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**Datasheet for the decision  
of 11 June 2024**

**Case Number:** T 2094 / 22 - 3.2.07

**Application Number:** 10700894.8

**Publication Number:** 2376709

**IPC:** E01C13/08, D01D5/253

**Language of the proceedings:** EN

**Title of invention:**

ARTIFICIAL GRASS FIBRE AND ARTIFICIAL LAWN COMPRISING SUCH A  
FIBRE

**Patent Proprietor:**

Ten Cate Thiolon B.V.

**Opponent:**

Saudi Company for Mfg. Carpet Materials

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(c), 123(2)

RPBA 2020 Art. 13(2)

**Keyword:**

Amendments - added subject-matter (yes)

Late-filed request - submitted during oral proceedings -  
admitted (no)

**Decisions cited:**

**Catchword:**



# Beschwerdekkammern

## Boards of Appeal

## Chambres de recours

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Case Number: T 2094/22 - 3.2.07

### D E C I S I O N of Technical Board of Appeal 3.2.07 of 11 June 2024

**Appellant:** Saudi Company for Mfg. Carpet Materials  
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**Decision under appeal:** Decision of the Opposition Division of the European Patent Office posted on 11 July 2022 rejecting the opposition filed against European patent No. 2376709 pursuant to Article 101(2) EPC.

#### Composition of the Board:

**Chairwoman:** A. Beckman  
**Members:** V. Bevilacqua  
Y. Podbielski

## **Summary of Facts and Submissions**

- I. An appeal was filed by the opponent against the decision of the opposition division to reject its opposition against European patent No. 2 376 709.
- II. The following document is referred to in the present decision:

D7: application PCT/NL2010/000004 on which the contested patent is based (English translation).
- III. In preparation for the oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA according to which the appellant convincingly demonstrated that the appealed decision had to be set aside, and the patent in suit had to be revoked.

This was because the ground for opposition under Article 100(c) EPC was likely to prejudice the maintenance of the patent as granted, and none of the first to eighth auxiliary requests seemed to comply with the requirements of Article 123(2) EPC.
- IV. The patent proprietor reacted to the above mentioned communication with letter of 11 April 2024, filing a new first auxiliary request.

The opponent filed a response thereto with letter of 30 April 2024.

V. Oral proceedings before the board took place on 11 June 2024.

The first auxiliary request filed with letter of 11 April 2024 was replaced, in the course of the oral proceedings, by a new first auxiliary request.

At the conclusion of the proceedings, the decision was announced.

Further details of the oral proceedings can be found in the minutes thereof.

VI. The parties' final requests are as follows:

for the appellant (opponent):

- that the decision under appeal be set aside and
- that the patent be revoked in its entirety.

for the respondent (patent proprietor):

- that the appeal be dismissed and the patent thus be maintained as granted (main request),  
alternatively, if the decision is set aside,
  - that the patent be maintained in amended form on the basis of the first auxiliary request filed during the oral proceedings before the board, or on the basis of one of the second to eighth auxiliary requests filed on 4 August 2021.

VII. The arguments of the parties are dealt with in detail in the reasons for the decision.

VIII. Claim 1 of the **main request**, with the feature identification used in the appealed decision, and with the features added with respect to claim 1 as

originally filed (see D7) in bold (emphasis added by the Board), reads as follows:

- a) A synthetic fibre (10)
- b) of the monofilament type for use in an artificial lawn,
- c) which synthetic fibre has a width greater than the thickness of the synthetic fibre,
- d) said synthetic fibre being provided with a thickened part (12a, 12b) at its free ends, seen in transverse direction,
- e) and having a curved section
- f) and a thickness/width ratio such that the synthetic fibre will buckle locally upon being subjected to an external load,  
**characterised in that**
- g) **the thickness of the central part (11) of the synthetic fibre between the thickened parts is a constant (D)**
- h) **and is between 0.05 mm and 0.15 mm,**
- i) **the width of the synthetic fibre is between 0.5 mm and 1.5 mm,**
- j) **and wherein the synthetic fibre is made of polyethylene.**

IX. Claim 1 of the **first auxiliary request**, filed during the oral proceedings before the board, reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A synthetic fibre (10) of the monofilament type for use in an artificial lawn **and having a cross-sectional shape as depicted in Figure 1 or Figure 2**, which synthetic fibre has a width greater than the thickness of the synthetic fibre, said synthetic fibre being provided with a thickened part (12a, 12b) at its free ends, seen in transverse direction, and having a curved section and a thickness/width ratio such that the

synthetic fibre will buckle locally upon being subjected to an external load, characterised in that the **fibre is an extruded monofilament having a** thickness of the central part (11) of the synthetic fibre between the thickened parts **that** is a constant (D) **in the extrusion direction** and is between 0.05 mm and 0.15 mm, the width of the synthetic fibre is between 0.5 mm and 1.5 mm, and wherein the synthetic fibre is made of polyethylene."

X. Claim 1 of the **second auxiliary request** corresponds to claim 1 of the main request.

XI. Claim 1 of the **third auxiliary request** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A synthetic fibre (10) of the monofilament type for use in an artificial lawn, which synthetic fibre has a width greater than the thickness of the synthetic fibre, said synthetic fibre being provided with a thickened part (12a, 12b) at its free ends, seen in transverse direction, and having a curved section and a thickness/width ratio such that the synthetic fibre will buckle locally upon being subjected to an external load, **the synthetic fibre having a neutral line (L) with identical amounts of synthetic material being present on either side of the neutral line and wherein the thickened parts are evenly distributed relative to the neutral line**, characterised in that the thickness of the central part (11) of the synthetic fibre between the thickened parts is a constant (D) and is between 0.05 mm and 0.15 mm, the width of the synthetic fibre is between 0.5 mm and 1.5 mm, and wherein the synthetic fibre is made of polyethylene."

XII. Claim 1 of the **fourth auxiliary request** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A synthetic fibre (10) of the monofilament type for use in an artificial lawn, which synthetic fibre has a width greater than the thickness of the synthetic fibre, said synthetic fibre being provided with a thickened part (12a, 12b) at its free ends, seen in transverse direction, and having a curved section and a thickness/width ratio such that the synthetic fibre will buckle locally upon being subjected to an external load, characterised in that the thickness of the central part (11) of the synthetic fibre between the thickened parts is a constant (D) and is between 0.05 mm and 0.15 mm, the width of the synthetic fibre is between 0.5 mm and 1.5 mm, **and wherein** the synthetic fibre is made of polyethylene, **and wherein said thickened part is round and the transition (13a, 13b) from the synthetic fibre to the thickened part is curved.**"

XIII. Claim 1 of the **fifth auxiliary request** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A synthetic fibre (10) of the monofilament type for use in an artificial lawn, which synthetic fibre has a width greater than the thickness of the synthetic fibre, said synthetic fibre being provided with a thickened part (12a, 12b) at its free ends, seen in transverse direction, and having a curved section and a thickness/width ratio such that the synthetic fibre will buckle locally upon being subjected to an external load, characterised in that the thickness of the central part (11) of the synthetic fibre between the

thickened parts is a constant (D) and is between 0.05 mm and 0.15 mm, the width of the synthetic fibre is between 0.5 mm and 1.5 mm, **and** wherein the synthetic fibre is made of polyethylene **and in that the radius of the curved section lies between 0.3 mm and 0.7 mm.**"

XIV. Claim 1 of the **sixth auxiliary request** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A synthetic fibre (10) of the monofilament type for use in an artificial lawn, which synthetic fibre has a width greater than the thickness of the synthetic fibre, said synthetic fibre being provided with a thickened part (12a, 12b) at its free ends, seen in transverse direction, and having a curved section and a thickness/width ratio such that the synthetic fibre will buckle locally upon being subjected to an external load, characterised in that the thickness of the central part (11) of the synthetic fibre between the thickened parts is a constant (D) and is between 0.05 mm and 0.15 mm, the width of the synthetic fibre is between **0.5-1.0** mm and 1.5 mm, and wherein the synthetic fibre is made of polyethylene."

XV. Claim 1 of the **seventh auxiliary request** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A synthetic fibre (10) of the monofilament type for use in an artificial lawn, which synthetic fibre has a width greater than the thickness of the synthetic fibre, said synthetic fibre being provided with a thickened part (12a, 12b) at its free ends, seen in transverse direction, and having a curved section and a thickness/width ratio such that the synthetic fibre

will buckle locally upon being subjected to an external load, characterised in that the thickness of the central part (11) of the synthetic fibre between the thickened parts is a constant (D) and is between 0.05 mm and 0.15 mm, the width of the synthetic fibre is between 0.5 mm and 1.5 mm, **and** wherein the synthetic fibre is made of polyethylene **and in that the synthetic fibre has an omega shape.**"

XVI. Claim 1 of the **eight auxiliary request** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A synthetic fibre (10) of the monofilament type for use in an artificial lawn, which synthetic fibre has a width greater than the thickness of the synthetic fibre, said synthetic fibre being provided with a thickened part (12a, 12b) at its free ends, seen in transverse direction, and having a curved section and a thickness/width ratio such that the synthetic fibre will buckle locally upon being subjected to an external load, characterised in that the thickness of the central part (11) of the synthetic fibre between the thickened parts is a constant (D) and is between 0.05 mm and 0.15 mm, the width of the synthetic fibre is between 0.5 mm and 1.5 mm, and wherein the synthetic fibre is **an extruded solid monofilament**, made of polyethylene."

## **Reasons for the Decision**

1. Claim 1 of the main request  
Feature g) - Lack of original disclosure
- 1.1 The opposition division (see appealed decision, II. 1.2.1) found that the added feature according to which the thickness of the central part (11) of the synthetic fibre is a constant (D) (feature g), see section VIII above) was unambiguously disclosed to the skilled person, when the common general knowledge about fibre extrusion processes leading to fibres with constant width and thickness was taken into account (page 5, lines 9-14 of the appealed decision).
- 1.2 The appellant replies that, contrary to the above findings of the appealed decision, it is not possible to conclude, on the basis of common general knowledge, that D7 unambiguously discloses that the thickness of the central part (D) is a constant.

The opposition division was wrong in finding that feature g) is originally disclosed in D7 already because the cross section of an extruded fibre does not change along the extrusion direction thereof.

The uncontested fact that an extruded fibre has a constant cross-sectional shape along the extrusion direction does not inevitably result in the claimed feature that the thickness of the central part of this synthetic fibre between the thickened parts (and therefore in a direction perpendicular to the extrusion direction) is a constant.

There is no passage in the originally filed description (reference will be made to document D7) from which it can be derived, directly and unambiguously, that the thickness of the central part is a constant within a single cross-section at a certain point of the fibre, i.e. over the width of the fiber.

In its argumentation the appellant also refers to a "total thickness D" (statement of grounds of appeal, page 6, first paragraph) to explain that the application as filed does not disclose directly and unambiguously that the thickness of the central part necessarily must be a constant.

- 1.3 The respondent replies that the ground for opposition under Article 100(c) EPC does not hold against claim 1 of the main request, because the description and the drawings (in particular figure 1) of D7 provide an unambiguous disclosure to the skilled person that the thickness D of the central section is a constant.
- 1.3.1 The appellant's argument based on the "total thickness" ignores that "D" refers, in D7, only to the thickness of the central section 11 depicted in figure 1. There is also no reference to such "total thickness" in the patent in suit or in D7. This argument, being clearly based on a wrong interpretation of figure 1 of D7 should therefore be dismissed.
- 1.3.2 The description's consistent reference to "the thickness" in the singular indicates that in D7 there is only one, single, constant thickness of the central part of the fibre (see page 4, line 31, and page 7, line 4, of D7).

Page 7, lines 12-14, of D7 clarifies that the central part of the fibre does not comprise the thickened parts 12a-12b, which are at the sides thereof.

There is therefore no suggestion at all in D7 that the thickness of the central portion could be variable in any way.

The above interpretation is also consistent with the originally filed Dutch text of D7, where the word "gelegen" is used in the passages corresponding to page 4, lines 6 to 9, and page 7, lines 4 to 11, of D7, whose proper translation into English is not "ranges", as in D7, which suggests a variable thickness, but rather "lies", which discloses that there is a single value thereof.

A skilled reader would therefore see, also in these passages, the disclosure of a constant thickness of the central part of the fibre, whose value is comprised (lies) within the boundaries indicated in D7.

1.3.3 Figures 1 and 2 of D7 are not mere schematic depictions of the cross section of the fibre, showing only the essential structural and functional aspects of the fibre, but rather exemplary ones, providing concrete, representative examples of the fibre, defining a shape of the fibre disclosed in D7.

Figures 1 and 2 disclose feature g), because they clearly show that the central part of the synthetic fibre has a constant thickness D.

1.3.4 The expression "constant thickness" should be construed, in accordance with established case law, as referring to a thickness which is substantially

constant within the manufacturing tolerances which are typical in the technical field of document D7.

On the basis of the above interpretation, allowing for some variability of the "constant thickness", feature g) is originally disclosed in D7.

1.3.5 The interpretation of D7 taken by the examining division when they amended the claims to require constant thickness, considering this an essential feature for the definition of the fibre by a thickness/width ratio (see the communication under Rule 71(3) EPC), is the correct one.

D7 in fact constantly refers to the thickness/width ratio, and such a ratio cannot be clearly defined without a constant thickness.

1.4 The board, while agreeing with the respondent that the appellant's argument based on "total thickness" is not convincing, concurs with the remaining arguments of the appellant.

On this basis the board concludes that feature g) is not disclosed in D7, and that the appealed decision on this specific issue (see appealed decision, II.1.2.1, pages 4 to 7) is not correct.

1.4.1 Contrary to the findings of the opposition division, feature g) is not unambiguously disclosed in D7 already because it is common general knowledge that fibre extrusion processes lead to fibres with constant thickness in the extrusion direction.

The uncontested fact that an extruded fiber has a constant cross-sectional shape along the extrusion

direction does not inevitably result in the claimed feature that the thickness of the central part of the synthetic fibre of D7, between the thickened parts, is also constant.

Instead, whether or not the thickness is constant will depend upon the design of the spinneret through which the fibre is extruded.

1.4.2 The passages of the description of D7 identified by the respondent do not provide any direct and unambiguous disclosure of feature g) meeting the requirements of the so-called "gold standard" under established jurisprudence (Case Law of the Boards of Appeal, 10th edition 2022, CLB in the following, II.1.3.1.1).

Specifically, the respondent refers to page 4, lines 6 to 9, and page 7, lines 4 to 11, of D7 respectively reading:

- *"According to the invention, in order to realise a fibre exhibiting a desired flexural stiffness but also a certain degree of flexibility so as to be able to take up the loads during play, the thickness of the synthetic fibre ranges between 0.05 mm and 0.15 mm."*
- *"The thickness of the synthetic fibre, indicated by reference D, preferably ranges between 0.05 mm and 0.15 mm, preferably between 0.08 mm and 0.10 mm. The width of such a fibre in that case ranges between 0.5 mm and 2.5 mm, preferably between 1.0 mm and 1.5 mm. It has been found that such a width-thickness ratio, with the fibre preferably being made of polyethylene, exhibits the above-described effect, with the fibre not distorting permanently"*

*under the influence of an external load but buckling locally, which buckling must therefore take place within the elastic range indicated by reference X in figure 3."*

These passages, referring to a thickness which "ranges" between two extreme values, clearly do not exclude embodiments in which said thickness is variable.

Similar conclusions would apply if, as the respondent submitted, these passages should be corrected to respectively read (amendments are in bold, emphasis added by the board) :

- *"According to the invention, in order to realise a fibre exhibiting a desired flexural stiffness but also a certain degree of flexibility so as to be able to take up the loads during play, the thickness of the synthetic fibre **ranges lies** between 0.05 mm and 0.15 mm."*
- *"The thickness of the synthetic fibre, indicated by reference D, preferably **ranges lies** between 0.05 mm and 0.15 mm, preferably between 0.08 mm and 0.10 mm. The width of such a fibre in that case ranges between 0.5 mm and 2.5 mm, preferably between 1.0 mm and 1.5 mm. It has been found that such a width-thickness ratio, with the fibre preferably being made of polyethylene, exhibits the above-described effect, with the fibre not distorting permanently under the influence of an external load but buckling locally, which buckling must therefore take place within the elastic range indicated by reference X in figure 3."*

Replacing "ranges" with "lies" also does not result in

feature g) being disclosed because it also does not exclude embodiments in which the thickness of the central part of the fibre is variable within the ranges indicated in these passages.

The respondent's references to page 4, line 31, and page 7, line 4, of D7 mentioning "the thickness" in the singular and to page 7, lines 12 to 14, explaining that the central part of the fibre does not comprise the thickened parts 12a-12b are also not decisive in that respect.

It is true that, on the basis of the above passages, D7 does not exclude that the thickness of the central portion of the fibre may be constant, but still, as established by the case law (CLB, I.C.4.1.), the mere fact that information in the prior art did not rule out a particular feature is not enough to establish that this feature is disclosed.

In other words, general information could not anticipate a more specific technical feature.

Therefore, contrary to what has been submitted by the respondent, the lack of disclosure in D7 that the thickness of the central part could be variable, does not correspond to a positive disclosure of the opposite feature, i.e. that this thickness is constant.

1.4.3 Figures 1 and 2 of D7 also do not provide any direct and unambiguous disclosure of feature g).

There is no basis in D7 supporting the respondent's allegation that these figures should be considered as exemplary depictions, and not as schematic drawings, as it is customary in patent documents.

In accordance with established case law (CLB, II.E. 1.13), the fact that a constant thickness of the central part of the fibre may be visually identified in figure 1 is not sufficient for concluding that this particular feature is effectively disclosed in D7, due to the schematic nature of this drawing.

Features shown solely in a drawing form part of the state of the art when a person skilled in that art is able, in the absence of any other description, to derive a technical teaching from them (CLB, I.C.4.6).

In the present case, as no technical teaching whatsoever related to a constant thickness of the central part of the fibre can be found in the description of D7 (see point 1.4.2 above), it is not possible to conclude that this specific detail of the schematic representation is actually meant to correspond to a technical feature of the synthetic fibre, rather than being merely an expression of the draughtsman's artistic freedom.

1.4.4 The respondent's allegation that feature g) does not represent an unallowable amendment because the examining division found (see communication under Rule 71(3) EPC), that a constant thickness is essential for the definition of the fibre by a thickness/width ratio, is also not convincing.

This is because there is no defined value in D7 of the thickness/width ratio (see page 3, line 23; page 5, line 16; page 6, line 7; page 7, lines 8 and 31), but rather the teaching that said thickness/width ratio should be such that the synthetic fibre will buckle locally upon being subjected to an external load.

Clearly such a ratio, allowing buckling, can also be defined without a constant thickness.

In addition the board notes that it is established case law that it was the respondent's responsibility, as applicant, to define the text on the basis of which it requested the patent in suit to be granted.

According to Article 113(2) EPC, which guarantees the fundamental principle of party disposition, the examining division could only have decided upon a text submitted to it, or agreed, by the respondent.

- 1.5 Consequently, feature g) of claim 1 of the main request, not being disclosed in D7, extends beyond the content of the application documents as originally filed.

The ground of opposition under Article 100(c) EPC thus prejudices maintenance of the patent as granted.

2. Auxiliary request 1

- 2.1 The respondent submitted a new first auxiliary request during the oral proceedings before the board to overcome the objection of added subject- matter discussed above in relation to the main request.

The respondent argued that the filing thereof was in particular triggered by the board's preliminary opinion and the interpretation, first introduced with the communication under Article 15 (1) RPBA, of two passages of D7 which were not correctly translated from Dutch into English.

According to the respondent no new issues are raised with this new first auxiliary request. The reference to the figures in claim 1 is allowable, according to the case law, because in the present case it is absolutely necessary to rely on the specific shape, depicted in figures 1 or 2, to overcome the objection of added subject matter directed against feature g).

