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**Datasheet for the decision
of 3 March 2016**

Case Number: T 1011/13 - 3.2.06

Application Number: 05700711.4

Publication Number: 1704272

IPC: D03D27/08, D04B1/04

Language of the proceedings: EN

Title of invention:

LOOPED FABRIC COMPRISING BAMBOO LOOPS AND TERRY MADE THERE
FROM

Patent Proprietor:

Descamps Belgium SPRL

Opponents:

Frottana Textil GmbH & Co. KG
Denizli Tekstil ve Konfekssiyon
Ihracatcilari Birliđi

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (no)

Decisions cited:

T 0261/87, T 0366/89, T 0404/90, T 0024/81



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Boards of Appeal
Chambres de recours**

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Case Number: T 1011/13 - 3.2.06

**D E C I S I O N
of Technical Board of Appeal 3.2.06
of 3 March 2016**

Appellant:
(Patent Proprietor)

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 15 February
2013 revoking European patent No. 1704272
pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman M. Harrison
Members: G. de Crignis
W. Ungler

Summary of Facts and Submissions

- I. European patent No. 1 704 272 was revoked by the opposition division by way of its decision posted on 15 February 2013.
- II. The opposition division held that the subject-matter of claim 1 was novel but did not meet the requirement of Article 56 EPC as no inventive step was involved when considering
D1/D1A CN 1 414 156 (English translation D1A) and
D2 Meister, Zielger; "Die Frottierweberei",
Verlag Melliland, Textilbericht Heidelberg, 1959, title
and bibliography page, pages 5 - 10, 91 to 109 and page
XIV.
- III. With letter of 25 April 2013, 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 24 May 2013 including the request to set aside the decision of the opposition division and to maintain the patent on the basis of the main request, alternatively on the basis of an included auxiliary request. Auxiliarily a request for oral proceedings was made.
- IV. In its reply, respondent OI (opponent OI) requested rejection of the appeal as inadmissible. If considered admissible, the appeal should be dismissed. Auxiliarily a request for oral proceedings was made. Arguments were provided with regard to lack of novelty and lack of inventive step of the subject-matter of claim 1 of the main request as well as that of the auxiliary request. The respondent OII (opponent OII) did not reply.

- V. With its communication following a summons to oral proceedings, the Board indicated that it considered no inventive step to be involved in the claimed subject-matter.
- VI. With letter of 3 December 2015, the appellant informed the Board that it withdrew its request for oral proceedings and would not be present during the oral proceedings.
- VII. Oral proceedings were held before the Board on 3 March 2016.

As announced by letter of 3 December 2015, the appellant was not present or represented at the oral proceedings. In its statement of grounds of appeal it had requested to set aside the decision under appeal and to maintain the patent on the basis of the main request or of the auxiliary request.

The respondent OI withdrew its objection to the appeal being inadmissible and requested dismissal of the appeal.

The respondent OII was neither present nor represented at the oral proceedings, despite having been duly summoned.

- VIII. Claim 1 of the main request (as granted) reads as follows:

"Looped fabric (1) comprising a ground fabric (2,4) that is essentially made of cotton and provided with loops (3) that are essentially made of bamboo fibre, characterised in that said looped fabric has a weight comprised between 200 and 1700 gram/m², and the number

of warp threads per cm fabric is comprised between 21 and 34, the number of weft threads per cm fabric is comprised between 10 and 28, and the number of loops per cm fabric is comprised between 3 and 9."

Claim 1 of the auxiliary request differs from claim 1 of the main request in that it additionally includes, at the end of the claim, the following feature:

"whereby the bamboo loops extend from the ground fabric to a height H, and that the bamboo loops have, at the height H/2, a width B which is $\leq 2/3 H$."

IX. The appellant argued in its grounds of appeal, in as far as relevant for the decision, essentially as follows:

The subject-matter of claim 1 involved an inventive step over D1/D1A in combination with common general knowledge, exemplified by D2. Bamboo fibres had completely different properties to cotton fibres when used for weaving. A skilled person, aware of the teachings of D1/D1A would not per se use the exact parameters as seen from D2 for cotton fibres, since there were a multitude of parameters which could be selected in combination.

D2 did not hint at applying the given parameters for materials other than cotton. Additionally, D2 was a publication from 1959 and it was not obvious for a skilled person to combine this old document with the document reflecting the closest prior art, D1/D1A. Reference was made to T261/87, T366/89 and T404/90. The parameters chosen optimised the web. It was merely by impermissible hindsight that selection of the claimed parameters from D2 or general knowledge could be made; reference here was made *inter alia* to T24/81).

With regard to claim 1 of the auxiliary request, it was found by the inventors that the specific relationship between height H and width B of the loops resulted in even better fluid-absorbing capacities and in better retention of its "structural capacities" during frequent use combined with superior feel to the users.

X. The respondent essentially argued as follows:

D1/D1A represented the closest prior art and related to providing a terry fabric using bamboo fibre yarns. Although there was no explicit disclosure of the number of the weft threads and loops per cm fabric, these numbers resulted mandatorily when applying standard manufacturing techniques.

Concerning inventive step, when considering the numbers of weft threads and loops as a distinguishing feature, the problem to be solved was to choose an appropriate number of weft threads and loops per cm fabric. The skilled person knew that, for terry fabric, commonly available weaving technology for cotton fabric could be used. Also, the standard ranges for the number of weft, warp and terry yarns were well-known and would be used for bamboo yarns as well. The appellant had not given any support for its general allegation that an optimisation of web parameters had been made. Thus, no inventive step was involved.

With regard to claim 1 of the auxiliary request, the wide range of the relationship $B \leq 2/H$ covered completely all the normally applied heights and widths of terry fabrics. The definition of the relationship thus did not involve any inventive step.

Reasons for the Decision

1. Main request - lack of inventive step

1.1 Although the respondent also made an objection of lack of novelty, no detailed reasons are given here on that issue as the subject-matter of claim 1 is anyway found to lack inventive step.

1.2 In the decision of the opposition division, it was stated that all features of claim 1 apart from the following features, labelled features (f) and (g) in the opposition division's decision, were known from D1/D1A:

(f) the number of weft threads per cm fabric is comprised between 10 and 28, and

(g) the number of loops per cm fabric is comprised between 3 and 9.

The appellant did not contest this finding in its grounds of appeal. The Board also agrees with the finding of the opposition division, as briefly explained below.

1.3 D1/D1a disclose a bamboo fibre terry fabric (title), the terry warps are made from bamboo fibre yarn; the foundation "warp and woof" is made from bamboo fibre yarn and from cotton yarn (page 4, line 19). The fabric weight is 300 to 420 g/m² (page 6, last paragraph). All weaving processes can be realized by cotton weaving machinery (page 7, last paragraph).

- 1.4 Two exemplary embodiments are disclosed in D1/D1A on page 7; the fabrics have a basis weight of 330 g/m² and of 380 g/m², the reed number is 126/10 cm and 130/10 cm. Accordingly, the number of warp threads per cm is 25.2 and 26, respectively. The calculation of the number of warp threads per cm follows from the equation of warp threads/cm = reed number/cm x 2. This equation can be seen as being applicable from D2, pages 94, left column and page 95, right column. There was also no objection in this respect raised by the appellant.
- 1.5 The claimed features of the number of weft threads per cm fabric and of the number of loops per cm fabric (features (f) and (g) above) are not explicitly disclosed in D1/D1A.
- 1.6 The respondent pointed to these features as being implicit when applying the usual weaving machinery such as referred to in D1/D1A (page 7, last phrase) and disclosed in technical manual D2. In this manual, with regard to the commonly used technique for terry fabrics, it is referred to commonly known "3-Schusstechnik" or to "4-Schusstechnik" (see page 7 of D2, including Figures 2 and 3). The possible application of these techniques is confirmed in the patent in suit (paragraph 0046). Pages 97 and 98 of D2 refer to generally applied standard settings for terry fabrics. Therein, the number of weft threads is defined to be usually 14 to 22 (page 97, left column, second paragraph); the number of loops per cm fabric is disclosed as lying in the range of 3.3 to 7.3 when applying the 3-Schusstechnik and lying in the range of 2.5 to 5.5 when applying the 4-Schusstechnik, calculated on the basis of the range for the weft threads being 10 to 22 threads per cm.

- 1.7 The skilled person could however also use slightly different weaving parameters or apply further techniques and thus could end up with a looped fabric that has, for at least one of the values of the number of weft threads per cm fabric and/or for the number of loops per cm fabric, a value which could differ from those specified in claim 1. Thus, there is no disclosure that the claimed parameters are unambiguously present in a terry fabric of D1/D1A, albeit that these parameters be present when applying the most commonly known weaving technology in this area.
- 1.8 Although it is common ground that D1/D1A represents the closest prior art, the appellant argued that the skilled person starting from D1/D1A would not combine this with the teaching of D2 in view of D2 being too old a document.
- 1.9 However, D2 is a basic manual for weaving of terry fabrics. In view of weaving technology being a traditional technology, and the appellant not having supplied a different or more recent manual indicating that the technology in D2 is not still equally valid, the Board finds that this manual represents a basic and applicable manual for the practitioner in this field. Hence, D2 is not to be disregarded for the assessment of inventive step. The Board of Appeal case law cited by the appellant relating merely to age of a document therefore does not alter this finding.
- 1.10 The further argument of the appellant that D2 should be disregarded since it does not refer to bamboo fibres is also not persuasive. D2 generally refers to the manufacturing of terry fabrics without being in any way

limited to cotton fibres. Additionally, the weaving techniques disclosed in D2 do not need to be altered in order to apply them for fabrics comprising cotton yarns and/or bamboo yarns. This fact is also referred to in D1/D1A, which states that all the weaving processes can be realized by standard cotton weaving machines (see page 7, last paragraph).

- 1.11 The problem to be solved, according to paragraphs 10 to 13 of the patent in suit, is the provision of a product optimized with regard to shrinking when being washed and with regard to water absorption capacity. However, the patent in suit does not provide any basis for such an alleged optimized product, since no comparison of any kind is disclosed. It is also not immediately apparent that any such optimization is present, particularly in regard to the product in D1/D1A. The problem given in the patent is thus not objective when starting from D1/D1A as closest prior art.

- 1.12 When starting from the disclosure in D1/D1A, the objective problem to be solved can only be seen as being what parameters should be present in a suitable cloth produced from bamboo fibres. The skilled person however, merely by applying commonly known manufacturing technology would arrive at the number of warp and weft threads as well as the number of loops per cm fabric within the claimed ranges. Consistently, the claimed ranges are not supported by any data which could allow the conclusion to be made that these ranges are somehow optimised in some non-obvious way. The application of commonly known manufacturing technology, and thus the arrival at commonly known parameters, cannot be considered as involving an inventive step, merely because such parameters are generally known and

not specifically stated in D2 as being those chosen when weaving with bamboo.

1.13 Thus, although D1/D1A does not disclose explicitly the ranges for the number of the weft threads per cm fabric or the number of loops per cm fabric, it nevertheless discloses a fabric which - when made with the use of commonly known weaving manufacturing technology, - would have the claimed numbers of weft threads per cm fabric and of loops per cm fabric. Accordingly, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).

1.14 The appellant argued only quite generally that a skilled person would not be taught the combination of features in claim 1 unless hindsight were used. However, the appellant's argument is not objective given the problem to be solved.

Notably, the appellant has not identified any feature of claim 1 which would not be entirely obvious to a skilled person when applying commonly known techniques for weaving from D2, nor why such should be different when using bamboo. Nor, apart from a mere allegation of an otherwise undefined optimisation, has the appellant indicated why a combination of the features in claim 1 would not result from simply performing commonly known techniques in weaving. Merely arguing that impermissible hindsight should not be used is, as such, accepted by the Board, but this does nothing to alter the aforementioned finding. Consequently the case law of the Boards of Appeal cited by the appellant also does not change this finding.

2. *Auxiliary request*

2.1 Claim 1 includes, in addition to the features of claim 1 of the main request, a relationship concerning breadth and height of the bamboo loops. No effect of this relationship is demonstrated in the patent in suit.

2.2 The wide range claimed by the relationship (at the height $H/2$, $B \leq 2/3H$) covers substantially all the normally applied heights and widths of the loops. Values chosen outside of this relationship indeed may be considered as being unrealistic.

2.3 Hence, the skilled person would immediately recognize that the relationship is formulated in such a way in order to cover the whole meaningful breadth and height of such an article. Therefore, the definition of such a relationship would be arrived at without the exercise of inventive skill.

2.4 Although the appellant argued that the defined features resulted in even better fluid-absorbing capacities and in better retention of its "structural capacities" during frequent use combined with superior feel to the users, there is no evidence supporting such alleged improved properties. This was also stated by the Board in its provisional opinion (see item 8) and no response to this was received.

2.5 Consequently, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC). The auxiliary request is therefore not allowable.

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