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**Datasheet for the decision  
of 27 August 2019**

**Case Number:** T 2380/16 - 3.2.07

**Application Number:** 07252467.1

**Publication Number:** 1876290

**IPC:** D21F1/00, D21F7/08, D21F3/02

**Language of the proceedings:** EN

**Title of invention:**  
Press fabric for pulp machine

**Applicant:**  
NIPPON FILCON CO., LTD.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 84, 111(1), 123(2)

**Keyword:**  
Amendments - added subject-matter (no)  
Claims - clarity - main request (yes)  
Remittal to the department of first instance - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2380/16 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 27 August 2019**

**Appellant:** NIPPON FILCON CO., LTD.  
(Applicant) 2220 Ohmaru  
Inagi-shi,  
Tokyo (JP)

**Representative:** D Young & Co LLP  
120 Holborn  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 8 June 2016  
refusing European patent application No.  
07252467.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** G. Patton  
A. Beckman

## **Summary of Facts and Submissions**

- I. The applicant (appellant) lodged an appeal against the decision of the Examining Division to refuse the European patent application No. 07 252 467.1 in the prescribed form and within the prescribed time period.
- II. The application was refused pursuant to Article 97(2) EPC on the basis that the set of claims filed with letter 30 July 2013 as the only request did not fulfil the requirements of Articles 123(2) and 84 EPC. The impugned decision refers to the communication dated 28 September 2015, hereafter the "reasons".
- III. With its appeal the appellant requested that the decision be set aside and that the case be remitted to the Examining Division for further prosecution on the basis of one of the sets of claims filed as main request and first to fourth auxiliary requests, all requests filed with the statement setting out the grounds of appeal.

After having received the Board's communication dated 25 April 2019 including a provisional opinion on its requests, the appellant filed with letter dated 25 June 2019 a new main request corresponding to the previous second auxiliary request and withdrew all other main and auxiliary requests. He requested to remit the case to the Examining Division on the basis of the new main request.

- IV. Independent claim 1 of the main request in appeal proceedings reads as follows:

"A press fabric for a pulp machine having a multilayer structure obtained by weaving warps, each of which is

selected from a group consisting of a monofilament, a monofilament twisted yarn, and a twisted yarn having a monofilament as a core with, as wefts, firstly monofilaments and secondly yarns obtained by bundling raw yarns of a small diameter and forming a fine water-sucking space therebetween, wherein:

at least upper surface side wefts and lower surface side wefts are arranged vertically as the wefts; and

two adjacent weft monofilaments are alternately arranged with either one of: a weft yarn forming a fine water-sucking space; and two adjacent weft yarns forming a fine water-sucking space, as the lower surface side wefts."

- V. The appellant's arguments are provided in the reasons for the decision below.

### **Reasons for the Decision**

1. *Objections based on Article 123(2) EPC*

1.1 *"of a small diameter" and "fine"*

1.1.1 Under point 2.1.1 of the reasons objections of added subject-matter are raised against claim 1 of the request underlying the impugned decision based on the deletion of the expression *"of a smaller diameter"* and the term *"fine"*.

1.1.2 These objections have been overcome as a result of the reinstatement of the deleted terms in claim 1 of the main request in a similar manner as in original claim 1.

- 1.1.3 The Board emphasises that the said expression and term at stake are not to be considered as leading to a lack of clarity but have rather to be assessed as encompassing a broad meaning when examining novelty and/or inventive step of the claimed subject-matter over the prior art.

In this respect, the Board notes that a water-sucking space in yarns of the prior art is to be inevitably "fine". Furthermore, raw yarns of the prior art bundled such as to obtain weft yarns with a water-sucking space are also inevitably of a "small diameter".

1.2 Mixture in warps

- 1.2.1 Under point 2.1.2 of the reasons the following feature of claim 1 of the main request that each of the warps

*"is selected from a group consisting of a monofilament, a monofilament twisted yarn, and a twisted yarn having a monofilament as a core"*

is considered as lacking basis in the application as originally filed, contrary to Article 123(2) EPC.

The reason given is that said feature would imply that the warps can be formed from a mixture of monofilaments, monofilament twisted yarns or twisted yarns having a monofilament as a core although, in the application as originally filed, it would only be disclosed, on the one side, that each of the warps is a monofilament and, on the other side, that each of the warps is either a monofilament twisted yarn or a twisted yarn having monofilament as a core.

1.2.2 The Board does not share this view.

The term "*monofilament*" is used with respect to the warps in the application as originally filed, see for instance original claim 1 or the embodiment on page 17.

Page 6, last sentence of the first full paragraph of the application as originally filed, states that "[e]ach of the *monofilaments* serving as the warps **may** be either a *monofilament twisted yarn* or a *twisted yarn having a monofilament as a core*" (emphasis added by the Board).

The term "may" implies that the monofilaments serving as the warps may be either a monofilament twisted yarn or a twisted yarn having a monofilament as a core, or may not be. In other words, each monofilament may be a regular (i.e. single strand) monofilament, or may be a monofilament twisted yarn, or may be a twisted yarn having a monofilament as a core. Hence, the skilled person would directly and immediately derive from this passage that any one of the warps may be any of these three alternatives, so any mixture can be used for the warps.

This passage of the original description is to be understood as presenting two examples of yarns, which for the purposes of the invention, are considered as falling within the broader term "*monofilament*". A monofilament twisted yarn or a twisted yarn having a monofilament as a core can then be used in place of a monofilament if desired.

Contrary to the reasons, original claim 9 does not contradict this interpretation of the disclosure in the description.

Accordingly, the skilled person would understand from the application as originally filed that the warps can be formed from a mixture of monofilaments, monofilament twisted yarns and twisted yarns having a monofilament as a core.

Consequently, the feature at stake does not contravene Article 123(2) EPC.

1.3 First group of weft yarns

1.3.1 Under point 2.1.3 of the reasons objection of added subject-matter is raised against claim 1 of the request underlying the impugned decision based on the feature that the first group of weft yarns is formed by "*monofilaments, monofilaments twisted yarns or twisted yarns having a monofilament as a core*".

1.3.2 This objection has been overcome by the deletion in claim 1 of the main request of the alternatives "*monofilaments twisted yarns or twisted yarns having a monofilament as a core*" for the first group of weft yarns. The only alternative "*monofilaments*" left in the claim is supported by for instance original claim 1.

1.4 In view of the above, the objections based on Article 123(2) EPC raised in the reasons of the impugned decision are overcome.

2. *Objections based on Article 84 EPC*

2.1 Inconsistency with respect to the weft yarns

2.1.1 A lack of clarity objection was raised under point 2.2.1 of the reasons against claim 1 of the request



underlying the impugned decision on the basis that the first group of weft yarns could be formed solely by "*monofilaments twisted yarns or twisted yarns having a monofilament as a core*", i.e. embodiments for which monofilaments would be excluded for the wefts, while at the same time "*monofilaments*" are also mentioned as lower surface side wefts in the claim.

2.1.2 This objection has been overcome by the deletion of the alternatives "*monofilaments twisted yarns or twisted yarns having a monofilament as a core*" for the group of weft yarns in claim 1 of the main request.

2.2 Distinction between first and second groups of weft yarns

2.2.1 A lack of clarity objection was raised under point 2.2.2 of the reasons against claim 1 of the request underlying the impugned decision on the basis that the first group of weft yarns, in case it would be formed by monofilament twisted yarns or twisted yarns having a monofilament as a core, could not be distinguished from the second group of wefts yarns obtained by bundling raw yarns of a small diameter and forming a fine water-sucking space therebetween.

2.2.2 This objection has been overcome by the deletion in claim 1 of the main request of the alternatives monofilament twisted yarns and twisted yarns having a monofilament as a core for the first group of weft yarns.

Hence, the monofilaments of the first group of wefts can be distinguished from the yarns of the second group of wefts, i.e. yarns obtained by bundling raw yarns of

a small diameter and forming a fine water-sucking space therebetween.

2.3 In view of the above, the objections based on Article 84 EPC raised in the reasons of the impugned decision are overcome.

3. *Dependent claims*

The amendments made to dependent claims 2-8 of the main request are in line with the above reasons.

4. Remittal

Since all objections raised in the reasons of the impugned decision are overcome by the main request, the Board considers it appropriate to remit the case to the Examining Division for further prosecution pursuant to Article 111(1) EPC, as requested by the appellant.

## 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 prosecution.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated