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**Datasheet for the decision
of 6 July 2017**

Case Number: T 0947/13 - 3.2.06

Application Number: 03772671.8

Publication Number: 1579046

IPC: D01G15/86

Language of the proceedings: EN

Title of invention:

METHOD AND APPARATUS FOR JOINING THE EDGES OF A TUBULAR
KNITTED ARTICLE

Patent Proprietors:

FABRITEX S.r.l
SANTONI S.p.A.

Opponent:

Mannucci, Michele

Headword:

Relevant legal provisions:

EPC 1973 Art. 54
EPC Art. 123(2)
RPBA Art. 13(1)

Keyword:

Novelty - main request (no)

Late-filed auxiliary requests - procedural economy - admitted
(no)

Decisions cited:

Catchword:



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Case Number: T 0947/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 6 July 2017

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 February 2013 concerning maintenance of the
European Patent No. 1579046 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
W. Ungler

Summary of Facts and Submissions

- I. An appeal was filed by the appellants (patent proprietors) against the interlocutory decision of the opposition division in which it found that European patent No. 1 579 046 in an amended form met the requirements of the EPC.
- II. The appellants requested that the decision be set aside and the patent be maintained according to a main request or, in the alternative, according to one of auxiliary requests 1 or 2.
- III. The respondent (opponent) requested that the appeal be dismissed.
- IV. The following document, referred to by the parties, is relevant to the present decision:

E1 US-A-1 068 853
- V. The Board issued a summons to oral proceedings including a communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of claim 1 of the main request appeared to lack novelty with respect to E1.
- VI. With letter of 22 June 2017 the appellants filed a new main request and auxiliary requests 1 to 8 to replace all requests previously on file. Auxiliary request 9 corresponded to the form found by the opposition division to meet the requirements of the EPC.
- VII. Oral proceedings were held before the Board on 6 July 2017, during which the appellant withdrew auxiliary requests 1 to 5 and 8.

The final requests of the parties were thus as follows:

The appellants requested that the decision under appeal be set aside and the patent be maintained as granted (main request), auxiliarily that the decision under appeal be set aside and the patent be maintained in amended form on the basis of one of auxiliary requests 6 and 7 as filed with letter dated 22 June 2017.

The respondent requested that the appeal be dismissed.

VIII. Claim 1 of the main request reads as follows:

"Method for joining the edges of a tubular knitted article, such as a stocking, upon the completion of the latter on a circular machine, characterized in that it comprises the following operating steps:

- a) knitting the article (6) by starting on one edge or hem to end up on the toe side by leaving the latter open;
- b) moving the machine's removable parts (5) away from the knitting head (100) of the same circular machine so as to clear the top of the cylinder (1) of needles (2);
- c) removing the stitches of the last knitted rank and retaining them onto suitable removal means (25, 26) supported by a movable carrier (300) between a knitting station defined by the knitting head (100) of said machine and a closing and/or hooking-up station (400) located at a preset distance from the other station;
- d) moving said removal means (25, 26) together with the article (6) away from the machine's knitting head (100) to move the same article up to said closing and/or hooking-up station (400);
- e) turning the article (6) inside-out while it is retained by said removal means (25, 26);
- f) moving the stitches of a first semi-rank,

corresponding in practice to half the stitches retained by said removal means (25, 26), so that, by an overturning through approximately 180° about a diametral axis of the circumference defined by the removal means (25, 26), each of the moved stitches will result juxtaposed and coaxial to the corresponding stitch of the other semi-rank's stitches;

g) moving the stitches of the pairs close to each other;

h) carrying out the hook-up of said pairs of stitches so as to obtain the definitive union of the edges of the article (6);

i) unloading the article from the means on which the hook-up operation has been performed."

Claim 1 of auxiliary request 6 reads as for claim 1 of the main request with the following appended to feature c):

"wherein said movable carrier (300) comprises a support body (11) on which hooks (14) are provided intended to move the stitches from the needles (2) of the knitting head (100) during the removal thereof, and wherein said hooks (14) are inserted into corresponding slots (130) disposed vertically and exhibiting a crown (13) for supporting the hooks which is disposed externally and coaxially to said support body (11);"

Claim 22 of auxiliary request 7 reads as follows with features a) to i) of claim 1 of the main request appended thereto:

"Method for joining the edges of a tubular knitted article, such as a stocking, upon the completion of the latter on a circular machine, the method using the apparatus of one or more of claims 1 to 21 and

characterized in that it comprises the following operating steps:"

IX. The appellants' arguments may be summarised as follows:

The subject-matter of claim 1 of the main request was novel over E1 which failed to disclose features b) and e). The method known from E1 lacked removable parts of the knitting machine being moved away from the knitting head. As regards feature e), the elastic fingers at the end of the quills of E1 did not retain the stitches during turning of the article inside out. Without interaction of the knitting needles the stitches could not be retained; the fingers alone were not suitable to retain the stitches. There was also no mention in E1 of the knitted article being turned inside out, nor of how the drawing-up was performed. Furthermore, since E1 dated from 1910, it could be that the drawing-up operation and retaining of the stitches on the quills was carried out manually.

As regards the admittance of auxiliary request 6, the subject-matter of claim 1 *prima facie* met the requirement of Article 123(2) EPC. In addition to claims 16 and 17 as granted, page 9, lines 8 to 20 of the application as filed directly and unambiguously disclosed the features added to claim 1 as granted. Even though this passage of the description mentioned the hooks being fixed to a support body, these were further detailed in lines 17 to 20 as being inserted into a number of slots, this greater detail being included in claim 1.

Regarding claim 1 of auxiliary request 7, this *prima facie* met the requirement of Article 123(2) EPC; the skilled person would understand the original disclosure

of the method being performed on the apparatus originally disclosed.

X. The respondent's arguments may be summarised as follows:

The subject-matter of claim 1 of the main request lacked novelty over E1. Page 3, lines 4 to 18 unambiguously disclosed the stitches being transferred from the needles to the quills prior to the drawing-up of the knitted web, the drawing-up clearly being a turning inside out of the article. The axial movement of the knitted web during drawing-up would result in a radial force pulling the stitches onto the quills, these thus being retained by the fingers of the quills. As regards feature b), the focus of E1 was on transferring the stitches from a knitting machine to the points of a looping machine, so the lack of an explicit disclosure of a dial being moved away from the knitting head was unsurprising; however it implicitly occurred before any stitches could be transferred.

Auxiliary request 6 should not be admitted. Claim 1 comprised a combination of claims 1, 16 and 17 as granted, yet claim 16 had been dependent on claim 15 the features of which were not included in claim 1. The omission of the features of claim 15 amounted to an unallowable intermediate generalisation of the original disclosure.

Auxiliary request 7 should also not be admitted. There was no direct and unambiguous disclosure in the application as filed of the specific method steps of claim 22 being carried out by just the apparatus of claim 15 as originally filed. The requirement of Article 123(2) EPC was thus *prima facie* not met.

Reasons for the Decision

1. Main request

1.1 Novelty (Article 54 EPC 1973)

The subject-matter of claim 1 lacks novelty with respect to E1.

1.1.1 E1 discloses all features of claim 1 as indicated in the feature by feature analysis below (the references in parentheses referring to E1):

Method for joining the edges of a tubular knitted article (see page 1, lines 8 to 23), such as a stocking, upon the completion of the latter on a circular machine (see page 1, lines 25 to 27), wherein it comprises the following operating steps:

