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**Datasheet for the decision  
of 3 November 2015**

**Case Number:** T 0978/15 - 3.2.06

**Application Number:** 09172941.8

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**IPC:** D04H13/00, B32B3/10, D02G1/00,  
D04B39/00

**Language of the proceedings:** EN

**Title of invention:**  
Wonder Fabric

**Applicant:**  
Welspun Global Brands Limited  
Kulkarni, Sachin Hanmant

**Relevant legal provisions:**  
EPC Art. 123(2)

**Keyword:**  
Amendments - intermediate generalisation

**Decisions cited:**  
T 0962/98



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Case Number: T 0978/15 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 3 November 2015**

**Appellant:** Welspun Global Brands Limited  
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**Appellant:** Kulkarni, Sachin Hanmant  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 18 December  
2014 refusing European patent application No.  
09172941.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** T. Rosenblatt  
**Members:** G. de Crignis  
W. Ungler

## Summary of Facts and Submissions

- I. The examining division refused European patent application No. 09172941.8 holding that neither claim 1 of the main request nor claim 1 of the auxiliary request met the requirements of Articles 123(2) EPC, 84 EPC and 54 EPC.
- II. The appellant (applicant) filed an appeal against this decision. It requested that the decision under appeal be set aside and that the case be remitted to the examining division for further prosecution on the basis of the main request rejected by the examining division or on the basis of the second auxiliary request filed with the grounds of appeal.
- III. In a communication sent as an annex to a summons to oral proceedings, the Board indicated that neither request appeared to be allowable for reasons *inter alia* in regard to the requirement of Article 123(2) EPC.
- IV. With letter of 2 November 2015 the appellant announced - without any further explanations and arguments - that it would not be attending the oral proceedings.
- V. Oral proceedings were held before the Board on 3 November 2015. The chairman noted the absence of the representative of the applicant. The proceedings were pursued according to Rule 115(2) EPC and Article 15(3) RPBA. At the end of the oral proceedings the decision of the Board was given.
- VI. Claim 1 of the main request reads as follows:  
  
"A multipurpose fabric suitable for home textile, upholstery & apparel textile application comprising of

at least one textile substrate with see through and unstable construction, namely of cover factor 14, and a web of fibres on at least one side of the textile substrate, with an entangled fibre structure ("pseudo yarns") formed by a plurality of fibres from said web of fibres becoming hydro-entangled among themselves in spaces within said textile substrate to form said entangled fibre structure, characterized in that the textile substrate is pre-treated prior to hydro entanglement by being subjected to at least one high pressure straight jet stream and at least one jet stream that strikes at an angle."

Claim 1 of the second auxiliary request differs from claim 1 of the main request in that the wording "see through and unstable construction, namely of" and the term " ("pseudo yarns")" have been deleted.

VII. The appellant in its grounds of appeal argued as follows with respect to the issues relevant for the present decision:

Concerning claim 1 of the main request, the use of the term "cover factor of 14" which was disclosed in Example 2 was not an intermediate generalisation. The skilled person would take the description into account.

The specification as a whole illustrated that the invention related to the construction of an improved fabric comprising *inter alia* a textile substrate of see through and adjustable construction. The properties of the fabric were unrelated to the subsequent treatment by water jets. Hence, these details of Example 2 were not related to the cover factor.

It was established case law of the Boards of Appeal that there were situations where some characteristics taken from a working example might be combined with other features disclosed in a more general context without necessarily creating an objectionable intermediate generalisation. This was the case if the skilled person could recognise without any doubt from the application as filed that the selected characteristics were not closely related to the other characteristics of the working example and applied directly and unambiguously to the more general context, as decided in decision T 962/98. This exception applied in the present case, since it was clear to the skilled person that the properties of the fabric were unrelated to the subsequent treatment by the water jets.

The Board should therefore overturn the examining division's finding on Article 123(2) EPC.

Concerning claim 1 of the Second Auxiliary request, the deletion of the term "unstable construction" led to a narrower definition provided by the term "cover factor". This deletion did not infringe Article 123(2) EPC since no additional information was provided to the skilled person.

## **Reasons for the Decision**

1. *Main request, Claim 1 - Article 123(2) EPC*
- 1.1 As set out in the communication informing the appellant of the Board's preliminary opinion on this issue, originally filed claim 1 does not include the feature concerning a cover factor of 14. In the description, only Example 2 (page 22, lines 12 to 25) specifies this cover factor for the textile substrate. Example 2 is

specific with regard to the nature of the fibres (cotton fibre web) and to the conditions of manufacturing of the fabric ("whole structure is subjected to high pressure water jet streams with jet description of 0.1 mm/23 jets/inch, 0.1 mm/40 jets/inch and 0.1 mm/40 jets/inch results in maximum fibre rolling and pseudo yarn formation as shown in Figure 4, with very few traces of fibres on the bottom side of textile substrates"). The remaining examples (Examples 1, 3 to 14) do not indicate a cover factor for the textile substrate used therein and cannot be compared to Example 2 with regard to the manufacturing conditions.

- 1.2 Thus, no part of the application as filed provides a direct and unambiguous disclosure of the combination of a textile substrate with cover factor 14 and the further features of claim 1.
- 1.3 In its grounds of appeal, the appellant referred to T 962/98. In T 962/98 it was indeed decided that there may exist situations where some characteristics taken from a working example may be combined with other features disclosed in a more general context without necessarily creating an objectionable intermediate generalisation. It was further held that under Article 123(2) EPC such an intermediate generalisation is only admissible if the skilled person can recognise without any doubt from the application as filed that those characteristics are not closely related to the other characteristics of the working example and apply directly and unambiguously to the more general context.
- 1.4 The Board does not see any reason to depart from these principles in this case. It did however ask in its annex to the summons, how, in the present case, the

skilled person was to recognise without any doubt from the application as filed that the cover factor specified for Example 2 applied directly and unambiguously in a more general context, i.e. was to ascertain whether the second of the two conditions for an intermediate generalisation being admissible, as set out in T 962/98 (cf. end of the preceding paragraph), was met.

1.5 No arguments in this respect have been submitted by the appellant. The Board considers that the cover factor is only disclosed in relation to Example 2. Therefore the Board is not convinced that the amendment introducing the term "cover factor 14" meets the conditions for an exception to the general rule regarding inadmissible intermediate generalisations as set out in T 962/98.

1.6 Thus, the Board accordingly maintains its view set out in the annex to the summons, i.e. that the subject-matter of claim 1 does not comply with Article 123(2) EPC.

## 2. *Second auxiliary request - Article 123(2) EPC*

2.1 Claim 1 differs from claim 1 of the main request in that the wording "see through and unstable construction" and ("pseudo yarns") has been deleted. However, the feature "cover factor 14" is still included in claim 1. Accordingly, the above objection under Article 123(2) EPC concerning the feature "cover factor 14" still applies to this claim, as noted by the Board in its preliminary opinion.

2.2 In the appeal grounds the appellant submitted that the deletion of the term "unstable construction" led to a narrower definition provided by the term "cover

factor". The Board is not convinced by this argument, because the issue to be decided here in regard to Article 123(2) EPC is not whether the amendments lead to a more narrow definition of the term. Rather, as stated above, it is whether the skilled person could recognise without any doubt from the application as filed that the cover factor of Example 2 applied directly and unambiguously in a more general context. This is not the case here, as explained above.

2.3 The Board accordingly concludes that the second auxiliary request is not allowable because the subject-matter of claim 1 does not comply with Article 123(2) EPC.

3. Since none of the appellant's requests is allowable, the appeal has to be dismissed.

## Order

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

The appeal is dismissed.

The Registrar:

The Chairman:



M. H. A. Patin

T. Rosenblatt

Decision electronically authenticated