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**Datasheet for the decision
of 29 October 2025**

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Language of the proceedings: EN

Title of invention:

WOVEN FABRIC HAVING THE APPEARANCE OF A FOAM COATED FABRIC,
AND METHOD FOR PRODUCING THE SAME

Patent Proprietor:

Sanko Tekstil Isletmeleri San. Ve Tic. A.S.

Opponent:

Troesch Scheidegger Werner AG

Headword:

Relevant legal provisions:

EPC Art. 56

EPC R. 80

Keyword:

Inventive step - (no) - obvious modification

Amendment occasioned by ground for opposition - (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1487/22 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 29 October 2025

Appellant: Sanko Tekstil Isletmeleri San. Ve Tic. A.S.
(Patent Proprietor) Organize Sanayi Bölgesi 3. Cadde
16400 Inegöl - Bursa (TR)

Representative: Gislon, Gabriele
Marietti, Gislon e Trupiano S.r.l.
Via Larga, 16
20122 Milano (IT)

Respondent: Troesch Scheidegger Werner AG
(Opponent) Schwäntenmos 14
8126 Zumikon (CH)

Representative: Schmid, Nils T.F.
SKM-IP PartGmbH
Oberanger 45
80331 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
29 March 2022 concerning maintenance of the
European Patent No. 3000920 in amended form.

Composition of the Board:

Chairman G. Pricolo
Members: M. Geisenhofer
O. Loizou

Summary of Facts and Submissions

- I. Appeals were filed by both the patent proprietor and the opponent against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 1A, the patent in suit met the requirements of the EPC.
- II. In coming to this decision, the Opposition division held that the main request (filed on 4 January 2022) was not allowable since it was based on amendments that were not occasioned by a ground of opposition (Rule 80 EPC).

They further held that the main request in version A (filed on 4 January 2022) extended beyond the content of the application as originally filed (Article 123(2) EPC).

- III. With letter dated 7 April 2025, the opponent withdrew their appeal such that the patent proprietor became the sole appellant and the opponent respondent.

- IV. Oral proceedings were held before the Board.

- (a) The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained in amended form based on one of the following requests:

main request and main request A filed during opposition proceedings on 4th January 2022;
main request B and main request BA filed with the reply to the opponent's appeal on 9th January 2023;
or

auxiliary request 1 filed during opposition proceedings on 4th January 2022.

(b) The board understands that the respondent, after having withdrawn their appeal, implicitly requested that the appeal of the patent proprietor be dismissed as no one attended the oral proceedings on their behalf.

V. Independent claim 1 according to the **main request** reads as follows:

"A woven double face fabric (1) having warp yarns (2) and weft yarns (3) providing a pattern whereby a warp yarn (2) floats over one or more weft yarns (3) to provide a corresponding over portion (5) and floats under one or more weft yarns to provide under portions (4) wherein in a repeat unit a first warp yarn (2') floats over at least three weft yarns on a first side of the fabric to provide a corresponding warp over portion (5), said warp yarn successively floating under one single weft yarn (3) to provide an under portion (4), whereby in said first warp yarn the total length of over portions is greater than the length of under portions, each of two warp yarns (2'' 2''') arranged adjacent to said first warp yarn (2') floats under at least three weft yarns to provide a corresponding warp under portion (4) on a second side of the fabric, said warp yarn successively floating over one single weft yarn (3) to provide an over portion (5) on said first side of the fabric, wherein the maximum length of each over portion (5) or each under portion (4) of a warp yarn is corresponding to 10 weft yarns, characterised in that all weft yarns are elastic yarns and the titer of the warp yarns is in the range Ne 10 to Ne 30 (~59.1 tex to 19.7 tex), each said over portion (5) of said first warp yarn (2') passes at

least three weft yarns and is followed by an under portion (4) passing one weft yarn in an N/1/N scheme, where N is an integer within 3 and 10, included."

Further independent claim 9 of the main request reads as follows:

"A woven double face fabric (1) having warp yarns (2) and weft yarns (3) providing a pattern whereby a warp yarn (2) floats over one or more weft yarns (3) to provide a corresponding over portion (5) and floats under one or more weft yarns to provide under portions (4) wherein in a repeat unit a first warp yarn (2') floats over at least three weft yarns on a first side of the fabric to provide a corresponding warp over portion (5), said warp yarn successively floating under one single weft yarn (3) to provide an under portion (4), each of two warp yarns (2'', 2''') arranged adjacent to said first warp yarn (2') floats under at least three weft yarns to provide a corresponding warp under portion (4) on a second side of the fabric, said warp yarn successively floating over one single weft yarn (3) to provide an over portion (5) on said first side of the fabric, wherein the maximum length of each over portion (5) or each under portion (4) of a warp yarn is corresponding to 10 weft yarns, characterised in that all weft yarns are elastic yarns and the titer of the warp yarns is in the range Ne 10 to Ne 30 (~59.1 tex to 19.7 tex), said fabric having a repeating unit of 5 warps and 10 wefts, being the warp pattern 1b/3a/1b/1a/3b/1a, 1b/1a/3b/1a/1b/3a, 1b/1a/1b/3a/1b/1a/2b, 2a/1b/1a/3b/1a/1b/1a and 3b/1a/1b/3a/1b/1a; wherein a is an under portion and b is an over portion."

The **main request in version A** differs from the main request only in that further independent claim 9 was omitted.

The **main request in version B** differs from the main request in that the expression "*each said over portion (5)*" used in the characterizing portion of claim 1 was replaced by "*each said over portions (5)*", i.e. a plural-s was added to the word "*portion*". The main request in version B contains a further independent claim 9 being identical to claim 9 of the main request.

The **main request in version BA** uses as the main request in version B in the characterizing portion of claim 1 the plural-s in the expression "*each said over portions (5)*". It differs from the version B only in that further independent claim 9 present in version B was omitted.

Claims 1 and 9 of **auxiliary request 1** differ from claims 1 and 9 of the main request in that both independent claims specify that the warp yarns are cotton yarns.

VI. The appellant's arguments (as far as they were relevant for the present decision) can be summarized as follows:

(a) The amendments to the main request remedy a lack of sufficiency of dependent claim 9, or, alternatively, a lack of novelty. The amendments hence are occasioned by a ground of opposition such that they comply with Rule 80 EPC.

(b) Same applies to auxiliary request 1.

(c) The subject-matter of claim 1 of the main request in any of versions A, B and BA is novel over document D1 and involves an inventive step when starting from D1 as closest prior art.

VII. The respondent's arguments (as far as they were relevant for the present decision) can be summarized as follows:

(a) Adding a second independent claim to the set of claims pursuant to the main request and auxiliary request 1 was not occasioned by a ground of opposition and hence should not be allowed.

(b) The subject-matter of claim 1 of the main request in the version A is not inventive when starting from document D1 as closest prior art.

(c) Same applies to the main request in the versions B and BA respectively.

Reasons for the Decision

Main Request

Amendments motivated by a ground of opposition

1. The amendments to the main request do not comply with Rule 80 EPC.

1.1 Granted claim 1 defines a fabric having a repeat unit with a first warp yarn floating over at least three weft yarns (to a maximum of ten) on one side of the fabric, followed by the warp yarn floating under one single weft yarn on the other side of the fabric, the first warp yarn hence having a total length of over portions that is greater than the length of under portions.

- 1.2 The set of claims according to the main request comprises two independent claims 1 and 9:
- 1.2.1 Claim 1 requires additionally to granted claim 1 that
- (a) all weft yarns are elastic yarns;
 - (b) the titer of the warp yarns is in the range Ne 10 to Ne 30; and
 - (c) the first warp yarn follows a N/1/N scheme, N being an integer within 3 and 10.

