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**Datasheet for the decision
of 20 October 2011**

Case Number: T 2085/10 - 3.2.06

Application Number: 05255174.4

Publication Number: 1630271

IPC: D03D 11/00, D21F 1/00

Language of the proceedings: EN

Title of invention:
Industrial two-layer fabric

Applicant:
NIPPON FILCON CO., LTD.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 84
RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Clarity - amended claim 1 (yes)"
"Late-filed request - admitted (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 2085/10 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 20 October 2011

Appellant: NIPPON FILCON CO., LTD.
(Applicant) 1780 Atsuhara
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 28 April 2010
refusing European patent application
No. 05255174.4 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: M. Harrison
Members: G. de Crignis
K. Garnett

Summary of Facts and Submissions

- I. With its the decision posted on 28 April 2010 the Examining Division refused the European patent application No. 05255174.4 for lack of clarity with regard to claim 1.
- II. On 28 June 2010 the appellant (applicant) filed an appeal against this decision and paid the appeal fee on the same date. On 1 September 2010 a statement setting out the grounds of appeal was received at the EPO together with a main request and five auxiliary requests.
- III. In a communication sent on 29 August 2011 as an annex to a summons to oral proceedings, the Board addressed various issues concerning clarity and indicated that none of the requests appeared allowable.
- IV. With letter of 10 October 2011, the appellant filed amended main and first auxiliary requests and maintained the previous requests as auxiliary requests 2 to 7.
- V. Oral proceedings were held on 20 October 2011. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the request filed during the oral proceedings.

Claim 1 of this request has the following text:

"A method for producing an industrial two layer fabric, the two layer fabric comprising eight pairs of warps arranged vertically, obtained by arranging eight upper

surface side warps and eight lower surface side warps, wherein one of the upper surface side warps of at least one pair of the eight pairs arranged vertically is substituted by a warp binding yarn, and further comprising a plurality of upper surface side wefts and lower surface side wefts, and which fabric has an upper surface side layer and a lower surface side layer, the method comprising in the lower surface side layer, successively forming a design by passing one warp over four successive lower surface side wefts, under the next lower surface side weft, over the next two lower surface side wefts and under the next one lower surface side weft, and shifting the design by three lower surface side wefts for each successive warp, and whereby two adjacent lower surface side warps simultaneously weave, from the lower surface side, one lower surface side weft, and whereby a weft long crimp of the lower surface side weft is formed corresponding to six lower surface side warps across the lower surface of the lower surface side layer, wherein, in the formation of the design of the lower surface side layer, the method comprises binding the upper surface side layer and lower surface side layer using the warp binding yarn, such that in the pair of a warp binding yarn and a lower surface side warp, the warp binding yarn is woven with an upper surface side weft to function as one warp constituting an upper surface side complete design on an upper surface side surface, while on the lower surface side surface, the pair of a warp binding yarn and a lower surface side warp cooperatively constitutes a lower surface side surface design the same as that constituted by the other lower surface side warp."

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

The request should be admitted into the proceedings. Claim 1 had been amended in order to address the clarity objections.

The feature of originally filed claim 1 relating to the zigzag manner represented a direct consequence of the weaving pattern defined via the 4-1-2-1 design feature and hence, was superfluous. Accordingly, it could be deleted without contravening Article 123(2) EPC. All features of the current claim 1 were disclosed in originally filed claims 1 and 3 and also present in the originally filed description (in particular on pages 5 and 12 to 16).

The subject-matter of claim 1 now referred to a method and the method steps were clearly defined. It was also evident from claim 1 as filed which method steps had to be carried out. The subject-matter was now further limited in that the feature concerning the warp binding yarn was specified with reference to its presence in at least one pair of the eight pairs of warps, which was relevant to the function of binding the two layers.

Accordingly, the clarity objections underlying the appealed decision and raised by the Board had been remedied and the application should be remitted to the department of first instance for further prosecution.

Reasons for the Decision

1. *Admission of late-filed request*

The current request was filed during the oral proceedings, hence at the latest possible stage in the proceedings. 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 any amendment to a party's case after it has filed its grounds of appeal or reply. In order to be admitted such a request should clearly be allowable in the sense of overcoming the objections raised without giving rise to new objections, which is the case for claim 1 of the present request, for the following reasons.

2. *Amendments - claim 1*

2.1 Originally filed claim 1 was directed to an industrial two-layer fabric. The following amendments have been carried out:

- (a) the category of the claim has been changed to "a method for producing ...";
- (b) the term "arranged vertically" has been inserted with regard to the eight pairs of warps;
- (c) it has been defined that "one of the upper surface side warps of at least one pair of the eight pairs arranged vertically is substituted by a warp binding yarn,";
- (d) the following feature has been added: "wherein, in the formation of the design of the lower surface side layer, the method comprises binding the upper surface side layer and lower surface side layer using the warp binding yarn, such that in the pair

of a warp binding yarn and a lower surface side warp, the warp binding yarn is woven with an upper surface side weft to function as one warp constituting an upper surface side complete design on an upper surface side surface, while on the lower surface side surface, the pair of a warp binding yarn and a lower surface side warp cooperatively constitutes a lower surface side surface design the same as that constituted by the other lower surface side warp."

- (e) some grammatical adaptations to the method category of claims have been made together with some linguistic amendments.

2.2 Basis for the amendments in the originally filed application

- (a) A basis for the change of category from a product claim to "a method for producing ..." can be found throughout the specification. The formation of, in particular, the lower woven layer is a main issue of the entire patent application. Hence the method is disclosed when the content of the application is read by a skilled person.
- (b) The term "arranged vertically" concerning the eight pairs of warps is disclosed on page 12, lines 23/24, of the originally filed application as well as in originally filed claims 2, 3 and 4.
- (c) The definition that "one of the upper surface side warps of at least one pair of the eight pairs arranged vertically is substituted by a warp binding yarn," is present in originally filed claim 3 as well as on page 13, lines 8 to 12, of the originally filed application.

- (d) The final feature which has been added is disclosed in originally filed claim 3 as well as on page 13, lines 8 to 12 in combination with page 14, lines 13 to 20 and page 15, lines 17 to page 16, line 4 of the originally filed application.
- (e) Some grammatical adaptations have been carried out so as to avoid ambiguities, in particular as a result of the change of category of the claim so as to define a method. In the final paragraph of the claim, the change in wording defining the design of the lower layer from "similar to" (as in claim 3 as filed) to "the same" is allowable in that a correspondence of these expressions in the given context is disclosed having regard to page 15, lines 24 to 26 of the originally filed application.

2.3 Due to the change of category of claim 1 and the further features introduced, the deletion of the "zigzag" feature for the lower surface side layer - which was held to lack clarity by the examining division - does not add subject-matter. Since all the embodiments disclose the presence of such a feature, in as far as that feature can be understood, when weaving the 4-1-2-1 design (as now defined in the claim), no violation of Article 123(2) EPC occurs. Hence, the subject-matter of claim 1 is disclosed in the originally filed application; hence, it meets the requirement of Article 123(2) EPC.

3. *Article 84 EPC*

3.1 The limitations in claim 1 compared to claim 1 as filed clarify that a warp binding yarn replaces the upper surface side warp of at least one of the eight pairs defined in the claim and that it is the pair of warp binding yarn and lower surface side warp which are used for the binding of the two layers of the fabric. Although the application as filed concerns, to a great extent, the weaving design of the lower layer, the aspect of producing such an industrial fabric is clearly linked to the particular issue of binding of the two layers while maintaining a repeating design, something which has now specifically been taken into account in the features of claim 1.

3.2 The Board finds that claim 1 is clear also in the sense that all essential method steps have been defined for carrying out the method, whereby a skilled person is capable of maintaining a 4-1-2-1 design in the lower layer of the two layer fabric while at the same time a warp binding yarn - replacing at least one of the upper layer side warps - interacts in this design. Support for this conclusion is found when considering the various examples given in the description. Example 11 (the corresponding designs being shown in Figures 31 to 33) shows how such a design can be woven whereby no further step is required. Examples 1 to 9 (the corresponding designs being shown in Figures 1 to 27) refer to embodiments having the warps of both sides (the upper surface side warp and the lower surface side warp) of a pair substituted by warp binding yarns and hence this also requires no further step.

- 3.3 Thus, the subject-matter of claim 1 satisfies the requirements of Article 84 EPC.
4. *Request admitted - remittal to the department of first instance*
- 4.1 Since the requirements of Article 123(2) EPC and Article 84 EPC are met, and no further objection is apparent, the Board exercised its discretion set out in Article 13(1) RPBA and admitted the request into the proceedings.
- 4.2 The decision to refuse the patent application was based solely upon the requirements of Article 84 EPC not being met by claim 1. The Board thus finds that remittal of the case back to the examining division for further examination is appropriate, since no decision has yet been taken with regard to novelty and inventive step.
- 4.3 Additionally, the description and any dependent claims will need to be considered at least for consistency with claim 1 and with regard to the further requirements of the EPC, which issues have not been considered by the Board.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further examination.

The Registrar

The Chairman

M. Patin

M. Harrison