- 2.2 The board is not convinced that the respondent's argumentation justifies the admission of this new request into appeal proceedings.
- 2.2.1 The argument that the new first auxiliary request is a justified reaction to an alleged new interpretation introduced by the board's preliminary opinion is not convincing, for the following reasons.

This is firstly because the fact that the board specifically highlighted the term "ranges", which, according to the respondent, should be replaced by "lies", when quoting verbatim from D7 does not introduce any new interpretation of the passages on page 4, lines 6 to 9, and on page 7, lines 4 to 11, of D7.

On the contrary, the board's preliminary opinion merely highlights that the literal wording found in the description supports the position of the appellant according to which feature g) is not originally disclosed (see point 1.4.2 above).

As there is no new interpretation of D7, no exceptional circumstances in the sense of Article 13(2) RPBA can be acknowledged on that basis.

2.2.2 In addition the board notes that while the respondent argued that the board had introduced a new interpretation of D7 by focusing on "ranges", and that "ranges" should be replaced by "lies", claim 1 of the new first auxiliary request contains no amendment which addresses this "ranges"/"lies" issue. In fact, claim 1 comprises new features such as "the fibre is an extruded monofilament" and "in the extrusion direction".

In a reaction to the "ranges"/"lies" issue, one would expect all amendments to directly address this particular language, as it was done in claims 5 to 7 of this request.

The amendments made to claim 1 are therefore clearly unrelated to the alleged new interpretation of the board.

In the absence of any causal link between the board's alleged new interpretation and the actual amendments made to claim 1 of the first auxiliary request, the board is not convinced that the respondent justified with cogent reasons exceptional circumstances for admitting the first auxiliary request.

On the contrary, the new first auxiliary request seems to be an attempt to reformulate the respondent's case and to introduce an amendment of the respondent's appeal case in reaction to the board's preliminary opinion in the last stage of the proceedings.

2.2.3 In addition, the appellant provided compelling reasons for not admitting the new first auxiliary request under Article 13(2) RPBA, noting that the objection of lack of basis of feature g) and in particular of the feature

of constant thickness of the central part of the fibre, was not first raised in the statement of grounds of appeal (see point 2.4.1), but already under discussion in opposition proceedings (see appealed decision, II. 1.2.1).

Therefore, the new first auxiliary request, specifically drafted to overcome this objection could and should have been filed during opposition or at the latest with the reply to the statement setting out the grounds of appeal.

2.2.4 In addition, auxiliary request 1 introduces new issues into the discussion, because no explanation has been given for deleting of "bending" from "bending radius" in claim 5.

In this context the board notes that there is no mention at all of a generic "radius" in D7, but only of a bending radius (see claim 5; page 8, line 4; page 6 lines 6 and 7; page 4, lines 4 and 33, of D7).

2.2.5 As a consequence of the above, there are no exceptional circumstances in the sense of Article 13(2) RPBA, and auxiliary request 1 is not admitted into the appeal proceedings.

3. Auxiliary request 2 to 8 - Article 123(2) EPC

When discussing auxiliary requests 2 to 8 in its reply to the statement setting out the grounds for appeal (see page 10 of the reply), the respondent did not provide any explanation as to why any of the amendments made to claim 1 of these requests may contribute towards overcoming the above discussed objection

according to which feature g) extends beyond the content of the originally filed documents.

During the oral proceedings the respondent also did not provide further substantive arguments in relation to these auxiliary requests.

Taking into account that feature g), discussed above, is present in claim 1 of each of auxiliary requests 2 to 8 (see points X to XVI above), the board decides that each of these auxiliary requests contravenes the requirements of Article 123(2) EPC, for the same reasons already discussed above in relation to claim 1 of the main request.

As a consequence of the above, none of these auxiliary requests can be allowed.

**Order**

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

The decision under appeal is set aside.

The patent is revoked.

The Registrar:

The Chairwoman:



G. Nachtigall

A. Beckman

Decision electronically authenticated