Feature (c) is in the Board's view not a further restriction since claim 1 as granted already defined a N/1/N repeat pattern with N being an integer within 3 and 10 in the preamble.

- 1.2.2 Claim 9 differs from granted claim 1 in that the feature "*first warp yarn has a total length of over portions that is greater than the length of under portions*" was omitted, whereas the claim additionally requires a particular warp pattern (1b/3a/1b/1a/3b/1a, 1b/1a/3b/1a/1b/3a, 1b/1a/1b/3a/1b/1a/2b, 2a/1b/1a/3b/1a/1b/1a and 3b/1a/1b/3a/1b/1a wherein a is an under portion and b is an over portion).

This particular weaving pattern stems from granted dependent claim 10.

- 1.3 The opposition division held that the main request did not comply with Rule 80 EPC since adding further independent claim 9 was not occasioned by a ground of opposition (cf. section 5 on pages 8 - 10 of the reasons for the decision).
- 1.4 The appellant disagreed and alleged that adding a second independent claim was necessary to remedy a lack of sufficiency under Article 100(b) EPC since the

skilled person was not able to resolve the contradiction between granted independent claim 1 and thereof dependent claim 10.

1.4.1 The Board agrees that there is a contradiction in the granted set of claims between claim 1 and dependent claim 10: Claim 1 requires that the first warp yarn has a length of over portions being greater than a length of under portions, whereas dependent claim 10 defines a weaving pattern having a length of over portions being identical to the length of under portions.

1.4.2 However, the patent still provides the skilled person with sufficient information to carry out the invention both pursuant to granted claim 1 and 10:

(a) Figures 1A and 1B, taken in combination with the passages of the description referring to these figures, disclose a "*preferred embodiment of the fabric of the invention*" (cf. page 3, line 26) which uses a first warp yarn (2') that floats over three weft yarns on a first (upper) side of the fabric to provide a corresponding warp over portion (5), said warp yarn successively floating under one single weft yarn (3) to provide an under portion (4), whereby in said first warp yarn the total length of over portions (here three) is greater than the length of under portions (here one).

The two warp yarns (2'', 2''') arranged adjacent to said first warp yarn (2') float under seven weft yarns to provide a corresponding warp under portion (4) on a second (under) side of the fabric, said warp yarn successively floating over one single weft yarn (3) to provide an over portion (5) on said first side of the fabric. The length of over

portions (here seven) is hence greater than the length of under portions (here one).

The patent in suit hence discloses an embodiment showing how the subject-matter of claim 1 can be put into practice.

- (b) The patent furthermore discloses in figures 7A and 7B a weaving pattern as defined in granted claim 10, which shall form part of the invention as set out in paragraph [0014] (*"Fig. 7A-7B show another embodiment of the fabric of the invention"*).

The patent in suit hence also discloses an embodiment showing how the subject-matter of claim 10 can be put into practice.

- 1.4.3 The discrepancy between the weaving pattern defined in granted claim 1 and thereof dependent claim 10 is hence not a matter of sufficiency. The amendment hence cannot be occasioned by the ground of opposition under Article 100(b) EPC.
- 1.4.4 In the Board's view, the contradiction between granted claims 1 and 10 is a matter of clarity. Clarity, however, is not a ground of opposition.
- 1.5 The appellant further argued that the amendment also aimed at remediating a lack of novelty. This required two independent claims to cover two distinct embodiments of the invention that could not be claimed in one single independent claim.
 - 1.5.1 Granted claim 1 inter alia requires that in the first warp yarn, the total length of over portions is greater than the length of under portions. Independent claim 9

of the main request does no longer contain this restriction but allows for both lengths being identical. Claim 9 of the main request is hence not a restriction of granted claim 1 but only seeks to remove the above mentioned contradiction between claims 1 and 10 as granted, i.e. the amendment made only serves the purpose of removing a lack of clarity without restricting the claimed subject-matter.

1.5.2 The amendment is hence not occasioned by the ground of opposition under Article 100(a) EPC either.

1.6 The Board hence sees no reasons why it should deviate from the opposition division's decision with regard to the main request.

Main Request - Version A

Inventive Step

2. The subject-matter of claim 1 pursuant to the main request in version A is rendered obvious when starting from document D1 as closest prior art.

2.1 Document D1 concerns producing a fabric and discloses in figure 11 an example of a weaving pattern. The embodiment of figure 11 is further described as "example 6" in paragraphs [0144] - [0150] of the description.

The fabric is a woven fabric (as any fabric disclosed in D1, cf. paragraph [0001]) and implicitly has two faces. As can be seen in figure 11, the fabric has weft yarns (referred to as "composite yarns A and B" in the caption under the weaving pattern) and warp yarns (referred to as "false-twist textured yarn") providing

a pattern in which each warp yarn floats over one or more weft yarns to provide a corresponding over portion (represented in the scheme as white square) and floats under one or more weft yarns to provide under portions (represented in the scheme as black square).

The weaving pattern comprises in the lower right corner a zone wherein in a repeat unit a first warp yarn floats over three weft yarns on a first side of the fabric to provide a corresponding warp over portion, said warp yarn successively floating under one single weft yarn to provide an under portion, whereby in said first warp yarn the total length of over portions (three white squares) is greater than the length of under portions (one black square).

Each of two warp yarns arranged adjacent to said first warp yarn follow in inverted pattern, i.e. they float under three weft yarns to provide a corresponding warp under portion on a second side of the fabric, said warp yarns successively floating over one single weft yarn to provide an over portion on said first side of the fabric.

The length of each over portion or each under portion of a warp yarn is thus at most three and therefore less than 10 weft yarns.

Each of said over portions of said first warp yarn passes three weft yarns and is followed by an under portion passing one weft yarn in an N/1/N scheme, where N is 3, hence an integer within 3 and 10, included.

- 2.2 The appellant alleged that the weaving pattern of figure 11 would not fall under claim 1 since it lacked a repeat unit with at least three over portions in all

zones of the weaving pattern. They considered the weaving pattern of figure 11 to use in the left zone and in the upper zone of figure 11 a repeat unit which warp yarns float over only two weft yarns. The repeat unit of figure 11 thus would not fulfil the condition required by claim 1 that the N in the N/1/N scheme is at least three.

- 2.2.1 The Board notes that the claimed subject-matter pursuant to claim 1 is not restricted to a fabric having one single repeat unit only. The wording of claim 1 does not exclude that further repeat units are used within one and the same fabric, i.e. that the fabric has several zones with different weaving patterns.
- 2.2.2 Document D1 discloses in figure 11 a fabric having two distinct zones whereby the zone in the lower right corner has a repeat unit in which the warp yarns are arranged in a N/1/N scheme with N equals three. The weaving pattern of this zone hence anticipates the weaving pattern defined in claim 1.
- 2.2.3 In this context, the term "*each said over portion (5)*" used in claim 1 refers to the over portions of this repeat unit and not to any of the over portions of the fabric, as alleged by the appellant.
- 2.3 The appellant further argued that D1 was a double-layered fabric such that the first warp yarn following the weaving pattern of figure 11 did not extend from the upper side of the first layer to the lower side of the second layer but only to the inner side of the first layer facing the second layer, hence not having an under portion on the second side of the fabric. Following the same reasoning, the adjacent warp yarns

would not be provided with over portions on the first side of the fabric.

The appellant deduced in particular from paragraphs [0013] and [0086] of D1 that the fabric disclosed in figure 11 is a double-layered fabric.

They further argued that the weaving pattern of figure 11 of D1 can only be carried out when the fabric comprises two layers. As proof of this allegation, the appellant referred to the following pieces of evidence and explicitly requested an explanation in the present decision (see written request filed during oral proceedings as annexed to the minutes) in view on how the disclosure of these documents influences the understanding of document D1:

- A1 Article "*Investigation of Mechanical and Utility Properties of Two-Layer Cotton Woven Fabrics*"
- A2 Article "*The Construction Principle of Double Cloth and Its Properties*"
- D2 CN 102268764 A
- D21 Extract from "*Lexikon der Gewebe*"
- D29 Extract from "*Engineering textiles*"

2.3.1 The Board notes that paragraph [0013] of D1 refers to a fabric having "*a multi-ply structure having two or more plies*". In paragraph [0086], the wording of paragraph [0013] is repeated such that this passage does not provide additional information to paragraph [0013].

(a) The appellant did not dispute that a multi-ply fabric or multi-ply structure in the usual meaning of the expression in the field of textiles is a fabric that is produced from a composite yarn which

consists of a plurality ("multi") of different yarns that are twisted together before weaving the fabric. This allows to achieve particular characteristics of the fabric by combining the individual characteristics of the yarns forming the composite yarn.

- (b) Document D1 refers to a two-ply fabric or structure in e.g. paragraph [0034] stating that the composite yarn (A) is formed from yarns (1) and (2).
- (c) Such a composite yarn is in particular also described in paragraph [0012] just before the passage cited by the appellant in paragraph [0013]: *"composite yarn (A) ... formed from a plurality of individual fibers"*.

In view of paragraph [0012], the Board concludes that paragraph [0013] also relates to a fabric manufactured from yarns, each of which comprises a combination of multiple distinct yarns that have been twisted together. This would coincide with the usual meaning of the expression *"multi-ply structure"* used in paragraph [0013].

- (d) The appellant alleged that D1 was a translation from a Japanese document whereby this translation was obviously incorrect. They considered the expression *"multi-ply"* correctly translated to refer to a plurality of layers.
 - (i) In the absence of a certified translation of the document forming basis for D1, the translation provided in the appellant's letter dated 29 September 2025 starting on page 2 (*"we have obtained the human*

translation of the relevant paragraphs, as follows:") cannot be considered to be acceptable as evidence before the Board such that the document forming basis for D1 discloses a fabric with two layers.

In particular, the patent proprietor did not furnish the Board with the qualifications of the alleged translator to do this translation.

(ii) Furthermore, the appellant did not file the Japanese document from which D1 originates.

(iii) The Board can hence only base their decision on document D1 in the form as on file as the opposition did in the decision under appeal.

2.3.2 None of the figures of D1 shows a fabric having a multi-layer structure and no other passage of the description mentions two (or more) layers of fabric. The expression "layer" is not used in D1.

Figure 11 does in particular not distinguish different layers of the fabric, contrary to e.g. document A1 which refers in the weaving pattern shown in figure 6 to an upper layer and to a bottom layer.

2.3.3 The Board furthermore does not share the appellant's view that the weaving pattern of figure 11 of D1 can only be obtained with two layers of fabric as allegedly demonstrated by documents A1, A2, D2, D21 and D29, respectively.

- (a) Document A1 discloses a weaving pattern being similar to the weaving pattern of the zone in the lower right corner of figure 11 of D1. It is agreed that A1 uses a double-layer fabric as clearly indicated in figure 6 (cf. upper layer g and bottom layer d).

However, this is not a proof that a weaving pattern as shown in figure 11 of D1 can only be produced with two layers of fabric. There is no technical reason apparent why the weaving pattern of figure 11 of D1 cannot be used to produce a fabric having one layer only. On the contrary, the patent in suit itself shows in e.g. figures 1A and 1B that warp yarns floating over several weft yarns but subsequently floating only under one single weft yarn can also be carried out in a single layer, such that the patent in suit itself refutes the appellant's allegation.

Use of a double-layer structure for the fabric is hence possible (as shown in A1) but not the only way of weaving a fabric with the weaving pattern of figure 11, i.e. in a 1/N/1 repeat unit. It is hence not possible to deduce from A1 that the weaving pattern of figure 11 of D1 will inevitably result in a double-layer fabric.

- (b) The same applies to A2 and D2. Albeit these documents show the same weaving pattern as in the lower right zone of figure 11 of D1, they do not prove that such a pattern necessarily requires two distinct layers of fabric.
- (c) D21 discloses again a weaving pattern with a 1/N/1 repeat unit. However, it does not disclose use of

two distinct layers, in particular not that it is compulsory that two distinct layers must be present when using the weaving pattern of figure 11 of D1.

- (d) Document D29 discloses on page 277 a definition of a double-faced fabric, of a double-weave fabric and a double-cloth fabric. However, it does not provide a definition of a double-ply fabric or a multi-ply structure as cited in paragraphs [0013] and [0086] of D1.

2.3.4 The Board hence is convinced that the weaving pattern shown in the lower right corner of figure 11 of D1 results in a fabric having one layer only.

2.4 The subject-matter of claim 1 therefore differs from the fabric disclosed in D1 only in that

- all weft yarns are elastic yarns; and
- the titer of the warp yarns is in the range Ne 10 to Ne 30 (~59.1 tex to 19.7 tex).

2.4.1 Using flexible weft yarns is obvious.

- (a) Document D1 intends to produce a "*stretchable composite fabric*" which is achieved by choosing stretchable yarns for the composite yarns (A and B) used as warp yarns for weaving the fabric (cf. paragraph [0009]). The expression "stretchable" is considered to be a synonym to flexible.
- (b) With regard to the weft yarns, D1 remains silent on any particular characteristics of the yarns used therefore.

However, it is obvious for the skilled person to use weft yarns that are flexible to ensure that the

fabric can be stretched in both directions of the fabric and not only in the direction of the warp yarns.

2.4.2 Using a titer falling within the range of Ne 10 to Ne 30 is rendered obvious by D1 itself.

(a) D1 suggests in various passages (e.g. paragraph [0061]) to use composite yarns with a titer falling within the range given in claim 1.

(b) The skilled person would hence use such a titer also for the warp yarns of example 6 and figure 11.

2.4.3 The skilled person hence arrives at the subject-matter of claim 1 of the main request in version A without inventive step.

Main Request - Version B and BA

Inventive Step

3. The subject-matter of claim 1 pursuant to the main request in the versions B and BA lacks an inventive step (Article 56 EPC).

3.1 Claim 1 reads identical in both version B and version BA and differs from claim 1 of the main request in version A only in that the expression "*each said over portion (5)*" used in the characterizing portion of claim 1 was replaced by "*each said over portions (5)*", i.e. a plural-s was added to the word "*portion*".

3.2 As explicitly confirmed by the appellant during oral proceedings before the Board, adding the plural-s does not result in an amendment of the claimed subject-

matter but is only a linguistic correction. The claimed subject-matter remains identical with the subject-matter claimed in version A of the main request.

- 3.3 The argumentation as set out above with regard to inventive step of claim 1 of the main request in version A hence also applies to claim 1 in the versions B and BA.

Auxiliary request 1

Amendments motivated by a ground of opposition

4. The amendments to the auxiliary request 1 do not comply with Rule 80 EPC.
- 4.1 The set of claims pursuant to the auxiliary request 1 comprises two independent claims 1 and 9. These independent claim differ from the independent claims of the main request only in that it is specified that the warp yarns are cotton yarns.
- 4.2 For the reasons provided with regard to the main request, introducing two independent claims cannot be regarded as being occasioned by a ground of opposition such that the amendments to auxiliary request 1 do not comply with Rule 80 EPC either.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



M. Schalow

G. Pricolo

Decision electronically authenticated