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**Datasheet for the decision
of 14 February 2023**

Case Number: T 1182/18 - 3.2.06

Application Number: 03075127.5

Publication Number: 1347086

IPC: D03D27/06, D03D27/10,
D03D39/00, D03D39/16

Language of the proceedings: EN

Title of invention:

Equipment of a weaving machine, method for the modification of a weaving machine equipment, and weaving process making use of a weaving machine having such equipment

Patent Proprietor:

Vandewiele NV

Opponent:

STÄUBLI BAYREUTH GmbH

Headword:

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (no)

Decisions cited:

Catchword:



Beschwerdekammern

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Case Number: T 1182/18 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 14 February 2023

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 March 2018 concerning maintenance of the
European Patent No. 1347086 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: T. Rosenblatt
W. Ungler
P. Cipriano
D. Prietzel-Funk

Summary of Facts and Submissions

I. The appellant (opponent) filed an appeal against the interlocutory decision of the opposition division, posted on 2 March 2018, in which the opposition division found that European patent No. 1 347 086 in an amended form met the requirements of the EPC.

The proprietor (respondent) also filed an appeal against that decision (which was later withdrawn in the course of the appeal proceedings). With its reply to the appellant's appeal, the respondent requested *inter alia* maintenance of the patent as granted (main request) or in amended form according to one of auxiliary requests 1 to 3 underlying the impugned decision. Auxiliary request 3 corresponds to the version of the amended patent considered by the opposition division to meet the requirements of the EPC.

II. The parties were summoned to oral proceedings before the Board.

III. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA 2020), the Board informed the parties of its preliminary opinion on the case. The Board stated *inter alia* the following:

"Main request - patent as granted

2. Articles 100(a) and 54 EPC - independent claim 1

2.1 It may be required to discuss the meaning of the expression "pile warp yarn system". All independent

claims of the patent in suit define in similar wording that groups of pile warp yarns extending through a same reed space can belong to different pile warp yarn systems, without however giving a limiting definition of this expression.

2.2 The opposition division considered the subject-matter of claims 1 and 18 of the main request to be anticipated by D13 and identified the two pile warp yarn systems with the two groups of yarns each composed of the coloured yarns g, b, e.

Similarly, in its conclusion on novelty of amended claim 1 of the first auxiliary request underlying the impugned decision (point 7.3), the opposition division considered a corresponding feature of that claim to be also anticipated by two pile warp yarn systems disclosed in Figure 4 of D8 - which prior art is also cited by the opponent in a novelty objection against claim 1 of the main request. The opposition division considered the two systems to be constituted by pile warps yarns 10-15 and pile warp yarns 20-25, respectively.

In both cases, the opposition division seemingly did not consider the subject-matter of the respective claim 1 to be in any way limited when having regard to the feature "pile warp yarn system", which would seem to be the normal way to construe the claim.

(2.3...)

3. In case the approach taken by the opposition division is followed, the Board would reach the same conclusion as the division on novelty of the subject-matter claim 1 in view of inter alia D13 and D8 due to

the absence of any further distinguishing limiting feature. Absent any reason why the description must be used to limit claim 1 in the sense argued by the proprietor, the Board currently sees no reason to overturn the decision in this regard.

(...)

Auxiliary requests 1 to 3

9. Auxiliary request 1 - Articles 54 and 56 EPC

It would have to be discussed whether the added features of the respective independent claims 1 and 9 provide an additional distinction over the face-to-face weaving machine and method disclosed in D8, and, only if so, whether such (potentially additional) distinguishing feature could contribute to an inventive step.

It is not disputed that D8 discloses features "a1", "b1" and also "c1" (following the denomination of added features according to the opponent's feature analysis on page 3 of the statement of grounds of appeal, albeit in French and not the language of proceedings). Whether the backing warp yarns are considered to constitute a single system or two systems appears to be based on a mental distinction rather than implying any further structural difference. In any case, added feature "d1" is then necessarily disclosed. The proprietor seemingly considers Figure 4 of D8 to disclose a single backing warp yarn system. The disclosure of the last added feature "e1" does not appear to be disputed.

The Board notes in view of the proprietor's arguments in the second paragraph of section "I Hilfsantrag 1" on page 3 of its appeal grounds, that D8 envisages at least to position pile and binder warps in a same reed space (page 2, lines 103 to 106). That D8 might lack an explicit disclosure for the claimed distribution of warp yarn systems in each or "per" reed space does nevertheless not appear to point to inventive subject-matter due to the lack of any apparent unexpected technical effect linked to such equipment.

It appears thus unlikely that the added features could change a previous negative conclusion on novelty or inventive step based on D8 reached against claims 1 and/or 13 of the main request.

10. Auxiliary request 2

Since claim 1 of this request is identical to claim 1 of auxiliary request 1 and independent claim 6 identical to independent claim 9, no different conclusion could be reached compared to that for auxiliary request 1.

11. Auxiliary request 3 - Article 56 EPC

11.1 Again, D8 may be considered to represent the closest prior art to the subject-matter of claims 1 and 4.

11.2 It appears to be common ground that the two alternative features added at the end of claim 1 (compared to claim 1 of auxiliary request 1 and 2), denoted "a3" and "b3" by the opponent on page 4 of its

statement of grounds of appeal, are not disclosed in D8.

11.3 Depending on the potentially further distinguishing features established during the consideration of novelty and inventive step of the subject-matter of claim 1 of the higher ranking requests (see above points 4.3 and 9.), the technical effect(s) necessarily achieved by the totality of these features over the whole scope of the claim could be discussed. The technical problem(s) need then to be formulated.

11.4 Since the complete set of distinguishing features of claim 1 over D8 is not yet finally established, it would be premature to give a detailed preliminary opinion on inventive step. However the Board notes briefly the following points:

(a) The Board cannot find any indication in the patent for the technical effect attributed in the impugned decision to feature "a3", i.e. avoiding or reducing entanglement between pile warp yarns in the same reed space (see the decision under appeal, page 22, penultimate paragraph). The patent only indicates in paragraph 15 that the pile warp yarn systems are well separated, without mentioning any advantage or effect of this separation. The question of whether the presumed effect is actually achieved in this generality over the whole scope of claim 1 or whether a less ambitious objective should be formulated, could thus be discussed during the oral proceedings.

The obviousness of the feature combination of claim 1 involving this alternative ("a3") in

view of the finally formulated objective technical problem(s) could then be examined in regard to common general knowledge and/or D10. The Board would presently agree with the proprietor that Figure 8 of D10 and the corresponding part of the description do not explicitly teach the disposition of the backing warp yarn system with respect to two pile warp yarn systems, if the meaning given in paragraph 4 of the patent in suit is regarded as limiting for claim 1. However, both examples 1 and 2 described on page 3 and illustrated in Figures 8 and 9, as well as the passage on page 2, lines 44 to 48, suggest a separation of the pile warp yarns by the backing warp yarns for the presumed effect to be achieved. In view of this teaching of D10 and since D8 already discloses to accommodate within a same reed space the two pile warp yarn systems (D8, page 2, lines 61/62) and additionally the binder or backing warp yarns (page 2, lines 103-106), the separation of the two pile warp yarn systems by the backing warp yarn systems does not appear to rely on inventive activity. The Board does not consider that the possibility of other distributions of the (pile and backing) in such warp yarn systems would be indicative of an inventive step in this case.

(b) The effect achieved by the alternative feature "b3" is described in paragraph 17 of the patent in suit as being the reaching of "good quality" of the back of the fabric, without specifying which particular quality aspect could be meant here. Similar questions as in regard to the first alternative ("a3") could arise and obviousness would have to be examined in view of common general knowledge, D9 or D12.

(c) Even if only one of these two alternative feature combinations is found to lack inventive step, the other would not require further consideration since the claim as a whole is then not allowable.

(d) There are no separate arguments submitted in regard to the subject-matter of independent method claim 4. All conclusions are considered seemingly to apply by analogy to those with respect to claim 1, so that no separate consideration of this claim is required."

The Board notes that the reference to "point 4.3" in the above cited "point 11.3" relates to considerations applicable in case the Board would have adopted a limited interpretation of claim 1 (cf. "point 3" above). These considerations are however not relevant for the present decision and have thus been omitted here.

- IV. With letter dated 16 January 2023 the respondent (still then appellant) withdrew its appeal and the request for oral proceedings and announced that it would not attend the oral proceedings.
- V. The summons to the oral proceedings were cancelled.
- VI. The appellant requested that the decision under appeal be set aside and the European patent be revoked.
- VII. Following the withdrawal of its own appeal, the respondent's only remaining request was thus that the appeal be dismissed.

VIII. The following evidence was *inter alia* referred to by the appellant:

D8 : GB-A-240 672
D9 : GB-A-630 554
D10 : EP-A-0 651 083
D12 : US-A-2 950 741
D13 : US-A-731 433

IX. Amended claim 1 has the following wording (denomination of features in square brackets according to the appellant's feature analysis on pages 2 to 4 of the statement of grounds of appeal, albeit in French and not in the language of proceedings):

"A [**a1**] *face-to-face* [**a**] *weaving machine* [**b1**] *provided for working according to a face-to-face weaving method in which two backing fabrics (30), (31) are woven one above the other, comprising*
[**b**] *a reed having reed dents and intermediate reed spaces, warp yarns (7-13), (16-22) extending through a number of reed spaces, and*
[**c**] *means for inserting weft yarns between the warp yarns during a weaving process in order to weave a pile fabric,*
[**d**] *said warp yarns comprising pile warp yarns (7-13), (16-22) distributed between a number of pile warp yarn systems,*
[**c1**] *the warp yarns (7-13), (16-22) also comprising backing warp yarns (1-6) distributed between backing warp yarn systems, in order to form a backing fabric (30), (31) by means of the weft yarns (14), (15) to be inserted, characterized*

[e] in that, through each reed space, a group of pile warp yarns (7-13), (16-22) extends, said group comprising the pile warp yarns of at least two pile warp yarn systems,

[d1] in that per reed space, the number of backing warp yarn systems is smaller than or equal to the number of pile warp yarn systems,

[e1] in that, per reed space, a number of backing warp yarn systems is provided, each backing warp yarn system including the backing warp yarns (1, 2, 5), (3, 4, 6) for both backing fabrics (30), (31),

[a3] and in that the backing warp yarn systems (1-6) have been heddled in such a manner that the backing warp yarn systems are situated between pile warp yarn systems (7-13); (16-22) which are not separated by a reed dent

[b3] or in that, per reed space, the number of pile warp yarn systems (7-13), (16-22) is equal to the number of backing warp yarn systems and, each time, at least one backing warp yarn and a pile warp yarn system are provided alternately."

The wording of the second independent method claim 4 is not relevant to the present decision and is thus not reproduced here.

X. The appellant argued *inter alia* that the subject-matter of claim 1 was distinguished over the closest prior art face-to-face weaving machine and its equipment illustrated in Figure 4 of D8 only by the features "a3" or "b3", which were however rendered obvious by either D9, D10 or D12.

XI. The respondent disputed that the face-to-face weaving machine equipped according to Figure 4 of D8 comprised *inter alia* "pile warp yarn systems" and "backing warp

yarn systems" within the meaning of the patent. Furthermore the respondent contested that feature "e1" was disclosed and that features "a3" and "b3" would be rendered obvious by the documents referred to by the appellant.

Reasons for the Decision

Article 56 EPC

1. The subject-matter of claim 1 lacks an inventive step for the reasons indicated in the Board's communication pursuant to Article 15(1) RPBA 2020. The respondent has not replied in substance to the Board's preliminary opinion. The Board thus has no reason to change its preliminary opinion, which is consequently confirmed herewith.
2. It is undisputed that D8, in particular the face-to-face weaving machine equipped according to Figure 4 thereof, may be considered to represent the closest prior art to the subject-matter of claim 1.
3. As noted in point 2.1 of the Board's preliminary opinion, the expression "pile warp yarn system" is not further defined in the claims (see above "Facts and Submissions", item III. above). No reason has been given by the respondent and the Board can also not see any reason why the description of the patent in suit should be used to limit claim 1 in the sense as argued by the respondent (see points 2.2 and 3. of the preliminary opinion, also transcribed in item III. above).

4. The Board thus confirms the finding of the opposition division in point 7.3 of the impugned decision, based on the normally adopted approach to claim construction, i.e. not limited by the description of the patent, that the face-to-face weaving machine equipped as illustrated in Figure 4 of D8 comprises *inter alia* two pile warp systems, the first being formed by pile warp yarns 10-15 and the second by pile warp yarns 20-25, and furthermore two backing yarn systems (formed by binder warps W in lower and upper fabrics) in a reed space.

Consequently, and as further set out in points 9. and 10. of the preliminary opinion (see item III. above) the Board concludes that the subject-matter of claim 1 is distinguished over the closest prior art face-to-face weaving machine known from D8 by the alternative features "a3" or "b3". In regard to feature "e1" the Board assumes in favour of the respondent that D8 does not disclose that in each reed space a number of backing warp yarn systems is provided where each backing warp yarn system includes the backing warp yarns (W) for both backing fabrics.

5. As stated in the penultimate paragraph of point 9 of the Board's uncontested preliminary opinion (see item III. above), there is no unexpected technical effect linked to the equipment of the face-to-face weaving machine with backing warp yarn systems which each include backing warp yarns for both backing fabrics in each reed space, as required by feature "e1". In the absence of any counter-argument submitted in reply to its opinion on this aspect, the Board thus sees no reason to deviate and consequently confirms its preliminary view that this feature cannot contribute to

an inventive step of the claimed subject-matter.

6. Similarly and as also stated in the Board's uncontested preliminary opinion, according to paragraph 17 of the patent the alternative distinguishing feature "b3", is alleged to allow a good quality of the back of the fabric to be achieved, without however specifying which particular quality aspect could be meant (see item III. above, point 11.4(b)). The Board cannot agree with the respondent's argument as to why the possibility of alternating pile and backing warp yarn systems in each reed space, for example ...|PB|PB|... or ...|PBPB|PBPB|..., is the result of an inventive step in this case. On the contrary, the provision of an equal number of pile and warp yarn systems and distributing them in an alternating arrangement in the reed spaces can only be seen to be based on normal design considerations of a skilled person seeking to provide appropriate equipment of a weaving machine for a given structure of the final fabrics and is thus based on common general knowledge as noted in point 11.(4)b) of the Board's preliminary opinion (see item III. above).
7. The arguments of the respondent in regard to the disclosure of D9 and D12 submitted in the written procedure prior to the Board's preliminary opinion also rely essentially on a limited interpretation of the expressions "pile warp yarn system" and "backing warp yarn system". Absent any unexpected technical effect achieved by the defined feature combination including feature "b3", the skilled person is anyway not required to consider these documents.
8. As was also noted in the Board's preliminary opinion in point 11.4(c) (see item III. above), if only one of the two alternative feature combinations defined in claim

1, including either feature "a3" or "b3", were found to lack inventive step, the other would not require further consideration since the claim as a whole is then not allowable. Also on this aspect, absent any counter argument, there is no reason to conclude differently. It may be noted that the conclusion on the feature combination including feature "a3" would not be different, as is already apparent from point 11.4(a) of the Board's preliminary opinion (see item III. above).

9. Absent any set of claims complying with the requirements of the EPC, the patent has to be revoked (Article 101(3)(b) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated