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**Datasheet for the decision  
of 21 May 2014**

**Case Number:** T 0271/11 - 3.2.06

**Application Number:** 99968134.9

**Publication Number:** 1169506

**IPC:** D04H1/58, B29D22/00, B32B5/08,  
B32B17/04, D04H3/04

**Language of the proceedings:** EN

**Title of invention:**  
COMPOSITE FABRIC

**Patent Proprietor:**  
Saint-Gobain Technical Fabrics Canada, Ltd  
Saint-Gobain Technical Fabrics America, Inc.

**Opponent:**  
Huesker Synthetic GmbH & Co.

**Relevant legal provisions:**  
EPC Art. 123(2)

**Keyword:**  
Amendment of claim 1 by the term "nonpenetrating" -  
not disclosed as originally filed - added subject-matter

**Decisions cited:**  
T 1269/06



**Beschwerdekammern  
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Case Number: T 0271/11 - 3.2.06

**D E C I S I O N  
of Technical Board of Appeal 3.2.06  
of 21 May 2014**

**Appellant:** Saint-Gobain Technical Fabrics Canada, Ltd  
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**Appellant:** Saint-Gobain Technical Fabrics America, Inc.  
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**Respondent:** Huesker Synthetic GmbH & Co.  
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**Representative:** Patentanwälte Freischem  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 22 November  
2010 revoking European patent No. 1169506  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

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

### **Summary of Facts and Submissions**

- I. European patent No. 1 169 506 was revoked by the opposition division by way of its decision posted on 22 November 2010.
- II. The opposition division held that the subject-matter of claim 1 of all requests did not meet the requirement of Article 123(2) EPC as no disclosure in the originally filed application was present for the addition of the word "nonpenetrating".
- III. 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 together with the request to set aside the decision of the opposition division and to maintain the patent in amended form based on a main request. As an auxiliary request, maintenance of the patent in amended form based on auxiliary requests 1 to 7 was requested. The following documents were filed to demonstrate the meaning of the term "nonpenetrating":
- |    |                 |
|----|-----------------|
| E1 | US-A-2 546 705  |
| E2 | US-A-5 429 066  |
| E3 | US-A-4 211 807  |
| E4 | US-A-2 855 327. |
- IV. With its communication annexed to a summons to oral proceedings, the Board indicated that it concurred with the view of the opposition division and considered the presence of the term "nonpenetrating" in the wording of claim 1 resulted in subject-matter extending beyond the content of the application as filed.

V. Oral proceedings were held on 21 May 2014.

The appellant did not attend the oral proceedings, as had been announced by letter of 19 May 2014. According to the statement of the grounds of appeal it requested that the decision under appeal be set aside and that the patent be maintained according to the main request, alternatively on the basis of one of the first to seventh auxiliary request.

The respondent (opponent) also did not attend the oral proceedings, as had been announced by letter of 2 April 2014, and requested that the appeal be dismissed.

VI. Claim 1 according to the main request reads:

"A fabric reinforced product comprising a composite fabric embedded within a polymer material, said composite fabric comprising a layer of warp strands, a layer of weft strands and a layer of nonwoven nonpenetrating material disposed between said layers of warp strands and weft strands, the layers of warp and weft strands and the nonwoven material being stitched or knitted together, the composite fabric being provided with a stiffening coating."

Claim 1 according to auxiliary request 1 differs from claim 1 of the main request in that the following feature has been inserted :

"the nonwoven material being nonpenetrating with respect to the layers of warp strands and weft strands,".

Claim 1 according to auxiliary request 2 differs from claim 1 of the main request in that the underlined feature has been added:

"a layer of weft strands and a layer of nonwoven nonpenetrating material, separate to and disposed between said layers of warp strands and weft strands,".

Claim 1 according to auxiliary request 3 includes the additional features of auxiliary requests 1 and 2.

Claim 1 according to auxiliary request 4 differs from claim 1 of the main request in that the following feature has been added:

"before being embedded within said polymer material."

Claim 1 according to auxiliary requests 5, 6 and 7 differs from claim 1 of auxiliary requests 1, 2 and 3 respectively, in that the same feature

"before being embedded within said polymer material." has been added.

VII. The appellant argued essentially as follows:

The layer of nonwoven material was an essentially separate layer. Such fact was emphasized by the disclosure in paragraph [0015] which described the assembly method and stated that: "In the machine the warp layer 112 is formed and held straight under tension, the nonwoven layer 116 is inserted under the warp layer and the weft layer is then introduced beneath the nonwoven layer. The fabric assembly is held in place by unillustrated retainer clips and thereafter stitched together by stitch yarn 118 (Fig.3)."

Consistently, the disclosure in paragraph [0016] clarified that, after stitching, the layers remained separate and did not pierce or permeate one another

Accordingly, the layers remained separate, and nonwoven layer 116 was nonpenetrating with respect to layers 112 and 114.

As examples for the use of the term "nonpenetrating" in a variety of arts related generally to composites and laminates, documents E1 to E4 were submitted.

Although the word "nonpenetrating" was not explicitly disclosed in the application as filed, the introduction of this word into claim 1 added no technical teaching to the application, as this teaching was already present in the application as filed. The word merely provided a succinct summary of the features adequately disclosed in the application as filed. T1269/06 allowed the addition of a term, and in particular noted that an objection under Article 123(2) EPC should not be considered on the basis of a purely semantic analysis of the relevant passages.

VIII. The respondent argued:

There was no disclosure for the term "nonpenetrating" in the application as originally filed (Article 123(2) EPC). Moreover, there was no embodiment disclosed in which the composite fabric would not in fact be penetrated by the nonwoven material.

## Reasons for the Decision

1. *Main Request - Claim 1 - Article 123(2) EPC*
- 1.1 Claim 1 of the main request is based on independent claim 5 and the corresponding description on page 4, lines 3 to 5 of the application as filed; it has been amended by adding the word "nonpenetrating" concerning the nonwoven material.
- 1.2 No explicit support for this additional word is present in the application as originally filed.
- 1.3 The word "nonpenetrating" was added to the wording of claim 1 in order to distinguish the claimed subject-matter from the fabric disclosed in D4 (US-A-4511619). The appellant argued that the meaning of this word was that the nonpenetrating material formed an essentially separate layer 116 between the warp and weft layers and therefore was "nonpenetrating", which view was considered as being established with reference to the disclosure in paragraphs [0015] and [0016] of the patent (identical to page 7, second paragraph bridging to page 8, second paragraph of the application as filed).
- 1.4 The information which can be gained from paragraph [0015] relates to a preferred apparatus (Liba warp knitting machine). However, claim 1 is not limited to fabrics constructed by such apparatus. Accordingly, the reference to paragraph [0015] does not overcome the raised objection.

- 1.5 Paragraph [0016] states that "the fabric 110 is desirably provided with a light coating of resin, sizing or other material capable of imparting a slight to moderate stiffness to the fabric. The agent locks the positions, i.e. prevents sliding of layers 112, 114, 116 relative to one another ...". The argument of the appellant that this passage clarifies that, after stitching, the layers remain separate and do not pierce or permeate one another, cannot be accepted. Such passage does not exclude the possibility that the nonwoven material of layer 114 which is disposed between a layer of warp strands and a layer of weft strands penetrates partially into these neighbouring layers. In this respect it is to be taken into account that the nonwoven material is defined in paragraph [0014] of the patent in suit as including "without limitation, staple or continuous strand fibers of glass, polyester, nylon, rayon, cotton, flax, ramie, paper, wood pulp and blends thereof". For such fibres it is technically more or less impossible to prevent penetration into the neighbouring layers - all the more so when these layers are stitched or knitted together.
- 1.6 Therefore, the conclusion that the addition of the term "nonpenetrating" extends the subject-matter beyond the content of the application as filed is not inconsistent with the decision in T1269/06, where the Board held that the assessment of whether the subject-matter of a patent extended beyond the content of the application as filed could not be inferred from a purely semantic analysis. This because it is not a purely semantic analysis which has been applied in the present case.
- 1.7 The appellant's further reference to documents E1 to E4 - which was done to demonstrate that the term "nonpenetrating" is used in a variety of technical



fields generally related to composites and laminates - does not lead to the word being given a different meaning in the current context. Specifically:

- E1 concerns the lamination of a polyvinyl alcohol film to paper, whereas claim 1 is not related to such lamination.

- E2 discloses that the penetration of an additional foam layer into a reinforcing fabric layer should be prevented, either by making the non-woven fabric sufficiently thick or by applying additional layers of the non-woven fabric prior to adding the foam layer.

- E3 is apparently referred to as an example of penetration in relation to adhesive filaments. As such, it is not suitable to illuminate the meaning of "nonpenetrating" in the context of the claimed subject-matter, nor does it provide a basis for a clear and unambiguous disclosure of this feature in the application as filed in some way.

- E4 was cited allegedly because it defines "non-penetration". However, it refers specifically to a coating composition which forms a film having non-penetrating qualities. Such a definition is not relevant in the context of the claimed subject-matter.

1.8 Consequently the subject-matter of claim 1 extends beyond the content of the application as originally filed (Article 123(2) EPC) and the main request is not allowable.

2. *Auxiliary requests*

2.1 Claim 1 of auxiliary requests 1 to 7 in each case also includes the term "nonpenetrating" in connection with the layer of nonwoven material. The objection under Article 123(2) EPC concerning the term "nonpenetrating" thus applies with regard to all auxiliary requests and none of the requests is therefore allowable. The above conclusions were already expressed in the Board's communication of 28 March 2014. No substantive reply was made to that communication by the appellant.

## Order

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

The appeal is dismissed.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated