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**D E C I S I O N**  
**of 4 February 2002**

**Case Number:** T 0403/97 - 3.2.6

**Application Number:** 88830305.4

**Publication Number:** 0314631

**IPC:** D01H 9/18

**Language of the proceedings:** EN

**Title of invention:**

Improved structure for supplying a spinning frame with full bobbins for replacing exhausted bobbin in a random way

**Patentee:**

MARZOLI S.p.A.

**Opponent:**

Zinser Textilmaschinen GmbH

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 52(1), 54, 56, 83, 84, 102(3), 123(2), (3)  
EPC R. 29(3)

**Keyword:**

"Admissibility of new request filed during oral proceedings - yes"  
"Admissibility of amendments - yes"  
"Novelty and inventive step - yes"

**Decisions cited:**

T 0583/93

**Catchword:**

-



Case Number: T 0403/97 - 3.2.6

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.6**  
**of 4 February 2002**

**Appellant:** MARZOLI S.p.A.  
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**Representative:** De Gregori, Antonella  
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**Respondent:** Zinser Textilmaschinen GmbH  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 6 March 1997  
revoking European patent No. 0 314 631 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** P. Alting van Geusau  
**Members:** G. C. Kadner  
M. J. Vogel

## Summary of Facts and Submissions

I. The mention of the grant of European patent No. 0 314 631 in respect of European patent application No. 88 830 305.4 claiming an Italian priority from 13 October 1987 and filed on 19 July 1988 was published on 27 April 1994.

II. Notice of opposition was filed on 26 January 1995 by the Respondent (Opponent), on the grounds of Article 100(a) EPC. During the opposition proceedings revocation under Article 100(c) EPC was additionally requested because of amendments being carried out which did not comply with Article 123(2) EPC.

III. By decision posted on 6 March 1997 the Opposition Division revoked European patent No. 0 314 631.

The Opposition Division arrived at the conclusion that the subject-matter of claim 1 amended during the opposition proceedings extended beyond the content of the application as originally filed.

IV. On 15 April 1997 the Appellant (Patentee) lodged an appeal against this decision and paid the appeal fee on 17 April 1997.

A statement of grounds of appeal was filed on 6 June 1997. A new statement was filed on 17 June 1997, and the Appellant requested that the latter be taken into account instead of that previously filed.

V. In its communication dated 9 December 1998 the Board considered that, since on the 17th of June 1997 the time limit for filing of the statement of grounds of

appeal had not yet lapsed, the appellant's request was to be granted and insofar the statement filed on 17 June 1997 would be considered. Furthermore the Board drew attention to some points concerning disclosure and clarity. In answer to that communication the Appellant filed with letter dated 9 April 1999 amended claims, description and figures of the patent. In a further communication dated 14 September 2001 the Board pointed out that discussion would be necessary as to whether the amendments to claim 1 were supported by the application as originally filed. For clarification and/or completion of the subject-matter of claim 1 introduction of the features of claim 2 should be considered.

VI. Oral proceedings were held on 4 February 2002.

The Appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the following documents:

- claims 1 to 3 together with
- description columns 1 to 3, both filed during the oral proceedings,
- drawings, Figures 1 and 2, as granted.

The Respondent requested that the appeal be dismissed and essentially relied upon the prior art disclosed in

D1: DE-A-3 601 832 and

D7: JP-U-58-38 662

in its line of argument concerning the alleged lack of inventive step of the subject-matter of claim 1.

Claim 1 reads as follows:

"A system for supplying a spinning frame (9) with full bobbins (2) and transferring empty bobbins or tubes from a spinning frame to a roving frame, comprising conveyor path means for transferring full bobbins from a roving frame (3) to said spinning frame (9), characterised in that said conveyor path means comprises two first bobbin supplying paths (1, 1') coming from said roving frame (3) and supplied by said roving frame (3) with a plurality of full bobbins (2) to be transferred to a second path (8), driving means for driving said first and second paths and an interexchanging apparatus (13) arranged between adjoining portions of said first and second paths for transferring bobbins between said first (1, 1') and second (8) paths, said first paths (1, 1') including first conveyor belts and said second path including a second conveyor belt; in that said driving means drive said first conveyor belts of said paths (1, 1') with an intermittent motion and said conveyor belt of said second path (8) with a substantially continuous motion, a portion of said second conveyor belt of said second path (8) perimetrically extending with respect to said spinning frames (9); in that a third path (6) is provided, said third path being common to said first paths (1, 1') and adjoining said second path (8); in that said interexchanging apparatus operates to exchange an empty bobbin with a full bobbin by supplying the full bobbin to said second path (8) and an empty bobbin to said common path (6) and that branches of the second path (8) laterally extend in an

alternate way, one of these branches supplying two adjoining spinning frames (9); and in that said first paths (1, 1') are adapted to take up all the bobbins (2) formed by a corresponding roving frame (3) each of said first paths comprising a first portion (4) and a second portion (5) to transfer said bobbins to said third common path (6) through a switching device (7)."

VII. In support of its request the Appellant essentially relied upon the following submissions:

Claim 1 filed at the beginning of the oral proceedings should be admitted for consideration by the Board because it was composed of amended claim 1 filed 9 April 1999 and of granted claim 2. Therefore the Respondent could not be surprised by the newly claimed subject-matter.

The amendments to claim 1 complied with Article 84 and 123 (2) EPC, and the teaching of the patent was clear enough so as to enable a skilled person to carry out the invention.

None of the prior art documents disclosed a system comprising separate paths, the one of them having a substantially continuous motion and supplying all the spinning frames with full bobbins, and the other ones having an intermittent motion and transporting full bobbins from the roving frames to an interexchanging apparatus changing empty bobbins from the second path with full bobbins from the first paths randomly only in the case when an empty bobbin arrived there. A combination of D1 and D7 would not have resulted in the subject-matter of claim 1.

VIII. The submissions of the Respondent are summarised as follows:

The new claim 1 submitted at the beginning of the oral proceedings should not be admitted because it was late filed. With reference to decision T 0583/93 the change of the Patentee's representative could not be considered as an acceptable reason for the late filing.

The teaching of amended claim 1 was not clear and complete since it was only understandable after having received the coloured drawings provided by the Appellant during the oral proceedings, and also its extent of protection was not clearly defined. Particularly a path could not be driven since it had an immovable position. No indication was given as to how the conveyor belts would be driven along the switching devices.

As regards the requirement of inventive step, the subject matter of claim 1 was at least obvious to a skilled person since all features were directly or implicitly disclosed in D1 and D7. The bobbin transporting systems according to these documents included paths with continuous and intermittent motions between spinning frames and roving frames as well as an interexchanging apparatus. Since it was within the knowledge of the skilled person that the production of a number of roving frames was related to a higher number of spinning frames the skilled person was led to apply more than one of the first paths as claimed by the patent. Since neither the patent specification nor the drawing would explain how two adjoining spinning frames were supplied by one branch of the second path according to claim 1, the skilled person would modify



the positioning of the paths 2, 3, 4 of D1 in relation to the spinning frame 1 as claimed, if necessary. In any case the teaching of claim 1 was made obvious by the prior art embodiments disclosed in D1 and D7 in combination with common general knowledge.

## **Reasons for the Decision**

1. The appeal is admissible.
2. *Admissibility of late filed request*
  - 2.1 The Respondent submitted that, having regard to decision T 0583/93, the newly filed claim 1 should be rejected as late filed.

The Board notes that according to the cited decision features had been incorporated from the description into the claim which had not hitherto been considered, and features previously abandoned had been reintroduced. Moreover, no reason had been given in that case for the lateness of the new requests nor had there been any argument concerning the newly introduced features. Considering the facts of case T 0583/93 obviously those actions did not comply with the requirement of fairness of proceedings since the other party had good reasons to be surprised by the new requests and had not been given the possibility to prepare itself for the new situation.

- 2.2 However, in the present case the facts differ from those of the previous case. The newly filed claim was composed of claim 1 as filed on 9 April 1999 and of granted claim 2. In its communication dated

14 September 2001 the Board considered the introduction of the features of claim 2 into claim 1 appropriate for further clarification of its subject-matter. Since the Respondent had knowledge of that preliminary opinion it could not have been surprised by the new request. Additionally, during the whole opposition proceedings the respondent had had occasion to deal with the features of granted claim 2, but had not commented on this claim.

3. *Amendments and clarity*

3.1 Considering the Respondent's objections with regard to clarity of the subject-matter of claim 1 it is to be noted that the application as originally filed contains sufficient support for the amendments in claim 1 and the description in the view of a skilled person who must be considered capable of recognizing obvious errors in the patent specification.

3.2 The skilled person in the present case is considered to be a mechanical engineer experienced in the field of textile machines. Indeed, this skilled person is aware of the problems arising in the continuous supply of bobbins produced by roving frames to each spinning-place of the spinning frames where a full bobbin is needed. The same standard of knowledge has to be considered when inventive step is discussed.

3.3 According to the description of the patent (column 2, lines 33, 35, 45 and 55; see also application page 5, fourth paragraph; page 7, second and fourth paragraph) "circuits or paths" 1, 1' and 8, respectively, are indicated as well as "conveyor belts" defining these paths. In view of this disclosure it is immediately

clear to the skilled person that the belts move along these paths and not the paths themselves.

- 3.4 Replacement of the term "legs" by "branches" was justified by an obvious translation error with respect to the application as filed in Italian language. The indication that one of these branches is able to supply two adjoining spinning frames is given in the patent (column 3, lines 24 to 27) and in the originally filed application (page 7, fourth full paragraph). It is true, that Figure 2 of the drawings shows path 8 not exactly intermediate to two adjoining spinning frames but the skilled person reading the text has no reason to exclude supply to both spinning frames.
- 3.5 Erroneous change of "intermittent" and "continuous" motion in the description is clearly derivable from the relationship between the paths 8 and 6 and the process of interchanging empty bobbins with full bobbins, and is therefore correctable under Rule 88 EPC.
- 3.6 Further small corrections of claim 1 were caused by obvious errors. Further amendments of the description were necessary for adaptation to the new claims. Since the features introduced into the claims also restrict the protection conferred, the amended documents filed as basis for maintaining the patent comply with Articles 84, 123(2) and (3) EPC.

#### 4. *Novelty*

Novelty of the subject-matter of claim 1 was not contested by the Respondent. The Board is satisfied that none of the cited prior art documents discloses a system with all the features of claim 1.

5. *Inventive step*

5.1 The closest state of the art is assumed to be represented by D7 which document discloses a system for supplying a spinning frame with full bobbins according to the precharacterising portion of claim 1.

5.2 Starting from such a system the objective underlying the patent in suit is to overcome the drawbacks of the prior art by providing a spinning frame supplying system capable of causing the spare full bobbins to be displaced in a continuous way along the front sections of the spinning frames, which is adapted to greatly facilitate the replacing of empty bobbins by completely full bobbins, and which is very reliable in operation (see column 1, line 46 to column 2, line 1 of the patent in suit).

5.3 The board is satisfied that this technical problem is solved by a system comprising the features of claim 1, in particular by the combination of a continuous moving conveyor for supplying full bobbins to and removing empty bobbins from the spinning frame with an intermittent moving conveyor supplying full bobbins from the roving frames, the conveyors having a section for transfer of bobbins from one conveyor to the other.

5.4 The Respondent was of the opinion that the closest prior art is disclosed in D1 and that already on the basis of D1 alone the skilled person would arrive in an obvious manner at the combination of features of claim 1.

D1 discloses a system for supplying a spinning frame 1 with full bobbins comprising conveyor path means for

transferring full bobbins from an interexchanging apparatus (loading station 7) to the spinning frame and empty bobbins back to that station in a continuous motion. A circuit from a roving frame to the loading station is not mentioned in D1, however, the Board agrees that the skilled person would recognize that the loading station changes full bobbins with empty tubes which are supplied from a roving frame.

5.5 With regard to the working processes of both transport systems, each of them supplying the spinning frames with full bobbins, the circuits with paths 2, 3, 4, 6 disclosed in D1 are only comparable with the second path 8 according to claim 1 of the patent. This second path differs from the arrangement of D1 in that it has the form of one closed circuit and that its branches laterally extend in an alternate way, one of these branches supplying two adjoining spinning frames whereas the paths according to D1 comprise several closed circuits 2, 3, 4, 6 (Figure 1) or 2-6', 3-6', 4-6' (Figure 2) which are interconnectable by switching devices. With regard to the different construction and working method disclosed in D1 no way is recognizable as to how a skilled person would be led to interpret this known system in the manner as disclosed in the patent in suit.

5.6 Furthermore, since a circuit supplying the empty tubes to the roving frames and the full bobbins from the roving frames to the interexchanging apparatus is not mentioned in D1 the group of features of claim 1 concerning the particular form of the paths 1, 1', 4, 5 and 6 in connection with the switching device 7 cannot be obvious because no indication is given towards that construction which, in its complexity, exceeds the

common knowledge in the art. Therefore with respect to D1 alone the supply system of claim 1 cannot be arrived at without the involvement of an inventive step.

- 5.7 The Respondent further submitted that the claimed invention was at least obvious by a combination of D1 and D7.

D7 discloses a system for supplying spinning frames 3 with full bobbins 5 and transferring empty bobbins or tubes 6 from the spinning frames 3 to a roving frame 1, comprising conveyor path means for transferring full bobbins from roving frames 1 to said spinning frames 3 in an intermittent motion (see the claim in the German translation).

These conveyor path means comprise two first bobbin supplying paths 6 coming from said roving frames 1 and supplied by said roving frames 1 with a plurality of full bobbins 5 to be transferred to a second path 7. Evidently driving means are necessary for driving said first and second paths and an interexchanging apparatus 18 arranged between adjoining portions of said first 16 and second 7 paths for transferring bobbins 5 between said first 16 and second 7 paths, said first paths including first conveyor belts and said second path including a second conveyor belt (Figure 1, 2).

- 5.8 The system according to claim 1 already differs from that known system in that its "second path" 8 is driven with a continuous motion whereas no indication is given as to whether the motion of the first conveyor belts of the paths 16 are driven with a continuous or intermittent motion.

Furthermore, in D7 no third path is provided being common to the first paths 16 since these first paths are directly adjoining the second path 7, and consequently no indication is derivable that the first paths comprise a first and a second portion to transfer the bobbins to a third common path through a switching device.

The interexchanging apparatus 18 of D7 operates only to supply the full bobbins 5 to the second path 7 whereas no means are disclosed which would supply an empty bobbin 6 to the roving frames 1.

Path 7 in D7 is divided into parallel paths 7g, 7h, 7i through switching devices. In contrast to that arrangement the branches of the second path according to claim 1 laterally extend in an alternate way, one of these branches supplying two adjoining spinning frames.

5.9 The skilled person trying to combine the teachings of D1 and D7 and having in mind the function of the second paths supplying the spinning frames would therefore only compare paths 2, 3, 4, 6 of D1 with paths 7, 7g, 7h, 7i which are similar in that they comprise sections interconnected by switching devices. No indication is derivable from that combination to arrange the second path of the invention in an alternate way with respect to the spinning frames as claimed.

Furthermore, a combination of first paths of D1 and D7 would not give any indication towards the invention because D1 does not disclose a first path and the first paths of D7 have a different configuration without switching devices and are working in a different manner.

Additionally, besides these substantial differences in the arrangement of the first and second conveyor paths, the further particular combination of features according to claim 1 with respect to the intermittent motion of the first paths and the continuous motion of the second path, and the working method of the interexchanging apparatus according to claim 1, can neither be derived from the documents themselves nor from their combination.

5.10 The further documents cited during the opposition proceedings, which have no longer been referred to in the appeal proceedings, do not come closer to the subject-matter of claim 1 than the documents discussed above. Therefore they also cannot lead to the supplying system of claim 1.

6. Summarizing, in the Board's judgment, the proposed solution to the technical problem underlying the patent in suit defined in the independent claim 1 is inventive and therefore this claim as well as its dependent claims 2 and 3 relating to particular embodiments of the invention in accordance with Rule 29(3) EPC, can form the basis for maintenance of the patent (Article 52(1) EPC).

Thus taking into account the amendments made by the Appellant, the patent and the invention to which it relates meet the requirements of the EPC and the patent as amended is maintained in this form (Article 102(3) EPC).

**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 with the order to maintain the patent on the basis of the following documents:

**claims:** claims 1 to 3,

**description:** columns 1 to 3, filed during the oral proceedings,

**drawings:** Figures 1 and 2, as granted.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau