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**D E C I S I O N**  
**of 23 May 2006**

**Case Number:** T 1124/05 - 3.2.04

**Application Number:** 00939009.7

**Publication Number:** 1294248

**IPC:** A44B 19/32

**Language of the proceedings:** EN

**Title of invention:**

Sealing slide fastener with teeth welded onto the tapes which they join

**Applicant:**

Riri S.A.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 54(1); 84; 111(1); 123(2)

**Keyword:**

"Clarity of claim 1 (yes)"

"Novelty of claim 1 (yes)"

"Remittal to the first instance for further prosecution"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1124/05 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 23 May 2006

**Appellant:** Riri S.A.  
(Applicant) Via Catenazzi 23  
CH-6850 Mendrisio (CH)

**Representative:** Zardi, Marco  
M. Zardi & Co. SA  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 30 June 2005  
refusing European application No. 00939009.7  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** C. Scheibling  
C. Heath

## Summary of Facts and Submissions

- I. By its decision dated 30 June 2005 the Examining Division rejected the patent application. The Examining Division considered that the subject-matter of claim 1 filed with letter of 11 March 2003 was not novel with respect to D1: US-A-4 765 038. On 8 July 2005 the Appellant (applicant) filed an appeal and paid simultaneously the appeal fee. The statement setting out the grounds of appeal was received on 13 August 2005.
  
- II. With letter dated 24 April 2006, the Appellant filed an expertise drafted by Professor G. Camino expert in industrial chemistry and polymer materials.
  
- III. Oral proceedings before the Board took place on 23 May 2006.

The Appellant mainly argued as follows: D1 relates to a slide fastener where the teeth are joined to the tapes by an adhesive and there is no indication in D1 that would suggest that a chemical adhesion takes place. Furthermore, D1 does not disclose to form the teeth by injection moulding. Therefore, novelty of the subject-matter of claim 1 is given.

The Appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 9 according to the sole request filed at the oral proceedings.

IV. Claim 1 reads as follows:

"1. Sealing slide fastener (10) comprising two tapes (1,2) of elastic material having their edges (1b, 2b) facing each other, which are pressed against each other by the coupling of two sets of aligned teeth (3,4) caused by the passage of a closing slider (8), wherein each of said tapes (1, 2) consists of two outer layers (1e, 2e) and an inner reinforcing layer (7) interposed between the two outer layers and each of said teeth comprises two halves (3a, 3b, 4a, 4b) disposed one on each side of the tapes, characterized in that the halves (3a, 3b, 4a, 4b) of the teeth are injection moulded and applied to the outer layers of both tapes (1, 2) and in that at least the outer layers (1e, 2e) of the said two tapes (1, 2) which outer layers (1e, 2e) are made of thermoplastic material and the halves (3a, 3b, 4a, 4b) of the teeth are welded together chemically, so that the halves adhere by chemical bonding, at the moment when they are formed by injection-moulding, onto the opposite outer layers of said tapes (1, 2)."

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Amendments:*
  - 2.1 Present claim 1 differs from claim 1 as originally filed in that it comprises the following additional features:

-a- each of said tapes consists of two outer layers and an inner reinforcing layer interposed between the two outer layers

-b- each of said teeth comprises two halves disposed one on each side of the tapes, the halves of the teeth are injection moulded and applied to the outer layers of both tapes,

-c- at least the outer layers of the said two tapes which outer layers are made of thermoplastic material and the halves of the teeth are welded together chemically, so that the halves adhere by chemical bonding, at the moment when they are formed by injection-moulding, onto the opposite outer layers of said tapes.

2.2 Features a) are disclosed in claim 6 as originally filed and page 3, lines 14 to 19 of the description as originally filed.

Features b) are disclosed in claim 3 as originally filed.

Features c) are partly disclosed in claim 2 as originally filed, partly in claim 3 as originally filed and partly in the description as originally filed, page 1, line 35 to page 2, line 3 and page 3, lines 33 to 36.

2.3 Thus the requirements of Article 123(2) EPC are met.

3. *Clarity of claim 1:*

The wording of present claim 1 now excludes the use of an adhesive since it is specified that each of the

tapes consists of two outer layers and an inner reinforcing layer interposed between the two outer layers (i.e. does not comprise any additional adhesive layer) and that the halves of the teeth are formed by injection moulding onto the opposite outer layers of both tapes (i.e. directly onto the outer layer without interposition of any additional layer).

Thus, the Board is satisfied that claim 1 fulfils the requirement of clarity of Article 84 EPC.

4. *Novelty of claim 1:*

4.1 Novelty has been disputed with respect to D1.

However, in this citation an adhesive layer is applied between the tape outer layers and the teeth. Moreover, even if as admitted in the expertise "the adhesion obtained through the use of an adhesive could as well be physical as chemical depending on the nature of the adhesive" (see point 4), it cannot directly and unambiguously be derived from the disclosure of D1 that the adhesive used is of the type providing a chemical adhesion. Finally, although D1 discloses that the coupling elements may be formed by moulding (column 3, lines 17 and 18) there is no indication that they are formed by injection-moulding.

Consequently, the subject-matter of claim 1 is novel with respect to D1.

4.2 The Board is satisfied that the subject-matter of claim 1 is also novel with respect of the other documents cited in the search-report.

5. *Further processing:*

Since proceedings before the Boards of Appeal are primarily concerned with the examination of the contested decision, remittal of the case to the Examining division in accordance with Article 111(1) EPC is normally considered by the Boards in cases where the Examining division issues a decision solely upon a particular issue (novelty) and leaves the substantive issue regarding inventive step undecided.

The Board therefore considers it appropriate to remit the case to the first instance for consideration of the undecided issue.

**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:

The Chairman:

P. Guidi

M. Ceyte