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**Datasheet for the decision  
of 23 January 2024**

**Case Number:** T 1104/22 - 3.2.01

**Application Number:** 14865570.7

**Publication Number:** 3073871

**IPC:** A47G9/10

**Language of the proceedings:** EN

**Title of invention:**

NOVEL FUNCTIONALLY SUPPORTIVE PILLOWS AND METHODS OF  
PREPARATION THEREOF

**Applicant:**

Yogibo LLC

**Headword:**

**Relevant legal provisions:**

EPC Art. 84

**Keyword:**

Claims - clarity (no) - essential features missing

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1104/22 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 23 January 2024**

**Appellant:** Yogibo LLC  
(Applicant) 16 Celina Avenue  
Unit 13  
Nashua, NH 03063 (US)

**Representative:** HGF  
HGF Limited  
1 City Walk  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 23 December  
2021 refusing European patent application No.  
14865570.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** S. Mangin  
**Members:** A. Wagner  
A. Jimenez

## **Summary of Facts and Submissions**

- I. The appeal was filed by the applicant against the decision of the examining division to refuse the European patent application No. 14865570.7 pursuant to Article 97(2) EPC.
  
- II. In the decision under appeal the examining division concluded that the main request of the application was not compliant with Article 84 EPC. Auxiliary requests 1, 2 and 3 were found to contravene the requirement of Article 123(2) EPC.  
With regard to the main request, the examining division held that claim 1 did not enable the skilled person to determine which technical features were necessary to perform the claimed function. In the annex to the summons to oral proceedings, the examining division raised additional objections regarding novelty, e.g. in view of JP 2005 230137 (D9).
  
- III. The appellant (applicant) requested to set aside the decision under appeal and to grant the European patent application on the basis of the main request, or as an auxiliary measure, on the basis of one of the auxiliary requests 1 to 3 underlying the impugned decision and filed again with the statement of grounds of appeal. Furthermore oral proceedings pursuant Article 116 EPC was requested.
  
- IV. After a communication of the Board under Rule 100(2) EPC dated 23 March 2023 stating that the examining division's decision was likely to be confirmed followed by summons to oral proceedings dated 25 April 2023, the appellant requested with letter dated 11 December 2023 a decision according to the state of the file and

announced that they will not attend the oral proceedings. Accordingly oral proceedings were canceled (Case Law, 10th Edition, III.C.4.3.2) and the Board decided in written proceedings.

V. Claim 1 of the **main request** reads as follows:

A functionally supportive pillow comprising a dynamically responsive combination of an inner core enclosing a bead material and an outer shell, wherein

(a) the inner core is defined by a first fabric material shaped into a pre-defined form capable of enclosing the bead material, wherein said first fabric consists of one or more synthetic fibers engineered to be stretchy and durable, which may be optionally treated to functionalize;

(b) the outer shell is defined by a second fabric shaped to contain the inner core enclosing the bead material, wherein said second fabric comprises one or more fibers engineered to be stretchy and durable;

(c) the bead material comprises a plurality of rounded particulates of polymeric foam capable of free flowing movement in the absence of constant pressure applied to the pillow, and

wherein the inner core is disposed inside of the outer shell, such that the combination of the inner core with the outer shell creates a dynamic response to applied pressure to the pillow for increased functional support of said pillow, rigidifying the bead material enclosed in the inner core in response to the application of the pressure to the pillow, and returning the bead material to free flowing in the absence of the pressure.

In **auxiliary requests 1 and 2**, the following amendment is made to the penultimate paragraph of claim 1:

"wherein the inner core is disposed directly inside of the outer shell, such that..."

**Auxiliary request 3** is based on auxiliary request 1. In features a) and b) of claim 1, the following features are added:

in a): "and is non-circular tricot fabric"

in b): "and is circular knitted fabric".

VI. The appellant's (applicant's) arguments may be summarized as follows:

The examining division misunderstood the "*free flowing*" movement of the beads, defined in the last feature of claim 1, as "*directed flow*".

"*Directed flow*" occurred upon pressure applied by the user. Then the pillow deformed by the active flow of beads outward therewith the pillow changing its shape, such as e.g. described in D9, figure 2 and paragraphs [0025, 0026, 0028, 0029].

However, the skilled person would understand "*free flowing*" in claim 1 to mean something that "*is able to move without anything stopping it*". Thus without pressure, the beads were free flowing, and when pressure was applied by the user, the beads rigidify, thus stop flowing. Hence, the concept was the inverse of "*directed flow*". With regard to the essential features required to produce this effect, no additional clarification would be required for the person skilled in the art. The definition of the "*dynamically responsive combination*" as claimed was clear to the skilled person.

The pillow disclosed in D9 was not claimed to provide -

or to be suitable to achieve - a dynamically responsive combination as claimed.

## **Reasons for the Decision**

### **1. Main request - Article 84 EPC**

1.1 The Board confirms the examining division's decision that claim 1 contravenes Article 84 EPC and agrees with the reasoning given under point 17.1 of the impugned decision.

1.2 According to the established case law of the boards of appeal, Article 84 EPC has to be interpreted as meaning not only that a claim must be comprehensible from a technical point of view, but also that it must define the object of the invention clearly, that is to indicate all the essential features thereof. An independent claim should explicitly specify all essential features needed to define the invention (G 1/04, OJ 2006, 334). The essential features should in particular comprise those which distinguish the invention from the prior art (Case Law, 10th Edition, II.A.3.2).

1.3 Independent claim 1 defines an inner core filled with bead material and an outer shell. The inner core is disposed inside of the outer shell, such that a specific effect is achieved. This effect is defined as creating a dynamic response to applied pressure to the pillow, whereby the bead material enclosed in the inner core rigidifies in response to the application of the pressure to the pillow, and returns to free flowing in the absence of the pressure.

- 1.4 The appellant argued, in particular, that the claimed effect - achieved by the combination of the inner core and the outer shell - was to be distinguished from the exact opposite behaviour known e.g. from D9 in which the beads flow while pressure is applied to the pillow - instead of rigidifying.
- 1.5 However should claim 1 indeed be directed to a pillow with a feature combination that achieves a specific effect not known from the prior art, then essential technical features of the pillow (e.g. properties of the beads, of the fabrics, of the degree of filling, etc.) are missing.
- 1.6 Claim 1 gives no information about what features relating to the composition of the pillow produce the claimed effect. Since the claimed effect allegedly differs from the prior art, it cannot be assumed that the technical features necessary to perform the described behaviour are generally known by the skilled person. The appellant also did not submit any arguments why the skilled person would know which technical features are needed.
- 1.7 Furthermore it is also not even clear from the application as originally filed which technical features actually contribute to the allegedly different behaviour.
- 1.8 As no technical features are defined in claim 1 by which the specific and allegedly different behaviour is achieved, claim 1 does not clearly define the matter for which protection is sought.

## 2. Auxiliary requests 1 and 2

2.1 Auxiliary requests 1 and 2 do not meet the requirements of Article 84 EPC for the same reasons as the main request. The amendments made to claim 1 do not overcome the clarity issue of the main request. It is noted that claim 1 of both requests is identical.

2.2 Claim 1 of auxiliary requests 1 and 2 differs from claim 1 of the main request in defining that the inner core is disposed "directly" inside of the outer shell.

The appellant argued that by the inclusion of the term "directly", it became clear that the specific combination of component materials which were in direct contact with each other, afforded the dynamic response to the applied pressure.

2.3 The Board does not agree. The appellant has not convincingly explained why and how the added features contribute to the claimed effect which is supposed to be different from the one disclosed in the prior art. Furthermore, the original application does not even literally disclose a direct disposition of the inner shell inside of the outer shell. It is thus neither derivable nor apparent from the original application how or why this feature could essentially result in the disputed effect.

2.4 Consequently, claim 1 still misses the essential features of the invention enabling the claimed effect (i.e. "*rigidifying the bead material enclosed in the inner core in response to the application of the pressure to the pillow, and returning the bead material to free flowing in the absence of pressure*").

### **3. Auxiliary request 3**

- 3.1 Claim 1 of auxiliary request 3 defines the inner core material as a "*non-circular tricot fabric*" and the outer shell material as a "*circular knitted fabric*".
- 3.2 The amendments made to claim 1 do not overcome the clarity issue of the main request. The appellant also did not argue that the added features would contribute to the allegedly different effect.
- 3.3 In the application, both materials for the inner core and the outer shell are not described as being essential for the specific effect. Instead the materials are advantageous, e.g. with regard to strength and durability, see e.g. page 14 of the application ("*in certain embodiments of the invention, the first fabric material is non-circular knitted fabric, wherein the non-circular knitting affords increased strength and durability of the combination of inner core with the outer shell*") and page 17 ("*In certain embodiments of the invention, the second fabric material is circular knitted fabric.*").
- 3.4 Consequently auxiliary request 3 does not meet the requirements of Article 84 EPC.

### **Order**

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

The appeal is dismissed.

The Registrar:

The Chair:



A. Voyé

S. Mangin

Decision electronically authenticated