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**D E C I S I O N**  
**of 22 January 2002**

**Case Number:** T 0595/98 - 3.2.4

**Application Number:** 86110652.4

**Publication Number:** 0239665

**IPC:** A41H 43/00

**Language of the proceedings:** EN

**Title of invention:**

Matching method and device for automatic cutting of patterned fabrics

**Patentee:**

INVESTRONICA S.A.

**Opponent:**

Gerber Technology, Inc.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 111(1), 123

**Keyword:**

"Extension of subject-matter and protection - no"  
"Remittal to first instance for further prosecution"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0595/98 - 3.2.4

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.4**  
**of 22 January 2002**

**Appellant:** INVESTRONICA S.A.  
(Proprietor of the patent) Tomás Breton, 62  
E-28045 Madrid-7 (ES)

**Representative:** Puschmann, Heinz H., Dipl.-Ing. (FH)  
Puschmann & Borchert  
Patentanwälte  
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**Respondent:** Gerber Technology, Inc.  
(Opponent) 24 Industrial Park Road West  
Tolland  
Connecticut 06084 (US)

**Representative:** Schaumburg, Thoenes, Thurn  
Patentanwälte  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 14 April 1998  
revoking European patent No. 0 239 665 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** M. G. Hatherly  
C. Holtz

## Summary of Facts and Submissions

- I. European patent No. 0 239 665 was revoked by the opposition division's decision dispatched on 14 April 1998.

The appellant (proprietor) filed a notice of appeal on 9 June 1998, paid the appeal fee simultaneously and then filed the statement of grounds of appeal on 30 June 1998.

- II. Following subsequent submissions by both the respondent (opponent) and the appellant, the board commented provisionally in its communication of 28 August 2001.

In sections 2 to 6 of this communication the board explained why the reason given in the opposition division's decision for revoking the patent, namely violation of Article 123 EPC, no longer applied to the new claims filed with the appellant's letter of 26 March 2001.

The board added in section 6 of the communication that novelty and inventive step had not been decided by the opposition division and that anyway the filing in the appeal proceedings of the more restricted claims had changed the situation.

In order to preserve the right of the parties to argue before two instances, the board therefore proposed to remit the case to the first instance for further prosecution (Article 111(1) EPC), providing the respondent withdrew the request for oral proceedings before the board (see sections 6 and 7 of the communication). This the respondent duly did by letter

dated 21 December 2001.

III. The appellant requests that the opposition division's decision revoking the patent be set aside and that the patent be maintained with

- claims 1 to 4 filed with the letter of 26 March 2001,
- a title and a description as defined in the appellant's letter of 11 October 2001, and
- the drawings as granted.

The respondent requests that the appeal be dismissed.

### **Reasons for the Decision**

1. The appeal is admissible.
2. In its communication the board provisionally stated that it saw no objection to the present claims under Article 123 EPC and proposed under Article 111(1) EPC to remit the case to the first instance for further prosecution. The board has now reviewed these points but sees no reason to deviate therefrom, particularly since the parties have not commented thereon.

## 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 on the basis of claims 1 to 4 filed with the letter of 26 March 2001.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries