Division stands.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau