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D E C I S I O N
of 24 February 1999

Case Number: T 1118/96 - 3.5.2

Application Number: 92300140.8

Publication Number: 0500203

IPC: H01B 11/10

Language of the proceedings: EN

Title of invention:
Shielded wire or cable

Patentee:
Champlain Cable Corporation

Opponent:
kabelmetal electro GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 111(1)

Keyword:
"No active participation of the respondent (opponent) during the appeal proceedings"
"Far-reaching amendments made during oral proceedings in response to objections against new claims filed during the appeal proceedings"
"Unforeseeable new situation for judging inventive step"
"Remittal to first instance for further prosecution"

Decisions cited:
G 0004/92

Catchword:
-



Case Number: T 1118/96 - 3.5.2

D E C I S I O N
of the Technical Board of Appeal 3.5.2
of 24 February 1999

Appellant: Champlain Cable Corporation
(Proprietor of the patent) P.O. Box 7
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Vermont 05404 (US)

Representative: Vetter, Ewald Otto, Dipl.-Ing.
Meissner, Bolte & Partner
Anwaltssozietät
Postfach 10 26 05
86016 Augsburg (DE)

Respondent: kabelmetal electro GmbH
(Opponent) Kabelkamp 20, Postfach 260
30179 Hannover (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 25 October 1996
revoking European patent No. 0 500 203 pursuant
to Article 102(2) EPC.

Composition of the Board:

Chairman: W. J. L. Wheeler
Members: A. G. Hagenbucher
B. J. Schachenmann

Summary of Facts and Submissions

I. The appellant contests the decision of the opposition division to revoke European patent No. 500 203. The reason given for the revocation was that the subject-matter of claim 1 then on file did not involve an inventive step, having regard to the following prior art documents:

D1: US-A-4 822 950 and

D2: DE-A-3 301 669.

With respect to the dependent claims, the following prior art documents were also referred to:

D3: EP-A-190 939 and

D4: DE-A-2 454 685.

In the letter dated 5 March 1997, the appellant filed amended claims and commented on the above-mentioned documents and on:

D5: US-A-4 634 805 and

D6: US-A-4 408 089, both of which had been cited during the opposition proceedings.

II. In the letter dated 13 July 1998, the respondent informed the Board that it did not wish to file any observations.

III. In the annex to the summons to oral proceedings the Board raised objections under Articles 84 and 123(2) EPC and required clarification of the amended claims filed with the letter of 5 March 1997.

- IV. In response thereto the appellant filed with the letter dated 22 January 1999 new claims and description pages.
- V. In the letter dated 2 February 1999, the respondent informed the Board that it would not participate in the oral proceedings.
- VI. Oral proceedings were held on 24 February 1999. In the annex to the summons to oral proceedings and during the oral proceedings attention was drawn to the fact that synthetic fibres normally have a weight of about one denier. In view of the two embodiments (a) thin layer of woven yarn and (b) braided or served layer of aramid fibres in the patent as granted (see column 4, lines 44 to 46 of EP-B-500 203 B1) the question arose which quantity of fibres was meant by "the weight of said fibres is between 50 and 10 000 denier" in claim 1. Thereupon the appellant restricted the whole patent to embodiment (a). The appellant filed amended claims 1 to 8 and amended description pages referring only to the first figure of the patent.

Claim 1 is now worded as follows:

"1. A cable article comprising a conductive core member (11), at least one layer (13) of insulation disposed over said conductive core member, and a layer (14) of shield material disposed over the insulated conductive core member comprising a yarn of a plurality of metallic coated fibres intertwined to form a protective shield layer against radio frequency interference (RFI) and electromagnetic interference (EMI) disturbances influencing signals passing through the cable, and a jacket (15) disposed over the protective shield layer, characterized in that said fibres are aramid, in that the fibres are coated with silver deposited on

the aramid fibres,
in that the weight of said yarn of fibres is between 50
and 10.000 denier,
in that the layer of shield material covers 96% or more
of the insulated conductive core member (11, 13),
and in that the silver coating is in a thickness range
of a few to a few tens of nanometres."

VII. The appellant argued essentially as follows:

Although according to document D2 the fabrics may be made from aramid fibres having a layer of silver for achieving a good transfer impedance, silver was used there as a middle layer between two other metal layers. Hence, silver was not deposited on the chemically inert aramid fibres but on another metal. Thus, thinly coated fibres had not been used according to this state of the art. A direct deposition of silver in a thickness range of a few to a few tens of nanometers on chemically inert aramid fibres had not been considered before the priority date of the present patent for obtaining a flexible shielding material. It was known that silver coating on glass must have a thickness of at least 80 Å in order to ensure a uniform coating. The present invention nevertheless suggested such a thin layer of silver deposited directly on aramid in order to ensure a light and effective shielding with a high coverage and good flexibility. According to document D5 polyaramid filaments were used in a conductive cable. Silver was coated on these filaments only as a second layer in bath 20 (see column 2, line 61 to column 3, line 7). The solution known from document D6 did not make use of aramid fibres but of two full layers of silver plated copper strands in order to increase the coverage of the dielectric medium. One layer covered only 95% of the area of the dielectric surface (see column 4, lines 37 to 46). It followed therefrom that thin filaments comparable to the thickness of the

fibres of the present patent were not available before the priority date of the patent. None of the cited documents taught the use of aramid fibres with silver directly deposited on the aramid fibres in the claimed thickness range.

Therefore, the subject-matter of present claim 1 was new and inventive.

VIII. The appellant requested that the decision under appeal be set aside and that the patent be maintained as amended with claims 1 to 8 and description (columns 1 to 6) submitted at the oral proceedings, and figure 1 of the patent specification (all other figures have been cancelled).

IX. The respondent has not made any request.

Reasons for the Decision

1. The appeal is admissible.
2. The amendments to the claims and description pages filed during the oral proceedings resulted from questions put forward in the annex to the oral proceedings and the discussion during the oral proceedings. Since the feature in the characterizing part of claim 1 concerning the coating of the fibres with silver refers to the individual fibres, the question arose which quantity of fibres was meant by the weight indication of between 50 and 10 000 denier in claim 1 in view of the two embodiments described in the patent as granted (see column 4, lines 43 to 47). A single synthetic fibre made of a material with a comparable specific weight, such as PP, PA 66, PET (polypropylene, polyamide, polyethylene terephthalate) has a weight of about 1 denier (for general knowledge

see Franz Fourné, "Synthetische Fasern", Carl Hanser Verlag, 1995, page 5). Therefore only a plurality of fibres could be meant by the weight indication referred to above. Moreover, the silver coating defined in claim 1 as granted was not clearly distinguished from that disclosed in D2 or D5.

In light of this, the appellant restricted the claims and description and drawings to embodiment (a) "as a thin layer of woven yarn" (see column 4, lines 43 to 45) and defined the silver coating more clearly. As a consequence, the reasons given in the decision under appeal do not apply to the new claims.

3. In the absence of the respondent, the Board considered that the appellant had made a bona fide attempt to remove the objections raised by the Board and had proposed amendments appropriate in the light of the cited documents. Thus the Board decided these amendments were admissible.

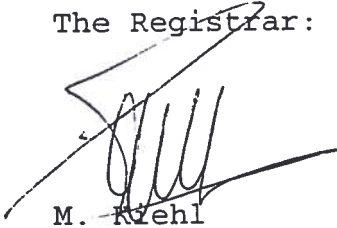
4. However, the amendments are far-reaching and the possibility of making them might not have been foreseen by the respondent when it decided not to attend the oral proceedings. Thus the Board decided in the exercise of its discretion under Article 111(1) EPC to remit the case to the opposition division for further prosecution. The remittal allows examination of the amended specification by two instances and takes into consideration decision G 4/92 (OJ EPO 1994, 149) according to which a decision against a party who has been duly summoned but who fails to appear at oral proceedings may not be based on facts put forward for the first time during those oral proceedings.

Order

For these reasons it is decided that:

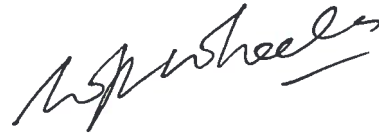
1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution.

The Registrar:



M. Kiehl

The Chairman:



W. J. L. Wheeler