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Datasheet for the decision of 7 July 2025

Case Number: T 1335/23 - 3.2.06

Application Number: 15168085.7

Publication Number: 2942427

IPC: D03D15/04, D03D15/08, D03D27/04, D03D17/00

Language of the proceedings: EN

Title of invention:
WOVEN FABRIC THAT LOOKS AND PERFORMS LIKE A KNITTED FABRIC AND METHOD OF MAKING THEREOF

Applicant:
Sanko Tekstil Isletmeleri San. Ve Tic. A.S.

Headword:

Relevant legal provisions:
EPC Art. 84
RPBA 2020 Art. 13(1)

Keyword:
Claims - clarity - main request (no) - unclear characterization by parameters
Amendment to appeal case - amendment overcomes issues raised (no)

Decisions cited:
T 0608/20

Catchword:

Europäisches Patentamt
European Patent Office
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Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1335/23 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 7 July 2025

Appellant: (Applicant)	Sanko Tekstil Isletmeleri San. Ve Tic. A.S. Organize Sanayi Bölgesi 3. Cadde 16400 Inegol - Bursa (TR)
Representative:	Gislon, Gabriele Marietti, Gislon e Trupiano S.r.l. Via Larga, 16 20122 Milano (IT)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 1 February 2023 refusing European patent application No. 15168085.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	M. Harrison
Members:	T. Rosenblatt
	W. Ungler

Summary of Facts and Submissions

I. The appellant (applicant) filed an appeal against the decision of the examining division by which European patent application 15168085.7 was refused for insufficiency of disclosure of the claimed invention (Article 83 EPC). The refused application was filed as a divisional application of European patent application 17716246.8 which led to the grant of European patent 3 443 155. This latter patent was subject to opposition-appeal proceedings before this Board in the same composition, leading to its revocation for lack of sufficiency of disclosure (T 608/20).

II. In the present case, the appellant was summoned to oral proceedings before the Board. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) the Board provisionally agreed with the reasons given by the examining division in the impugned decision.

III. With its letter dated 25 June 2025, the appellant submitted further evidence and arguments.

IV. Oral proceedings were held on 7 July 2025, in the course of which the appellant filed an amended auxiliary request 22A comprising amended claims and an amended description.

V. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request, submitted with the statement of grounds of appeal, or on the basis of auxiliary request 22A, filed during the oral proceedings before the Board, or on the basis of one of auxiliary requests 1

to 19, 19A, 20 to 25, all submitted with the statement of grounds of appeal.

Furthermore, the appellant requested that the case be remitted to the examining division should the Board find the appeal allowable.

VI. The appellant referred *inter alia* to the following evidence:

D2 : DE 32 47 651 A1
D3 : US 2 597 580 A
Exhibit 1 : page 94 and 147 of '*Textile Terms and Definitions*', Fourth Edition, The Textile Institute, 1960
A3 : '*The Geometry Of Cloth Structure*', F.T. Peirce et al., Journal of the Textile Institute Transactions, T45, March 1937
A6 : pages 109 to 113 of '*Woven textile structure, Theory and applications*', B.K. Behera and P.K. Hari, Woodhead Publishing Limited, 2010
A7 : ASTM D3883 Standard Test Method for Yarn Crimp and Yarn Take-up in Woven Fabrics
A8 : ASTM D3774, Standard Test Method for Width of Textile Fabric

VII. Claim 1 according to the **main request** has the following wording:

'*A method for producing a woven fabric having a front side and a back side, the method comprising*
providing warp yarns (104),
providing first hard weft yarns (106) having a count between 15 Ne and 50 Ne;
providing second elastomeric weft yarn [sic] (105), the second elastomeric weft yarns having a greater

shrinkage ratio than the shrinkage ratio of the hard weft yarns (105), whereby the shrinkage ratio of said second elastomeric weft yarns (105) is greater than the shrinkage ratio of said first hard weft yarns (106); selecting a weave pattern wherein at least one first hard yarn (106) is alternately arranged with at least one second elastomeric yarn (105), the first hard yarns pass alternately along the back side of the warp yarns a predetermined number of warp yarns for each pass to form a series of under portions (107) of the first hard yarns defining loop portions (107a), and along the front side of the warp yarns a predetermined number of warp yarns for each pass to form over portions (108) of the first hard weft yarns defining connection portions (108a), and for each first hard weft yarn, an average number of warp yarns (104) passed by each under portion is at least 6, and the second elastomeric weft yarns (105) pass alternately along the back side of the warp yarns a predetermined number of warp yarns for each pass to form a series of under portions of the second elastomeric weft yarns, and along the front side of the warp yarns a predetermined number of warp yarns for each pass to form a series of over portions of said second elastomeric weft yarns, whereby said first hard and second elastomeric weft yarns are alternated to provide a fabric (101) pattern;
whereby the number of warp yarns (104) passed by the said loop portion (107a) formed by the under portions of the first hard weft yarns is at least 6 times the number of warp yarns passed by the connection portions (108a) formed by the over portions of the first hard weft yarns (106); the number of warp yarns (104) passed by the loop portion (107a) is within the range of 6 to 24, said loops (107a) are provided on said back side of the fabric and whereby the loop portions (107a) of adjacent first hard weft yarns (106) and the connection

portions (108a), formed by the over portions of the first hard weft yarns (106), of adjacent first hard weft yarns form a pattern extending in a diagonal direction with respect to the warp yarns (104) and the weft yarns to provide a diagonal pattern, wherein the fabric stretches in a diagonal direction with respect to the warp and the weft yarns,
weaving the fabric according to the selected pattern;
shrinking the woven fabric wherein the elastomeric weft yarns shrink more than the hard weft yarns causing said under portions (107) of the first hard weft yarns to form said loop portions (107a) on said back face of the fabric.'

The claims of the main request were accompanied by an amended description in lines 20 to 23 on page 9 while lines 22 to 25 on page 14 of the description of the originally filed application were deleted.

Claim 1 of **auxiliary request 22A** filed during the oral proceedings before the Board reads as follows. The amendments compared to claim 1 of the main request have been highlighted by the Board, the bold and underlined features correspond to amendments added during the oral proceedings and the simply underlined correspond to amendments carried out in claim 1 of auxiliary request 22 on which the present request was based:

'*A method for producing a woven fabric having a front side and a back side, the method comprising* ***a shrinking of said woven fabric, said method comprising the steps of***
providing warp yarns (104),
providing first hard weft yarns (106) having a count between 15 Ne and 50 Ne;

providing second elastomeric weft yarn (105), wherein the first hard weft yarns are cotton yarns and the second elastomeric weft yarns contain elastane, the second elastomeric weft yarns having a greater shrinkage ratio than the shrinkage ratio of the hard weft yarns (105), whereby the shrinkage ratio of said second elastomeric weft yarns (105) is greater than the shrinkage ratio of said first hard weft yarns (106); selecting a weave pattern wherein at least one first hard yarn (106) is alternately arranged with at least one second elastomeric yarn (105), the first hard yarns pass alternately along the back side of the warp yarns a predetermined number of warp yarns for each pass to form a series of under portions (107) of the first hard yarns defining loop portions (107a) ***after said fabric shrinking step****, and along the front side of the warp yarns a predetermined number of warp yarns for each pass to form over portions (108) of the first hard weft yarns defining connection portions (108a), and for each first hard weft yarn, an average number of warp yarns (104) passed by each under portion is at least 6, and the second elastomeric weft yarns (105) pass alternately along the back side of the warp yarns a predetermined number of warp yarns for each pass to form a series of under portions of the second elastomeric weft yarns, and along the front side of the warp yarns a predetermined number of warp yarns for each pass to form a series of over portions of said second elastomeric weft yarns, whereby said first hard and second elastomeric weft yarns are alternated to provide a fabric (101) pattern; whereby the number of warp yarns (104) passed by the said loop portion (107a) formed by the under portions of the first hard weft yarns is at least 6 times the number of warp yarns passed by the connection portions (108a) formed by the over portions of the first hard weft yarns (106); the*

number of warp yarns (104) passed by the loop portion (107a) is within the range of 6 to 24, said loops (107a) are provided on said back side of the fabric and whereby the loop portions (107a) of adjacent first hard weft yarns (106) and the connection portions (108a), formed by the over portions of the first hard weft yarns (106), of adjacent first hard weft yarns form a pattern extending in a diagonal direction with respect to the warp yarns (104) and the weft yarns to provide a diagonal pattern, wherein the fabric stretches in a diagonal direction with respect to the warp and the weft yarns,
weaving the fabric on a loom according to the selected pattern;
wherein the fabric is elastic;
removing the fabric from the loom so that ***said*** *shrinking of the woven fabric occurs, wherein when the fabric is removed from the loom, and is no longer under tension, the elastomeric weft yarns shrink more than the hard weft yarns causing said under portions (107) of the first hard weft yarns to form said loop portions (107a) that cover a larger portion of the back of the fabric than if they were tightly woven against the warp yarns on said back face of the fabric.*'

Auxiliary request 22A was accompanied by an amended description page 3 of the published application in which at the end of paragraph 10 the following statement was added (underlining by the Board):

'[... *Suitable apparatuses for measuring the shrinkage ratio are known in the art, e.g. an Uster Tensorapid tester (Uster, CH) can be used to determine the shrinkage ratio.*] *Peirce, The geometry of cloth structure, The Journal of Textile Institute March 1937,*

page T70, discloses evaluating the shrinkage of the yarn after the shrinkage of the cloth.'

The precise wording of claim 1 of auxiliary requests 1 to 19, 19A and 20 to 25 is not relevant for the present decision.

VIII. The appellant's arguments may be summarised as follows.

Main request

Claim 1 was directed to a method of producing a woven fabric which implied that the skilled person had full control over all aspects of the production. The skilled person knew how to select first hard and second elastomeric weft yarns having the required properties which in combination with the selected weave pattern would, due to their expected different behaviour, result during the shrinking step in that the elastomeric weft yarns shrink more than the hard weft yarns causing said under portions (107) of the first hard weft yarns to form said loop portions (107a) on said back face of the fabric. The relative shrinkage required by the difference in shrinkage ratios required only the selection of two yarns which will behave differently to specifically perform the shrinkage so that one yarn shrinks more than the other. An exact definition of the term shrinkage ratio was thus not required to carry out the invention. Moreover, the skilled person anyway understood that shrinkage ratio related to a change of a yarn's length due to shrinkage. This came out of its literal meaning as confirmed also by the description, notably paragraphs 20, 21, 49 and 54 of the published application, and was also confirmed by documents D2 and D3 of the search report. Shrinkage ratio could be expressed by either of

the quotients of $(l-l_0)/l_0$ and l/l_0. The claim was not limited to any particular shrinking method. Hence, the length l_0 was the yarn's initial length, when the process started, before any shrinking occurred, and was thus the yarn's length on the loom. The length l was its final length after shrinkage. Further evidence, that the shrinkage ratio and its meaning belonged to the common general knowledge of the skilled person was given by A3 and A6, which disclosed the same mathematical formula. It was irrelevant which of the two ratios was considered since the result of the comparison required by claim 1 would remain the same. As to the signification of the expression '*loop portion*', the claim gave a step-by-step description of the method and first defined that the '*first hard yarn under portions defin[ed] loop portions*', meaning that during weaving on the loom the respective first hard yarns were just under portions. When shrunk, these under portions would be formed into loop portions, as was also clear from paragraph 49 of the published application. The meaning of a loop belonged to common general knowledge, as shown by Exhibit 1, and designated any structure formed by bending of the yarn, or, according to English Collins Dictionary, '*a curved or circular shape in something long, for example in a piece of string*'. For removing any doubt with respect to its meaning, paragraphs 30 and 50 of the description of the published application were deleted.

Auxiliary request 22A

Auxiliary request 22A was admissible since it responded to the clarity objections raised for the first time by the Board during the oral proceedings. The amendments overcame the clarity objections since they made clear that

- '*shrinkage ratio*' belonged to common general knowledge and this had been indicated by a neutral formulation of a reference to the prior art in the description,
- the loop portions were formed only during the shrinking step.

Auxiliary requests 1 to 19, 19A, 20 to 25

During the oral proceedings, after consideration of auxiliary request 22A, in regard to the remaining auxiliary requests 1 to 19, 19A, 20 to 25, the appellant referred only to its written submissions. In regard to the clarity of the respective amended claims of the auxiliary requests, the written submissions of the appellant address the clarity of the expression '*loop portion*' (see section 3.1, 3.1.1 and 3.1.2 of the appeal grounds) and '*elastic fabric*' (section 3.1.3, *ibid.*).

Reasons for the Decision

Main request - Article 84 EPC

1. Irrespective of whether the method according to claim 1 could be considered to meet the requirement of Article 83 EPC, the Board concludes that claim 1 lacks clarity within the meaning of Article 84 EPC, at least due to the lack of clarity of the meaning of the expression '*shrinkage ratio*', for the reasons set out below.

1.1 In decision T 608/20, leading to the revocation of a European patent granted for an earlier application on which the present divisional application is based, this

Board in the same composition, decided that the patent did not disclose the invention defined in the then pending claim 1, directed to a woven fabric, in a manner sufficiently clear and complete to be carried out by the person skilled in the art (see Reasons 1 to 12).

The patent in suit in that case also comprised a further independent claim 19, directed to a method for producing a woven fabric, on which the present method claim 1 is based. No decision had however been taken on its subject-matter in regard to the issue of sufficiency of disclosure.

1.2 Although dealt with in the context of a product claim, the case T 608/20 essentially hinged on the question of whether the term '*shrinkage ratio*' had a well defined meaning in the art of weaving and woven fabrics (see e.g. Reasons 5 or Reasons 8, third paragraph). It was considered that the term designated a '*physical property of a yarn which is distinguished from its elasticity*' (see Reasons 3). In Reasons 4 of said decision, the Board considered the significance of the fact that the claim required only a relationship comparing the shrinkage ratios of two types of yarns in view of the question whether the absence of knowledge on the meaning and the method for determining a shrinkage ratio was only a matter of clarity or of sufficiency of disclosure. The Board concluded that this lack of knowledge was not only a matter of clarity but amounted to insufficiency of disclosure. It was further held that '[n]*either the claims nor the description comprise a definition of the feature "shrinkage ratio", nor an explanation of how to determine the shrinkage ratio of the two types of weft yarns, let alone how to determine such ratios in yarns*

of a final woven fabric (noting here that claim 1 defines a "woven" fabric). Furthermore, no evidence has been provided that the parameter "shrinkage ratio" and its determination on yarns, in particular when woven into a fabric, belongs to the common general knowledge of the skilled person.' (see Reasons 5). The disclosure of paragraphs 15 and 54 of the underlying opposed patent was considered as not clarifying the meaning of 'shrinkage ratio' as a property of yarns (see Reasons 6). Several interpretations of the term 'shrinkage ratio', given by the then respondent-proprietor in those previous appeal proceedings, were considered and rejected by the Board due to a lack of support in the patent or for lack of evidence (see Reasons 8, third paragraph).

1.3 The Board acknowledges that these considerations in T 608/20 are all also linked to a certain extent to the additional difficulty of determining a parameter or physical property related to some form of yarn shrinkage in a final woven fabric in which the history of shrinkage is generally hidden, making the determination of a shrinkage ratio or even only a relative shrinkage ratio, whatever it might mean, impossible due to the unknown change history of the yarns during the entire manufacturing process (including even later incurred shrinkage actions due too hot washing).

The Board can also agree that in a method claim such additional difficulties might be resolved or overcome since the skilled person has, in principle, control on all aspects of the manufacturing process. The skilled person might, even without knowing the precise meaning of a yarn's shrinkage ratio and the way of determining it for a given yarn, be able to recognise a

relationship of shrinkage ratios on the basis of a secondary indicator where the yarns used implicitly had the relative shrinkage ratio. Accepting that the skilled person would understand the 'shrinkage ratio' to relate to a change in length of a yarn from shrinking occurring during the manufacturing method, such a secondary indicator could be a specific structure obtained in the final product as a result of the manufacturing method. If it were beyond doubt that this specific structure was the result of a selection of two yarns having different shrinkage ratios in the sense that they underwent different length changes during manufacturing, excluding the influence of other aspects of the manufacturing method on obtaining such structure, it could possibly be concluded that the shrinkage ratio must have been different for both yarns, so that the skilled person might have been able to carry out the claimed method.

For the purpose of this decision it was however left open whether the claimed method could be considered to be sufficiently disclosed in the above sense.

1.4 The clarity requirement of Article 84 EPC is a separate requirement of the EPC and must be fulfilled independently of the requirement of Article 83 EPC.

The crucial issue raised in decision T 608/20, the unknown meaning of the term 'shrinkage ratio', gives rise to a corresponding lack of clarity in the present divisional application. A clarity objection under Article 84 EPC could not have been examined in T 608/20, for the simple fact that lack of clarity is not a ground for opposition.

1.5 Analogously to the findings in T 608/20, the term 'shrinkage ratio' is neither defined in the claims nor in the remaining parts of the present divisional application.

1.5.1 According to paragraph 46 of the description (see the published application EP 2 942 427 A2), shrinkage ratio relates to a physical property of a yarn or yarns, which is distinct from its elasticity. Paragraph 46 lists both these properties as separately selectable parameters for the weft yarns. Also, it is not excluded that the hard weft yarns with their claimed relatively lower shrinkage ratio are elastomeric (see paragraph 8 of the application). As a consequence, both weft yarns may be of elastomeric material but with different shrinkage ratios.

1.5.2 Paragraph 10 states merely that suitable apparatuses for measuring the shrinkage ratio are known in the art, e.g. that an Uster Tensorapid tester (Uster, CH) can be used to determine the shrinkage ratio, without indicating any further details. The appellant did not rely on this statement and did not submit any supporting evidence showing how the cited tester, which may be used to establish stress-strain curves of yarns, would be commonly used to determine shrinkage ratios of yarns (see also Reasons 6.3 of T 608/20).

1.5.3 Paragraphs 10 and 46 and claim 1 refer to yarns in the plural form, leaving it open whether shrinkage ratio is in fact a property of a single yarn or whether it relates to a property of a skein of yarns, as mentioned during the oral proceedings by the Board.

1.5.4 First, it is assumed, in favour of the appellant that the skilled person would have understood from the whole

application (see notably the description, paragraph 12 and the other paragraphs referred to by the appellant), that a yarn's 'shrinkage ratio' quantifies the relationship of a change in length due to shrinkage from an initial yarn length, l_0, to a final yarn length, l. The appellant argued that a corresponding quotient could then take the form of either "final length minus initial length divided by initial length", thus shrinkage ratio (SR)=$(l-l_0)/l_0$, or "final length divided by initial length", thus SR'=l/l_0. According to the appellant's argument in oral proceedings, both were correct. These definitions, for which there is anyway no explicit basis in the application, lead to contradictory conclusions: If for example one yarn does not shrink, i.e. $l=l_0$, the shrinkage ratio would be either SR=$(l_0-l_0)/l_0=0$ or SR'=$l_0/l_0=1$; if the other yarn shrinks from some initial length l_0 to some smaller final length l, i.e. $l<l_0$, then SR=$(l-l_0)/l_0<0$ or SR'<1. With these definitions given by the appellant during the oral proceedings, the shrinkage ratio of the non-shrunk yarn would thus always be greater than the shrinkage ratio of a shrunk yarn. The appellant's quotients suggested for the meaning of 'shrinkage ratio' would thus lead to the contrary of the requirement of the claim according to which the elastomeric weft yarns having the greater shrinkage ratio shrink more than the hard weft yarns.

1.5.5 Assuming, still in favour of the appellant that the skilled person would know how to define a quotient or relationship expressing a shrinkage ratio on the basis of a length change from an initial length to a final length and reflecting a greater shrinkage by a greater value of such ratio, the 'shrinkage ratio' still lacks a clear meaning in regard to the question of which conditions must prevail when the initial length before

shrinkage and the final length or the length variation due to shrinkage have to be determined. Such conditions are neither defined in the claims nor indicated elsewhere in the application.

The appellant argued that the initial length would have to be determined on the loom and the final length after the final shrinkage and based this consideration on, inter alia, paragraph 21 of the description, notably on the statement '*when the completed fabric is removed from the loom, i.e. is no longer under tension, the first and second yarns shrink in a different way and to a different degree, namely the second elastomeric yarns shrink more than the first hard yarns*...', and on a similar statement in paragraph 49, namely '*Shrinking naturally occurs as soon as the fabric is removed from the weaving loom and the yarns are no longer under tension ; further shrinking is carried out by wetting the fabric, during the finishing processes*.' The Board does not see that these general statements imply any definite condition for determining, for example, an initial length.

1.5.6 Moreover, the method claim does not exclude that a fabric undergoes several steps of shrinkage. A woven fabric naturally shrinks already when it is taken from the loom (see paragraph 49 of the description) and it may undergo further shrinkage due to e.g. washing. Natural shrinkage may be induced due to crimp of the fabric as a result of the selected weaving pattern and the selected weave density. Shrinkage therefore does not have to result from different yarn properties and it is not clear how the 'shrinkage ratio', constituting a physical property of the yarn (see above point 1.5.1), should distinguish between the separate

contributions of shrinkage.

1.5.7 The Board concludes that the 'shrinkage ratio' referred to in claim 1 cannot be considered to constitute a feature having a clear meaning for the skilled person without defined conditions as to which lengths to compare.

1.6 Less than two weeks before the oral proceedings the appellant submitted for the first time that the 'shrinkage ratio' was part of common general knowledge in the field of woven fabrics and filed evidence in the form of *inter alia* documents A3 and A6. The Board is however not convinced by these arguments.

1.6.1 First, as discussed during the oral proceedings, the Board notes that none of the documents actually mentions a 'shrinkage ratio' at all. Instead, they both refer simply to 'shrinkage of the yarn' or 'yarn shrinkage' and give the same percentage formula of a length change (page T70 of A3, page 112, A6). The mere fact that the amount of shrinkage of the yarn is given in the form of a quotient or ratio, does not mean that the formula is a definition of "shrinkage ratio". Furthermore, this formula is equivalent to the quotients $SR=(l-l_0)/l_0$ suggested by the appellant (see point 1.5.4 above), except that the quotient is multiplied by a factor 100. However, as set out above, the formula leads to a contradiction within the claim (see point 1.5.4 above). Therefore the Board cannot see any evidence that the yarn shrinkage in percent disclosed in A3 or A6 corresponds to the 'shrinkage ratio' as defined in claim 1.

1.6.2 Moreover, neither A3 nor A6 give clear indications on how to determine initial and final lengths of weft

yarns undergoing a manufacturing method as defined by claim 1. The further references of the appellant to the ASTM-standards A7 and A8 in the context of determining fabric crimp and, based on this, deriving yarn shrinkage by means of the formulas indicated in A3 and A6, on the basis of fabric shrinkage and yarn crimp before and after shrinkage do not change the Board's conclusion. There is simply no evidence that the term 'shrinkage ratio' in the application would have to be understood in this sense.

1.7 The Board is also not convinced by the appellant's further argument submitted for the first time during the oral proceedings before the Board, that the 'shrinkage ratio' was not a physical property of the yarns but instead merely designated a property resulting from the combination of physical yarn properties and weaving parameters (pattern and weave density). On the one hand, the wording in paragraph 46 mentions this property in the following sentence: '...*this step can include determining all the aspects of the first hard weft yarns known to those skilled in the art, including but not limited to: the thickness of the yarns, shrinkage ratio, elasticity, color, weft density, etc.*' Although indeed the last property mentioned relates to an aspect which is not describing a physical property of a yarn, the position of 'shrinkage ratio' between thickness, elasticity and color, clearly suggests the contrary. On the other hand, paragraph 10 clearly addresses the 'shrinkage ratio' as a yarn property (see also point 1.5.2 above).

1.8 The Board furthermore concludes that the term 'loop portions' also lacks clarity within the meaning of Article 84 EPC. Reasoning as to why this is the case will however be dispensed with since claim 1 anyway

does not meet the clarity requirement of Article 84 EPC for the reasons set out above.

Auxiliary request 22A - Article 13(1) RPBA

2. It was not contested that auxiliary request 22A, submitted during the oral proceedings before the Board after the consideration of the main request, constituted an amendment of the appellant's case. Its admittance into the proceedings is therefore subject to the conditions of Article 13 RPBA. The Board decided not to admit auxiliary request 22A into the proceedings under Article 13(1) RPBA, since the amendments *prima facie* did not overcome the clarity objection at least to the expression 'shrinkage ratio'.

2.1 The appellant submitted the request in response to the rejection of its main request for lack of clarity under Article 84 EPC. Formally, the objection against the clarity of claim 1, *inter alia* against the expression 'shrinkage ratio' under Article 84 EPC was expressly raised for the first time by the Board during the oral proceedings. The Board thus considered these circumstances exceptional within the meaning of Article 13(2) RPBA, so that its strict conditions did not per se oppose the admittance of a new request into the proceedings.

2.2 The admittance of auxiliary request 22A is nevertheless still subject to the conditions in Article 13(1) RPBA which require the Board to exercise its discretion in view of, inter alia, the current state of the proceedings, the suitability of the amendment to resolve the issues raised by the Board, whether the amendment is detrimental to procedural economy, and, in the case of an amendment to a patent application,

whether the appellant has demonstrated that any such amendment, prima facie, overcomes the issues raised by the Board and does not give rise to new objections.

2.2.1 The amendments carried out in claim 1 did not have the potential to affect the previous conclusions on clarity against the expression '*shrinkage ratio*'. The amendments in claim 1 address the clarity of the expression '*loop portion*'. The appellant also did not suggest that these amendments would clarify the meaning of '*shrinkage ratio*'.

2.2.2 The amendment to the description could also not resolve the outstanding lack of clarity of the expression in the claim. Irrespective of the questions of whether the amendment of the description by the insertion of a reference to a prior art document (here to a particular page in A3) as evidence for common general knowledge in respect of unclear terminology in a claim was allowable under Article 123(2) EPC and whether the simple mention of such document could have a limiting effect on the unchanged wording of the claim in this regard, the content of document A3 (and A6) had already been taken into account in the Board's conclusion with regard to the clarity of claim 1 of the main request. The equations found in A3 (or A6) were considered not to resolve the lack of clarity in regard to the meaning of '*shrinkage ratio*' (see above point 1.6). It was therefore entirely unclear how the mention of such document in the description could change the Board's conclusion on clarity of claim 1.

2.2.3 For these reasons the amendments according to auxiliary request 22A do not *prima facie* overcome the outstanding objection under Article 84 EPC against at least the term '*shrinkage ratio*' in claim 1.

Auxiliary requests 1 to 19, 19A, 20 to 25 - Article 13(1) RPBA

3. During the oral proceedings before the Board, the appellant submitted auxiliary request 22A after the Board had reached a conclusion on the main request. The appellant asked for consideration of this new auxiliary request 22A before consideration of the auxiliary requests submitted with the appeal grounds.

The appellant did not contest that this re-ordering of requests constituted an amendment to its appeal case, as pointed out by the Chairman as being a consequence when the appellant filed new auxiliary request 22A.

The consideration of the auxiliary requests submitted in the written procedure, as a new sequence where auxiliary request 22A was the first auxiliary request of the new sequence, is consequently subject to the conditions set out in Article 13(1) RPBA.

None of the auxiliary requests 1 to 19, 19A, 20 to 25 comprised the amendments introduced in auxiliary request 22A, leading to a lack of convergence, contrary to the requirement for procedural economy. The appellant did not contest that a lack of convergence of these auxiliary requests arose with the previously considered auxiliary request 22A, due to the lack of the corresponding amendments in the requests submitted in the written procedure. The Board notes merely for completeness that the non-admittance of auxiliary request 22A does not mean that its amendments did not require consideration; the amendments had indeed been considered (see above point 2.2) leading to the Board's conclusion that the clarity objection was *prima facie*

not overcome.

It has not been argued that any of the amended claims according to auxiliary requests 1 to 19, 19A, 20 to 25 could overcome the clarity objection raised against the expression '*shrinkage ratio*' in claim 1 of the main request. The appellant's reference to its written submissions also does not affect this conclusion since the lack of clarity of the term 'shrinkage ratio' was not addressed by the respective amendments.

Under these circumstances the Board exercised its discretion pursuant to Article 13(1) RPBA not to admit auxiliary requests 1 to 19, 19A, 20 to 25 into the proceedings.

Request for remittal

The appellant's request for remittal of the case to the examining division was conditional on the appeal being successful. Since there is no set of claims on file which would meet at least the requirement of Article 84 EPC, the appeal cannot be allowed. Since the appellant's condition is not met, the request for remittal does not require further consideration. This was also not contested by the appellant during the oral proceedings before the Board.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Grundner M. Harrison

Decision electronically authenticated