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**Datasheet for the decision  
of 2 December 2015**

**Case Number:** T 2234/14 - 3.2.07

**Application Number:** 05748606.0

**Publication Number:** 1759022

**IPC:** C14B1/26, C14B1/58

**Language of the proceedings:** EN

**Title of invention:**

Drying system for pelts

**Patent Proprietor:**

Dansk Mink Papir A/S

**Opponent:**

Jasopels A/S

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

Amendments - added subject-matter (no)

**Decisions cited:**

T 0253/06, T 0526/92

**Catchword:**



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Case Number: T 2234/14 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 2 December 2015**

**Appellant:** Jasopels A/S  
(Opponent) Fabriksvej 19  
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**Representative:** Zacco Denmark A/S  
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**Respondent:** Dansk Mink Papir A/S  
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**Representative:** Budde Schou A/S  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 24 November 2014 rejecting the opposition filed against European patent No. 1759022 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** H. Meinders  
**Members:** V. Bevilacqua  
G. Weiss

## **Summary of Facts and Submissions**

I. The Appellant (opponent) lodged an appeal against the decision rejecting the opposition against European patent 1 759 022.

Opposition was filed based on the following grounds:

- Article 100(a) EPC (lack of novelty);
- Article 100(c) EPC (added subject-matter).

II. The ground for opposition according to Article 100(a) in conjunction with Article 54 EPC was withdrawn. The Opposition Division held that the ground for opposition according to Article 100(c) EPC did not prejudice the maintenance of the patent as granted.

III. The appellant, invoking both Article 100(c) EPC and Article 100(a) EPC in conjunction with Article 54 EPC, requested that the decision under appeal be set aside and that the European patent be revoked.

IV. The respondent requested that the appeal be dismissed (main request).

V. With a communication annexed to the summons to oral proceedings the Board presented its preliminary opinion with respect to claim 1 of the patent as granted.

VI. With letter dated 14 October 2015 the respondent further submitted amended claims (auxiliary requests 1 and 2).

VII. Oral proceedings before the Board were held on 2 December 2015.

During the oral proceedings the respondent did not give its consent for again introducing the ground of lack of novelty under Article 100(a) EPC.

The question whether the ground for opposition of Article 100(c) EPC holds against the subject-matter of claim 1 of the patent as granted, as well as the admissibility of auxiliary request 1 and the compliance thereof with the requirements of Article 123(2) EPC were discussed.

At the end of the oral proceedings the respondent withdrew its main request, the appellant confirmed its initial requests and the Board announced its decision.

VIII. The wording of independent claim 1 of auxiliary request 1 reads as follows:

"System for use in the drying of the leather side of pelts (26) which are applied to, stretched and secured on a hollow oblong pelt board (6) in the stretched position during the drying procedure, and where the pelt (26) is secured in the stretched position by means of a holding bag (28) being drawn over the fur side of the pelt (26) and at least over a part (30) of the lower end of the pelt (26), said holding bag (28) pressing the pelt (26) against a holding area (8) of the pelt board (6) with an open structure, the system further comprising a sleeve or bag item (10) of the kind which is used for covering a pelt board (6), and wherein the sleeve or bag item (10) consists of a tubular sleeve or bag item (10) made of a fat and moisture absorbing material, and intended for drawing onto the pelt board (6) from the pointed end (34) of the pelt board (6),

characterized in that

the hollow oblong pelt board (6) comprises a first and a second half shell (12) having a convex surface (14) with a very open structure in the form of holes (16), the half shells (12) defining a cavity which is open at the foot (18) of the pelt board (6) and in which air is replaceable through the opening at the foot end (18) of the pelt board (6) and the open structure through natural openings in the pelt (26), and where the holding area (8) comprises a part area of said surfaces (14) being rough, corrugated or grooved, and

the sleeve or bag item (10) has an extent such that it covers a part of or the whole of the holding area (8) on the pelt board (6),

the extent of said sleeve or bag item (10) covers at least 1/3 of the extent of the holding area (8) on the pelt board (6)."

IX. The appellant argued, insofar as relevant to the present decision, essentially as follows:

Auxiliary request 1 has not been substantiated, and should therefore not be admitted in the proceedings.

The last feature of claim 1 of auxiliary request 1, which requires that the bag item effectively covers at least 1/3 of the extent of the holding area on the pelt board extends beyond the original disclosure of the application as filed.

There is also no basis, in the originally filed documents, for the feature that the complete holding area on the pelt board is covered by the pelt bag.

- X. The respondent argued, insofar as relevant to the present decision, essentially as follows:

As explained in its accompanying letter dated 14 October 2015, claim 1 of auxiliary request 1 has been amended by introducing a feature, coming from granted claim 2, the removal of which was objected to by the appellant.

The feature that the sleeve or bag item covers at least 1/3 of the holding area of the pelt board is implicitly disclosed in the originally filed documents, because the sleeve or bag item does not extend beyond the holding area of the pelt board, and has an extent of at least 1/3 of the extent of this holding area.

As originally the sleeve covered "at least a part" of the holding area, covering the complete holding area with the pelt bag was also originally disclosed.

## **Reasons for the Decision**

1. *Admissibility of auxiliary request 1*

Auxiliary request 1 has been submitted after oral proceedings have been arranged.

The appellant argues that this request should not be admitted because it has not been substantiated, and according to T 253/06 (not published in OJ EPO) unsubstantiated auxiliary requests filed after oral proceedings had been arranged should be regarded as belated and not admitted under Article 13(3) RPBA.

The Board regards auxiliary request 1 as substantiated because the accompanying letter addresses both the issues of added subject-matter raised in the course of the proceedings by the appellant against the patent as granted, such that it is clear why the amendments contained therein were made and how they were intended to overcome these objections.

The Board therefore decides to consider this request in the proceedings.

2. *Auxiliary request 1 - Compliance with the requirements of Article 123(2) EPC*

2.1 The appellant argues that the subject-matter of claim 1 of the auxiliary request 1 extends beyond the application as originally filed, because the last feature of claim 1 requires that the bag item covers at least 1/3 of the extent of the holding area on the pelt board.

Page 4, lines 5-9 (reference will be made to the PCT publication WO 2005/121381), as well as claim 1 originally filed, explain that the bag according to the invention is suitable for covering at least a part of the holding area of the distension element, but does not give information on which percentage of the holding area is covered.

This is because the remaining passages rather provide the information that the extent of said pelt bag corresponds *"at least to 1/3 but preferably a half part of the extent of the holding area on the distension element"*.

This extent of the pelt bag only corresponds to the extent of the covered holding area if said bag can be completely drawn onto the holding area of the pelt board.

This may not always happen, as it depends from the relative dimensions (and therefore the relative position, see figure 3) of the board and of the bag, because, as explained at page 7, lines 22-24, the bag is drawn down over the board until it wedges firmly on the outer side surface in the holding area, where it covers a part of that area.

Page 7, lines 18-26, also refers to the pelt bag according to the invention shown in figures 3 and 4 (see page 5, lines 26-29), and confirms that the bag does not cover the pelt board completely ("*considerably shorter than the traditionally-known pelt bags*"), and gives the information that a part of the holding area is covered by the bag, again without specifying the extent of this coverage.

Based on this analysis the appellant comes to the conclusion that the originally filed documents disclose a bag having a minimum extent (length) corresponding to at least 1/3 of the extent of the holding area on the distension element, but do not disclose a specific minimum value of the extent of the holding area covered by said bag.

In these passages, as well as in the rest of the application as filed, there is no information at all concerning which amount of the extent of the pelt board is covered by the sleeve or bag item.



2.2 The Board disagrees with this interpretation of the original disclosure.

As explained at page 3, starting from line 12, the pressure exerted by the holding bag against the corrugated holding area of the pelt board has the result that the pelt in this region turns black.

To solve this problem, which only occurs in correspondence with the holding area of the pelt board, a sleeve or bag item is used, which absorbs the fat and moisture collected in the leather side of the pelt in the holding area (see page 4, lines 14-15).

It is clear to the skilled person that in order to achieve these effects not only the length of the bag cannot be reduced beyond a certain limit, but also the extent of the holding area covered by said bag.

The skilled reader is also made explicitly aware (see the second paragraph at page 3) that a pelt bag extending beyond the holding area of the pelt board is undesirable, because it would limit air circulation and therefore result in an undesired prolongation of the drying time for the pelts, and would be more difficult to handle.

With this in mind the skilled person would not understand the passage at page 4, lines 5-9, to mean that only a bag item having a minimum extent (length) corresponding to at least 1/3 of the extent of the holding area on the distension element is enough to prevent pelt decaying in the holding area, because it is the minimum value of the extent of the holding area covered by said bag (which of course has to be of sufficient length) which solves this problem.

This is because it is the covered extent of the holding area which is the feature which prevents pelt decaying by allowing the moisture and fat adsorption, as well as the increase in frictional force as mentioned at page 4, line 11.

Claim 1 of auxiliary request 1 may not be interpreted, as the appellant does, as referring to systems in which the bag item has a length of at least 1/3 of the extent of the holding area, but does not cover at least 1/3 of said area, because it is not wide enough to be drawn over it.

This is because this interpretation does not make technical sense for the above discussed reasons, and the skilled person would rule it out, and therefore consider that the feature that the sleeve or bag item covers at least 1/3 of the holding area of the pelt board is implicitly disclosed in the originally filed documents.

This is the logical consequence of the consideration that the sleeve or bag item should not extend beyond the holding area of the pelt board in order to achieve the desired effects, and has an extent of at least 1/3 of the extent of this holding area.

- 2.3 According to the appellant there is also no basis, in the originally filed documents, for the feature of claim 1 of auxiliary request 1 that the complete holding area on the pelt board is covered by the pelt bag.

This is because the passage at page 4, lines 5-9, as well as claim 1 as originally filed limit the maximum

extent of said covered area to 1/2 of the extent of the holding area.

Referring to T 526/92 (not published in OJ EPO) the appellant argues that page 7, lines 24-26, where a pelt bag covering the complete holding area is mentioned, only describes an isolated embodiment and that this value could not form the basis for defining a new upper limit of the range mentioned at page 4 and in claim 1 as originally filed.

- 2.4 The Board disagrees also with this interpretation of the original disclosure.

The passage at page 4, lines 5-9 (as well as original claim 1) recites that:

*"the extent of said pelt bag corresponding at least to 1/3 but preferably a half part of the extent of the holding area on the distension element."*

This passage mentions a range ("*at least 1/3*"), as well as a preferred embodiment falling within this range ("*preferably half a part*").

The interpretation of the appellant according to which the range disclosed is comprised between 1/3 and 1/2 cannot be accepted by the Board, because "half a part of the extent of the holding area" is clearly indicated therein as a preferred embodiment ("*preferably*") and not as maximum value.

This interpretation would also be ruled out because in the light of the effects achieved by the pelt bag (see the above discussion at point 2.2) there are no

technical reasons for limiting the pelt bag extent to only one half of the extent of the holding area.

The Board therefore concludes that page 4, lines 5-9 as well as claim 1 as originally filed already provide a sufficient basis for a pelt bag having a maximum extent sufficient for completely covering the holding area.

As a consequence of the above, the issue of "inadmissibly extending the range to an isolated value", based on T 526/92 (*supra*) needs not to be addressed.

- 2.5 For the above reasons the Board judges that auxiliary request 1 complies with the requirements of Article 123(2) EPC.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent as amended on the basis of the following :
  - claims 1 to 6 filed as auxiliary request 1 with letter dated 14 October 2015;
  - description, pages 2 and 4 of the patent as granted, page 3 as submitted at the oral proceedings with the paragraph replacing the paragraphs 8 and 9;
  - figures 1 to 4 of the patent as granted.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated