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**Datasheet for the decision  
of 1 February 2012**

**Case Number:** T 1595/09 - 3.2.06

**Application Number:** 01830717.3

**Publication Number:** 1312709

**IPC:** D03D 51/02

**Language of the proceedings:** EN

**Title of invention:**

Weaving loom with an assembly for actuating the weaving mechanism

**Patentee:**

Promatech S.p.A.

**Opponent:**

Lindauer-Dornier Gesellschaft mbH

**Headword:**

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**Relevant legal provisions:**

RPBA Art. 13(1)

**Relevant legal provisions (EPC 1973):**

EPC Art. 54

**Keyword:**

"Main request, first auxiliary request: novelty (no); Second auxiliary request, third auxiliary request: not clear prima facie - not admitted"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1595/09 - 3.2.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.06  
of 1 February 2012

**Appellant:** Promatech S.p.A.  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 3 June 2009  
revoking European patent No. 1312709 pursuant  
to Article 101(3)(b) EPC.

**Composition of the Board:**

**Chairman:** M. Harrison  
**Members:** G. de Crignis  
W. Sekretaruk

## **Summary of Facts and Submissions**

- I. European patent No. 1 312 709 was revoked by the opposition division by way of its decision posted on 3 June 2009.
  
- II. On 31 July 2009 the appellant (patent proprietor) filed an appeal against this decision and paid the appeal fee. A statement setting out the grounds of appeal was received at the European Patent Office on 13 October 2009, filed in Italian language; a corresponding translation was filed on 12 November 2009.
  
- III. In a communication dated 25 November 2011, annexed to a summons to oral proceedings, the Board considered that the subject-matter of claim 1 of the main request lacked novelty, and that the first and second auxiliary requests did not alter the Board's opinion in that regard. Additionally, the Board mentioned the lack of arguments from the appellant concerning the auxiliary requests.
  
- IV. With letter of 2 January 2012, the appellant submitted a main request and first to third auxiliary requests, wherein the main request corresponded to the main request filed with the grounds of appeal and the first auxiliary request corresponded to the second auxiliary request filed with the grounds of appeal. The arguments accompanying all requests were filed in the Italian language, the appellant citing Article 14(4) EPC and indicating that a translation would be filed within the 1-month term provided in Rule 6(2) EPC, noting that such date would be after the date for oral proceedings.

- V. With letter dated 24 January 2012 the appellant informed the Board that it would not attend the oral proceedings and with letter of 31 January 2012, the appellant submitted a translation of the letter of 2 January 2012 in English.
- VI. Oral proceedings were held on 1 February 2012. The proceedings were carried out based upon the appellant's requests filed on 2 January 2012, which were that the decision under appeal should be set aside and that the patent should be maintained on the basis of the main request or according to one of the auxiliary requests 1 to 3 filed therewith.

The respondent requested that the appeal be dismissed.

- VII. Claim 1 of the main request reads as follows:  
"Weaving loom with an actuating assembly for the weaving loom, comprising at least a first motor (M1) and a main shaft for actuating the weaving mechanism characterized in that said first motor (M1) is of the type comprising a dual power take-off, the two power take-off points being connected to two opposite sections (6a, 6b) of a main drive shaft which move devices for actuating said weaving mechanism which are present respectively on the two sides of the loom."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the features of originally filed (and granted) claims 6 ("said first motor (M1) is in the form of a motor-driven shaft with two power take-off points") and 11 ("connected via a direct drive to said sections (6a, 6b) of the main drive shaft") are added, as well as the passage of the

originally filed description on page 4, lines 16 to 19 corresponding to the passage in paragraph [0017] of the patent that "the first motor is integrated with the main shaft, the latter coinciding with the axis of rotation of said first motor (M1)".

Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that between the features of the main request and the features added in the first auxiliary request, the following wording is added:

"and comprise, depending on the situation, a sley (2), a pair of weft-insertion grippers (3a-3b) and other accessory equipments", which, according to the appellant is based upon the originally filed description on page 5, lines 3 to 5, corresponding to paragraph [0019] of the patent in suit,

and wherein the word "only" is added at the end of the following feature: "comprising at least a first motor (M1) and a main shaft for actuating the weaving mechanism".

Claim 1 of the third auxiliary request differs from claim 1 of the main request in that features of certain originally filed claims has been added, according to the appellant, specifically concerning:

- from claim 2; "said main motor (M1) is arranged in a substantially barycentric position with respect to the main associated resistive loads";
- from claim 3; "said main motor (M1) is arranged at the axis of transverse symmetry of the loom";

- from claim 6; "said first motor is in the form of a motor-driven shaft with two power take-off points";
  - from claim 7; "said power take-off points are connected to the proximal ends of the two opposite sections (6a, 6b) of said main drive shaft, said two sections (6a, 6b) [having fixed to them] at the respective distal ends at least [the cam/follower] devices (7a, 7b) for actuating the sley (2); the terms in squared brackets are consistent with the originally filed description on page 5, line 31 to page 6, line 2 corresponding to paragraph [0023]";
  - from claim 10; "said first motor (M1) is connected via an electric axis to a second separate motor (M2) for actuating a weave machine";
  - from claim 11; "said first motor (M1) is connected via a direct drive to said sections (6a, 6b) of the main drive shaft";
- as well as the wording from paragraph [0017] (see first auxiliary request above).

VIII. The arguments of the appellant may be summarised as follows:

Concerning the main request, the subject-matter was limited to the main drive shaft actually moving the devices for actuating the weaving mechanism and was not simply "apt to move" any devices which were responsible for forming of the warp yarn shed.

The expression "comprising a main shaft for actuating the weaving mechanism" should be understood such that the main shaft controlled only the fabric-forming devices and did not control the weaving machine. Both sections of the main shaft moved the weaving mechanism devices.

Such subject-matter was novel with respect to e.g. the embodiment illustrated in Figure 8 of

D2 WO-A-98/31856

because this embodiment concerned a weaving loom wherein a single power take-off of the motor drove the weaving mechanisms found on both loom sides, and there was no shaft which controlled only the fabric-forming devices. Hence, the reasons set out with respect to lack of novelty by the opposition division were no longer valid.

Claim 1 of the first auxiliary request included additionally the feature that the first motor was integrated with the main shaft as well as the features of originally filed (and granted) claims 6 and 11.

The subject-matter of claim 1 of the second auxiliary request was clear. In particular, dependent on whether a pneumatic or a gripper weaving loom were considered, the accessory devices differed. Therefore, the wording "weaving mechanism comprising, depending on the situation, a sley 2, a pair of weft insertion grippers 3a-3b, and other accessory equipments", clearly defined the relevant weaving mechanisms.

Concerning the subject-matter of claim 1 of the third auxiliary request, an inventive step was present since the loom structure described in D3 concerned cams actuating the sley that were keyed on a secondary shaft, connected through suitable transmissions to toothed gears (31, 34) to the main shaft (21, 25), rather than

being directly fastened to the main shaft as in the patent in suit.

IX. The arguments of the respondent may be summarised as follows:

The subject-matter of claim 1 of the main request lacked novelty with respect to the disclosure in D2. Two power take-off points on two opposite sections of a main drive shaft were disclosed in D2. On each side, weaving aggregates were attached. The expression "comprising a main shaft for actuating the weaving mechanism" could not be understood such that the main shaft did not control the weaving machine - which understanding also was not part of the patent in suit, as set out in its paragraph [0002]. Hence, the reasons set out with respect to lack of novelty by the opposition division were still valid.

The subject-matter of claim 1 of the first auxiliary request included no features which rendered it novel over the disclosure in D2.

The subject-matter of claim 1 of the late-filed second and third auxiliary requests was *prima facie* at least not clear (Article 84 EPC 1973) and therefore should not be admitted into the proceedings.

## **Reasons for the Decision**

1. The appeal is admissible.



2. *Interpretation of claimed subject-matter*

2.1 Concerning the wording "main shaft for actuating the weaving mechanism" in claim 1:

The term "weaving mechanism" is defined in the patent in suit as including (see paragraphs [0002] and [0019]) a sley and reed, a pair of weft insertion grippers, weft insertion nozzles, and other accessory equipment, such as the supply device, cutters, tensioners, other components and, finally, the weave machine as well. Hence, according to the patent in suit, the "weaving mechanism" does not exclude the weaving machine, as had been alleged by the appellant.

2.2 Concerning the terms "main shaft" and "main drive shaft" in claim 1:

The claim refers to a main shaft for actuating the weaving mechanism and to a main drive shaft, specified in connection with two opposite sections of the two power take-off points comprised in the first motor. A difference between the main shaft and the main drive shaft is thus not defined. Nor did the appellant distinguish the main shaft from the main drive shaft in its grounds of appeal; in fact the appellant argued that these were the same (see grounds of appeal page 2, paragraph 2). Further support for the equivalence of these terms is also found in paragraph [0025] of the patent in suit which refers to the sections (6a, 6b) "of the main shaft", whereas these sections are referred to also as belonging to the main drive shaft in the claims. Since no distinguishing characteristics

are defined, the "main shaft" and the "main drive shaft" can only be interpreted as being the same thing.

3. *Main request*

3.1 *Amendments*

Claim 1 defines a motor having two power take-off points being connected to two opposite sections of a main drive shaft "which move devices for actuating said weaving mechanism", whereas the wording in claim 1 as granted did not state "which move devices" but only "apt to move devices".

Although the respondent objected that an extension of the subject-matter beyond the content of the application as filed had occurred by the use of this terminology, such objection need not be further addressed in view of the finding of lack of novelty of the subject-matter of claim 1 (see below).

3.2 *Novelty*

3.2.1 D2 discloses a drive for a mechanical loom in the embodiment shown in Figures 8 to 10. The motor is arranged on the main shaft (2). Accordingly, the axis of the main shaft and of the motor are the same. Two power take-off points at opposite sections of the motor are disclosed: on the one hand power is transmitted through gear (66) to a further gear (9), and on the other hand power is transmitted through coupling (67, 68) to the cam system (73). Hence, a single power take-off point of the motor drives the weaving mechanisms for both weft insertion grippers, but there are two

power take-off points, one at each of the opposite sections of the main drive shaft.

- 3.2.2 The appellant argued that the loom in D2 did not comprise a "main shaft for actuating the weaving mechanism" since this expression should be understood such that the main shaft controlled the fabric-forming devices and not the weaving machine, whereby accordingly, it would also be necessary that both sections of the main shaft moved the weaving mechanism devices, whereas according to D2 all main weaving mechanism devices were controlled exclusively by a single one of the two sections of the main shaft.
- 3.2.3 However, claim 1 does not define that each of the two power take-off points actuates e.g. weft insertion grippers on opposite sides of the loom (see also point 2.1 above). It is not clear whether the wording at the end of claim 1, "which are present respectively on the two sides of the loom", concerns the devices for actuating the weaving mechanism or whether it concerns the two opposite sections. Therefore, such wording has to be considered in its broadest scope including both possibilities. Accordingly, even for this reason, no difference can be recognized in this respect between the subject-matter of claim 1 and the disclosure in D2.
- 3.2.4 The appellant further considered claim 1 to be novel because the main drive shaft "moves" the devices for actuating the weaving mechanism, rather than simply being "apt to move" same.
- 3.2.5 However, in D2, the main drive shaft 2 also moves the devices for actuating the weaving mechanism (see D2,

page 16, lines 26 to 30: "Die axial verschiebbare Hauptantriebswelle 2 ist mit einem Zahnrad 66 versehen, das mit einem Antriebszahnrad 9 in Eingriff steht, das zum Antrieb von Antriebselementen dient, die unter anderem den Antrieb für Fachbildungsmittel enthalten.") Accordingly, in D2, the connection of the main drive shaft (Hauptantriebswelle 2) to the shedding means (Fachbildungsmittel) via gears 66 and 9 corresponds to this feature.

3.2.6 Therefore, the claimed subject-matter is not novel over D2 and accordingly, the requirement of Article 54 EPC 1973 is not met.

#### 4. *First auxiliary request*

##### 4.1 *Amendments*

The subject-matter of claim 1 is based on originally filed (and granted) claims 1, 6 and 11 as well as on the originally filed description on page 4, lines 16 to 19 corresponding to paragraph [0017] of the patent in suit that "the first motor is integrated with the main shaft, the latter coinciding with the axis of rotation of said first motor (M1)".

As with the main request, the respondent's objections concerning Article 123(2) EPC need not be considered, in view of the finding of lack of novelty of the subject-matter of claim 1 (see below).

#### 4.2 *Novelty*

Compared to claim 1 of the main request, the following features are added:

- (a) the first motor is integrated with the main shaft;
- (b) the main shaft coincides with the axis of rotation of said first motor;
- (c) said first motor is in the form of a motor-driven shaft with two power take-off points;
- (d) the first motor is connected via a direct drive to said sections (6a,6b) of the main drive shaft.

Concerning features (a) and (b), Figure 8 of D2 discloses that the motor is integrated with the main shaft which coincides with the axis of rotation of the motor, since the shaft 2 is depicted as being an integral part of the motor and since shaft 2 is that shaft which drives, and thus actuates, the weaving mechanisms actuated on each side of the loom.

Concerning feature (c), Figure 8 also discloses that there are two power take-off points on opposite sides of the main motor-driven shaft; gears 66 and 9 on the one section and cam system 73 via couplings 69/67 on the other section of the main shaft.

Concerning feature (d), a direct connection (and thus a "direct drive" in its broadest sense) of the motor with the sections of the main drive shaft is shown in Figures 8 and 9 of D2. The term "section" is not specified further and thus is not different with respect to any characteristic which would allow it to be distinguished from e.g. non-central parts shown in

these Figures. This also holds true since the "main shaft" and the "main drive shaft" are the same (see point 2.2 above).

Accordingly, also the subject-matter of claim 1 of the first auxiliary request is not new and accordingly the requirement of Article 54 EPC 1973 is therefore not fulfilled.

5. *Second and third auxiliary requests*

The second and third auxiliary requests were filed with letter of 2 January 2012 and thus after filing of the grounds of appeal. According to Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA), it lies within the discretion of the Board to admit a late filed request in the proceedings as an amendment to a party's case. The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy. In order to be admitted at such a late stage the request should be clearly allowable in order to be procedurally economic, which however is not the case here, taking into account the additional amendments in these requests, as explained below.

- 5.1 Concerning the second auxiliary request, the features added to claim 1 are disclosed in the description (see originally filed page 5, lines 3 to 5, corresponding to paragraph [0019] of the patent in suit). This section refers to the devices for actuating the weaving mechanism which are specified as comprising "depending on the situation, a sley 2, a pair of weft-insertion

grippers 3a-3b and other accessory equipments, ...". The wording "depending on the situation" is however not clear, not least since the manner of dependency and the "situation" meant are not specified. Therefore, this late-filed request was not *prima facie* clearly allowable and the Board thus exercised its discretion under Article 13(1) RPBA not to admit this request into the proceedings.

5.2 Concerning the third auxiliary request, claim 1 includes the subject-matter of originally filed claims 1, 2, 3, 6, 7, 10 and 11. Additionally, the two sections (6a, 6b) are specified as "having fixed to them at the respective distal ends at least the cam/follower devices (7a,7b) for actuating the sley (2)". These latter features are based upon the disclosure in paragraph [0023] and consistent with originally filed claim 7.

5.2.1 Via such combination of features, the "main shaft" would appear to distinguish the shaft related to the first motor from the shaft related to the sections (6a, 6b), which is specified as being the "main drive shaft". However, the description is not unambiguous in this respect as already set out under point 2.2 above. Also, the appellant's submission (see letter of 31 January 2012, page 2, second paragraph) that the expression "comprising a main shaft for actuating the weaving mechanism", should be understood such that the main shaft controlled only the fabric-forming devices, seems, in as far as this can be understood, to contradict its submission filed in the grounds of appeal, see page 2, second paragraph.

5.2.2 The additional wording now is understood to further define the role of the main drive shaft in the sense that a fixation at the distal ends of the sections concerns the cam/follower devices and a connection at the proximal ends of the sections concerns the power take-off points. Such wording of the claim is however not clear since the main drive shaft is the same as the main shaft and because the first motor is also defined as being "integrated" with the main shaft, whereby it should at the same time be connected to its sections and have "proximal ends" of the sections (6a,6b). Thus, it is not clear how the first motor can be both "integrated" with the main shaft and at the same time have its two opposite sections (which are parts of it) connected to the "proximal ends" of something with which it is integrated. No further explanations related to this question were presented by the appellant in its written submissions.

5.2.3 Accordingly, at least the requirement of clarity in Article 84 EPC 1973 is not met. Therefore, also this late-filed request is not *prima facie* allowable. The Board thus exercised its discretion under Article 13(1) RPBA not to admit this request into the proceedings.

## 6. *Procedural note*

6.1 Although the appellant, by not attending the oral proceedings which it had initially requested, was unable to comment on the above-mentioned objections raised by the respondent at oral proceedings, in accordance with Article 15(3) RPBA the Board relied on the written case of the appellant and found no reason to exercise its discretion under Article 13(1) RPBA



differently than as stated above. In particular, the Board was unable to find any convincing reason as to why such a combination of features would fulfil the requirement of clarity.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar

The Chairman

M. Patin

M. Harrison