- a) knitting the article (6) by starting on one edge or hem to end up on the toe side by leaving the latter open (page 1, lines 23 to 28);
- b) moving the machine's removable parts away from the knitting head of the same circular machine so as to clear the top of the cylinder of needles (implicitly must occur in order for the needles of the knitting machine to be exposed; Fig. 1, page 1, lines 95 to 97);
- c) removing the stitches of the last knitted rank (page 1, lines 23 to 27) and retaining them onto suitable removal means (10; see page 2, lines 19 to 22) supported by a movable carrier (see page 3, lines 54 to 56; implicit that the ring, 1, carrying the quills, 10, moves rather than it remaining stationary and the knitting machine and the looping machine moving)

between a knitting station defined by the knitting head of said machine and a hooking-up station (see page 3, lines 54 to 56; 'looping machine') located at a preset distance from the other station;

d) moving said removal means (quills, 10, and fingers, 14) together with the article away from the machine's knitting head to move the same article up to said hooking-up station (see page 3, lines 4 to 14 and lines 54 to 56);

e) turning the article inside-out (see page 3, lines 14 to 17) while it is retained by said removal means (10, 14);

f) moving the stitches of a first semi-rank, corresponding in practice to half the stitches retained by said removal means (10, 14), so that, by an overturning through approximately 180° about a diametral axis of the circumference defined by the removal means (10, 14), each of the moved stitches will result juxtaposed and coaxial to the corresponding stitch of the other semi-rank's stitches (see Figs. 2 and 3; page 3, lines 30 to 35);

g) moving the stitches of the pairs close to each other (page 3, lines 43 to 46);

h) carrying out the hook-up of said pairs of stitches so as to obtain the definitive union of the edges of the article (page 3, lines 54 to 56);

i) unloading the article from the means on which the hook-up operation has been performed (implicitly occurs when closing of the toe seam complete).

1.1.2 The appellants' contention that E1 failed to disclose removable parts of the knitting machine being moved away from the knitting head (feature b) of claim 1) is not accepted. The Board can see no technically feasible realisation of a circular knitting machine without a removable part (or dial) which interacts with the

knitting head. On specific questioning on this point during the oral proceedings, the representative of the appellants was also unable to explain how such a machine could be technically realised. It is noted that the stitch transferring device depicted in Fig. 1 of E1 interacts with the knitting needles of the knitting machine depicted as dotted lines in Fig. 1. For this to be possible, the dial must have previously been removed, otherwise the depicted interaction of the transferring device with the knitting needles could not be achieved. It thus follows that the knitting machine of E1 implicitly must have a removable dial which has been moved away from the knitting head, this feature of claim 1 thus also being known.

1.1.3 The appellants' argument that the elastic fingers at the end of the quills of E1 did not retain the stitches during turning of the article inside out (feature e) of claim 1) is not accepted. From page 3, lines 7 to 18 of E1 it is evident that the stitches, initially held on the knitting needles, are cast onto the fingers of the quills prior to the article being drawn-up through the ring. If the stitches were not retained on the fingers of the quills, it is not technically evident how the article could be turned inside out, as this action requires something to hold the toe end of the article in place during the drawing-up step disclosed on page 3, lines 14 to 16, which, in the absence of any other part, this technically having to be the fingers of the quills.

1.1.4 The appellants' further argument, that without the knitting needles interacting with the quills the stitches could not be retained, is also not accepted. In this respect it is noted that feature e) of claim 1 does not exclude further elements, for example the

knitting needles, interacting with the quills in order to retain the stitches on the quills. It is solely the involvement of the removal means which is however claimed and this is anticipated by the action of the quills 14 of E1 in retaining the stitches. The retention of the stitches on the quills is also further accentuated by the drawing-up action of the article moving the stitches axially away from the open end of the quills, the stitches thus being securely retained by the quills.

1.1.5 The appellants' additional argument, that since E1 dated from 1910 it could be that the drawing-up operation and retaining of the stitches on the quills was carried out manually, is not persuasive in thus finding feature e) as not known. There is no feature in claim 1 which excludes the turning inside out step from being a manual procedure; thus, even if intended as a manual step in E1, this would not alter the drawing-up feature disclosed on page 3, lines 14 to 16 from anticipating feature e) of claim 1.

1.1.6 In conclusion, therefore, the features b) and e) contested by the appellants as not being known from E1 are indeed disclosed therein such that the subject-matter of claim 1 lacks novelty, contrary to Article 54 EPC 1973. The main request is consequently not allowable.

2. *Auxiliary request 6*

2.1 *Admittance (Article 13(1) of the Rules of Procedure of the Boards of Appeal, RPBA)*

2.1.1 After filing the grounds of appeal or reply, any amendment to a party's case may be admitted and

considered at the Board's discretion, which is set out in Article 13(1) RPBA, such discretion being exercised *inter alia* in view of the need for procedural economy. As is established case law of the Boards of Appeal, such procedural economy implies that amended requests should at least be *prima facie* allowable in order to be admitted.

- 2.1.2 The respondent filed auxiliary request 6 subsequently to its grounds of appeal. The request thus represented a change to the respondent's complete case and its admittance may be considered at the Board's discretion under Article 13(1) RPBA.
- 2.1.3 With respect to the requirement of Article 123(2) EPC, the basis for the subject-matter of claim 1 was given as being a combination of claims 1, 16 and 17 as granted, or as claim 1 in combination with paragraph [0011] of the granted patent (corresponding to page 9, lines 8 to 20 of the application as filed).
- 2.1.4 As regards the alleged basis in the claims 1, 16 and 17 as granted alone, claim 16 as granted is dependent upon claim 15 such that, the omission of the features of claim 15 from the present claim 1 results in the features of claim 16 added to claim 1 being isolated from the context in which they were originally disclosed (i.e. in combination with the features of claim 15). A basis for claim 1 is thus *prima facie* lacking in claims 1, 16 and 17 as granted.
- 2.1.5 With respect to the alleged basis on page 9, lines 8 to 20 of the application as filed, the wording of this paragraph does not reflect that found in claim 1 such that this also cannot provide the required basis. In particular, claim 1 simply states that the movable

carrier comprises a support body 'on which hooks are provided' whereas the referenced description passage, more specifically states that the movable carrier comprises a support body 'on which relevant hooks are fixed'. A 'fixing' of the hooks to the support body is a more specific disclosure of the relationship between the body and the hooks than that adopted into claim 1, such that no *prima facie* basis for the subject-matter of claim 1 can be recognised in the referenced description passage in combination with claim 1 as filed.

2.1.6 The subject-matter of claim 1 thus *prima facie* fails to meet the requirement of Article 123(2) EPC. Consequently, the subject-matter of claim 1 is not *prima facie* allowable, which would be necessary for fulfilling the need for procedural economy and admitting the request into the proceedings. Accordingly, the Board exercised its discretion under Article 13(1) RPBA not to admit this request into the proceedings.

3. *Auxiliary request 7*

3.1 *Admittance (Article 13(1) RPBA)*

3.1.1 Claim 22 of this request is directed to a method for joining the edges of a tubular knitted article using the apparatus of one or more of claims 1 to 21. The originally filed apparatus and method claims were not dependent one from the other such that no *prima facie* basis can be found for this subject-matter in the claims alone. Furthermore, the description essentially discloses two embodiments of the apparatus in significant detail and it is not *prima facie* evident that the claimed method steps disclosed in present

claim 22 can be carried out by the apparatus according to (only) claim 1 i.e. the least detailed and broadest of the apparatus claims of the present request. The representative of the appellants was also unable to show this link, its argument being limited to the skilled person allegedly being able to derive the subject-matter of claim 22 from the entirety of the application. This is however not accepted with the subject-matter of claim 22, when using the apparatus of claim 1, being a very specific disclosure of method steps associated with a particular apparatus for which no *prima facie* basis in the application as filed is evident.

3.1.2 It thus follows that the subject-matter of claim 1 *prima facie* fails to meet the requirement of Article 123(2) EPC. The Board consequently exercised its discretion under Article 13(1) RPBA also not to admit auxiliary request 7 into the proceedings.

4. Auxiliary request 9

This request corresponds to the form found by the opposition division to meet the requirements of the EPC, such that the patent can be maintained on that basis as a consequence of the present appeal being dismissed.

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