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**Datasheet for the decision
of 11 November 2025**

Case Number: T 0511/23 - 3.2.02

Application Number: 17800805.8

Publication Number: 3537909

IPC: A41D3/00, A41D13/02

Language of the proceedings: EN

Title of invention:
GARMENT FOR MOTORCYCLISTS

Patent Proprietor:
Alpinestars Research S.p.A.

Opponent:
Dainese S.p.A.

Headword:

Relevant legal provisions:
EPC Art. 100(a), 54, 111(1)
RPBA 2020 Art. 11, 12(2)

Keyword:

Grounds for opposition

Novelty - (yes)

Remittal - special reasons for remittal

primary object of appeal proceedings to review decision

Decisions cited:

T 0275/15

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0511/23 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 11 November 2025

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
5 January 2023 concerning maintenance of the
European Patent No. 3537909 in amended form.**

Composition of the Board:

Chairman M. Dorfstätter
Members: T. Rosenblatt
S. Ruhwinkel

Summary of Facts and Submissions

- I. The patent proprietor and the opponent (appellants) each filed an appeal against the interlocutory decision of the opposition division, in which the opposition division found that European patent No. 3 537 909 in amended form met the requirements of the EPC.
- II. The appellant-proprietor requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or, in the alternative, if the Board found that the subject-matter of claim 1 of the main request was novel, that the case be remitted to the opposition division for further prosecution, or, in the alternative, that the patent be maintained in amended form according to auxiliary request 1 (corresponding to the request for dismissal of the appellant-opponent's appeal), or, in the alternative, that the patent be maintained according to one of auxiliary requests 2 to 4, 1bis to 4bis submitted with its reply dated 16 October 2023, or, in the alternative, according to auxiliary requests 5 or 5bis submitted with its letter dated 1 July 2024.

The appellant-opponent requested that the decision under appeal be set aside and the patent be revoked.

- III. The following evidence referred to by the parties is relevant to the present decision.

D1: Video at https://www.youtube.com/watch?v=ZSDyxWlw_GM, published on YouTube on 8 February 2012, relating to Spidi Track Wind Pro Race Suit

D3: Video at <https://www.youtube.com/watch?v=KT6K1jb0tnM>, published on YouTube on 21 May 2014,

relating to Spidi Track Wind Pro Replica Race Suit

D4: Video at <https://www.youtube.com/watch?v=JQqRr6Lo0sQ>, published on YouTube on 10 January 2012, relating to Spidi Track Wind Pro Race Suit

D5: Video at <https://www.youtube.com/watch?v=ZrOKg7kbtnw>, published on YouTube on 20 December 2014, relating to Spidi Track Wind Replica EVO Race Suit

The appellant-opponent submitted with its statement of grounds of appeal four annexes containing individual video frames of certain moments of the respective videos. Corresponding frames were also reproduced in its statement of grounds of appeal and subsequent writs.

IV. Claim 1 of the patent as granted (main request) reads as follows (with feature numbering in square brackets as according to point 11.1 of the impugned decision):

"[1a] *Garment for motorcyclists (10) comprising*
[1b] *a panel (12) formed by two elastic inserts (14),*
[1c] *each elastic insert (14) having a first portion (141), positioned underneath the respective armpit, along the side of the upper portion of the trunk, and a second portion (142), inclined upwards over the respective shoulder blade, and*
[1d] *by an elastic band (16), crosswise positioned along the bottom portion of the back, characterized in that*
[1e] *the two elastic inserts (14) are connected to the elastic band (16) by means of at least one not-stretchable element (18), running along the sides of the torso, and in that*
[1f] *the garment (10) comprises two further stretchable pieces (20),*

[1g] *each stretchable piece (20) running along the inner side of the sleeve from the wrist up to the armpit and*
[1h] *being provided with an extension (22) extending along the adjacent side of the upper portion of the trunk and joined to the first portion (141) of the adjacent elastic insert (14)."*

The wording of the amended claims of the auxiliary requests is not relevant to the present decision and therefore does not need to be reproduced herein.

- V. The Board issued a summons to oral proceedings and a subsequent communication under Article 15(1) RPBA (hereinafter referred to as "the Board's communication") containing its provisional opinion on several issues, which stated, *inter alia*, that feature 1h was seemingly not derivable from D1, D3, D4 or D5.
- VI. The arguments of the appellant-proprietor, where relevant to the present decision, can be summarised as follows.

Main request - novelty

The subject-matter of granted claim 1 was novel over each of the garments according to D1, D3, D4 and D5. The motorcyclist suits shown in these videos all had the same structure, differing only in colours and in secondary features which were not relevant to the present decision. Features 1e and 1h of granted claim 1, when interpreted in light of the whole of the patent specification, were not disclosed in any of the garments shown in these videos.

Concerning feature 1e, the elastic inserts 14, the elastic band 16 and the not-stretchable element 18 were part of a panel 12 (see feature 1b and feature 1d) designed to be positioned at the back portion of the garment (see paragraph 31 of the patent). The wording of claim 1 thus implied that the at least one not-stretchable element, which was part of a distinguishable element, namely the back panel, was itself distinguishable from a further back portion. The whole back portion of the suits shown in D1 could not be considered to correspond to the at least one not-stretchable element. The leather inserts of D1, with a panel according to features 1b, 1d and 1e, as identified by the opposition division, formed the structure of the suit. Their function was not that of connecting the upper and lower stretch elements, acting in the claimed suit like a single piece and allowing the back part of the garment to move independently from its front part (see also paragraphs 71 and 72 of the patent). In D1, the insert at the lower back portion and the inserts at the shoulder portions were independently applied at the back portion of the suit, and were not able to work in synergy with each other.

Feature 1h required, *inter alia*, the extension to be joined to the first portion 141 of the elastic insert 14 which, as clearly indicated by feature 1c, was positioned under the armpit. From a comparison of the video frames of D1 at minutes 0:45 and 0:46 it could be concluded that the terminal end of the (black) elastic insert running along the sleeve was positioned at the armhole and did not extend along the upper portion of the trunk. Although at least the bottom portion of the (red/orange) shoulder insert was indeed positioned along the upper portion of the trunk, this did not necessarily imply that the terminal end of the

(black) sleeve insert was positioned along the upper portion of the trunk.

Remittal

The conclusions in the impugned decision in regard to claim 1 of the patent as granted concerned only novelty. Inventive step had not been considered with respect to the granted claim. Thus, in line with the decisions in cases T 986/16, T 275/15 and T 1604/22, which relied on the same circumstances, the case should be remitted to the opposition division for a discussion of this requirement.

- VII. The arguments of the appellant-opponent, where relevant to the present decision, can be summarised as follows.

Main request - novelty

The subject-matter of claim 1 lacked novelty over each of the suits disclosed in D1, D3, D4 and D5.

Features 1e and 1h were disclosed in the suits shown in these videos, as were features 1a to 1d and 1f and 1g.

Concerning feature 1e, claim 1 did not require the panel to necessarily be a distinguishable element from the remaining portion of the garment to which it was applied, nor did it require the not-stretchable element to be distinguishable from a further back portion. The claim did not exclude the possibility that the whole back portion of the known suit (i.e. the assembly of the suit of D1, D3, D4, and D5, formed by the leather pieces and the elastic inserts/band shown in these videos) could constitute a panel. Moreover, it did not exclude the possibility that a side part of such a back

portion could correspond to the at least one not-stretchable element. Even the back part of the suit of D1, D3, D4, and D5 was part of a larger object (the suit as a whole) and could therefore be identified as a part which was inserted inside a "larger" portion, namely the suit.

Feature 1h did not specify the amount of the extension along the upper portion of the trunk. In frame 0:42 of D1, the left end of the (black) insert at the sleeve was clearly visible even if the arm of the user was retracted. This meant that this left end of the insert extended along the upper portion of the trunk, in particular underneath the armpit, when the user was wearing the garment. Moreover, in the video frames of D4, particularly at minute 4:32 to 4:33 thereof, the triangular extension of the sleeve's insert could be clearly seen. With respect to the video frame at minute 0:45 of D1, since the armpit was entirely covered and could not be seen in these frames, the visibility of the triangular extension meant, however, that it extended out of the armpit and thus necessarily along the side of the trunk.

Remittal

The case should not be remitted to the opposition division. The matter of inventive step had already been fully discussed with respect to granted claim 1 before the opposition division (see, for example, the preliminary opinion in the annex to the summons to oral proceedings) and the Board had already taken a position on this aspect. A remittal would go against the need for procedural economy.

Reasons for the Decision

Main request - Articles 100(a) and 54 EPC

1. The Board concluded that the subject-matter of granted claim 1 is new (Article 54(1) and (2) EPC) over the garment(s) disclosed in D1, D3, D4 and D5.
- 1.1 D1, D3, D4 and D5 are videos of presentations of motorcycle racing suits, also referred to herein as "suits". As stated in the Board's communication pursuant to Article 15(1) RPBA, which contained its preliminary opinion on the case, the suits shown in the videos D1, D3, D4 and D5 relate to essentially the same model of a garment, with minor modifications in respect of colours, additional equipment and finishes, which, however, do not present structural differences in view of the relevant features of claim 1. This was not contested by the parties in their subsequent written submissions or during the oral proceedings before the Board. The appellant-opponent based its additional arguments submitted in the oral proceedings specifically on a certain frame of the video of D4 (see below). The appellant-opponent argued, in particular, that due to differences in colours, the relevant features would be more easily seen in D4. The appellant-opponent did not, however, contest that the structure of the suit was identical in respect of the relevant features to the structure of the other suits disclosed in the other videos.

The conclusions drawn with regard to D1 also apply to the garments of D3, D4 and D5. For this reason, the Board's considerations are (essentially) limited to D1 in the following.

1.2 It was common ground between the parties that features 1a to 1d and 1f and 1g are disclosed in the suit of D1, or at least no argument to the contrary has been submitted. The board has no reason to view this differently.

1.3 The opposition division and the appellant-opponent additionally considered features 1e and 1h to be disclosed in the suit shown in D1. The Board, however, has concluded that whilst feature 1e is disclosed, feature 1h is not directly and unambiguously derivable from D1 for the following reasons.

1.3.1 In point 1.2 of its communication, the Board stated the following.

"The Board is not convinced by the arguments of the appellant-proprietor concerning the alleged lack of disclosure of feature 1e by the garment shown in D1. The opposition division considered that the entire leather back portion of the garment disclosed in D1, between the (light blue) stretchable back portion, i.e. the elastic band according to feature 1d, and the (orange) elastic shoulder portions, i.e. the elastic inserts according to feature 1c, could be regarded as one not-stretchable element. The Board presently follows this consideration. The claim does neither explicitly nor implicitly require the not-stretchable element to be a distinguishable element from the remaining part of the back portion (as also argued by the appellant-opponent, for example at pages 2 to 5 of the reply to the appellant-proprietor's statement of grounds of appeal). The appellant-proprietor's references to the description of the patent in suit do seemingly not

give rise to a limited interpretation of the features of claim 1. Nor are features 1b and 1d in contradiction with a broader interpretation of feature 1e. The definitions of the term "panel" according to the online dictionaries referred to by the appellant-proprietor do not contradict the finding in the impugned decision either. Even a panel comprising the entire back portion and the not-stretchable element is distinguishable from the remaining parts of the garment, as argued also by the appellant-opponent on page 6 of its reply."

The appellant-proprietor did not submit any additional arguments in this regard. The Board cannot see any reason to deviate from its preliminary opinion, which is hereby confirmed. Feature 1e of claim 1 is thus considered to be disclosed in D1, as well as in D3, D4 and D5 (see point 1.1 above).

- 1.3.2 As also already stated in point 1.3 of the Board's communication (see below), feature 1h of claim 1 of the patent in suit is not disclosed in D1.

"...It cannot be directly and unambiguously derived from the frames specifically referred to by the parties that the extension of the sleeve's stretchable piece, which may indeed be a mentally dividable portion of the piece at its end close to the armpit, extends along the adjacent side of the upper portion of the trunk. The Board presently can agree with the appellant-proprietor that the (black) stretchable arm piece rather appears to end at the armhole, while the (orange) elastic strip's sharp end seemingly lies underneath the armhole. The frames seemingly do not allow to derive the mentioned feature of an extension which extends, at

the same time, beyond the armpit and along a side of the trunk, at least not with the required unambiguousness.

The Board cannot see that any different conclusion on this aspect could be reached regarding the disclosure of D3, D4 and D5."

In the oral proceedings, the appellant-opponent referred specifically to the frames of D4 at minute 4:32 to 4:33. These frames had been referred to in its statement of grounds of appeal on page 5, and in its reply to the appellant-proprietor's statement of grounds of appeal. The Board took them into account when issuing its preliminary opinion. Similarly to the depiction in, for example, the frames at minute 0:45 to 0:46 of D1, in these frames the user wearing the suit assumes a race position in which their arm is bent forward. In this position, the arm thus does not extend straight along the side of the user's trunk. As a consequence, the armpit is not entirely hidden, as was allegedly the case in the cited view of D4 according to the appellant-opponent. From this view it cannot be unambiguously determined that the visible triangular extension, which uncontestedly belongs to the elastic piece running along the inner side of the sleeve, extends along the adjacent side of the trunk according to feature 1h or whether it merely extends to the seam of the armpit (i.e. without extending along the trunk). The arguments submitted during the oral proceedings before the Board with respect to the specific video frame of D4 referred to by the appellant-opponent are therefore not convincing and do not change the Board's preliminary opinion set out above, which is hereby confirmed.

- 1.4 For these reasons, the Board has concluded that the subject-matter of claim 1 is new over D1, D3, D4, and D5.
- 1.5 When asked by the Chair during the oral proceedings before the Board, the appellant-opponent confirmed that it had no further novelty objections against granted claim 1 based on other evidence referred to in the appeal proceedings.

As a consequence, the ground for opposition pursuant to Articles 100(a) and 54 EPC does not prejudice the maintenance of the patent as granted.

Remittal

2. According to Article 111(1), second sentence, EPC, the board of appeal may either exercise any power within the competence of the department which was responsible for the appealed decision or remit the case to that department for further prosecution. Article 11 RPBA further states that the board shall not remit a case to the department whose decision was appealed for further prosecution unless special reasons present themselves for doing so.

In the present case, the Board considers the latter condition fulfilled.

According to Article 12(2) RPBA, it is the primary object of the appeal proceedings to review the decision under appeal in a judicial manner. In the present case, as far as the claims of the main request are concerned, the decision under appeal only deals with the ground for opposition of a lack of novelty (Articles 100(a), 54 EPC). On the further ground for opposition raised

against the granted claims, i.e. a lack of inventive step (Articles 100(a), 56 EPC), no decision was taken. Under these circumstances, an examination by the Board with respect to the inventive-step requirement would go against the primary object of a judicial review of the decision under appeal (see, for example, T 275/15, Reason 4, as also cited by the appellant-patent proprietor).

The Board does not agree with the appellant-opponent that the cursory preliminary opinion given in the annex to the summons to oral proceedings by the opposition division on the objections raised indicated that the subject-matter of the granted claims had been fully examined for compliance with the provision of Article 56 EPC. With respect to the main request, besides these rather cursory statements, the decision under appeal does not contain any indication of the opposition division's opinion on this ground for opposition, let alone a decision to be reviewed. The fact that the Board took a preliminary view on this issue does not lead to a different conclusion; nor can the fact that the remittal is detrimental to procedural economy change the Board's conclusion, since procedural economy is only one of several factors to be considered by the board when exercising its discretion and it cannot outweigh the lack of a reviewable decision on inventive step with respect to the subject-matter of the main request.

For these reasons, the Board has allowed the appellant-proprietor's request for the case to be remitted to the opposition division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairman:



A. Chavinier-Tomsic

M. Dorfstätter

Decision electronically authenticated