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Aktenzeichen / Case Number / N^o du recours : T 222/87 - 3.2.2

Anmeldenummer / Filing No / N^o de la demande : 82 304 095.1

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 072 648

Bezeichnung der Erfindung: A method of forming cloth into three dimensional
Title of invention: shapes and the articles produced by that method
Titre de l'invention :

Klassifikation / Classification / Classement : A41H 43/00, A41D 1/06

ENTSCHEIDUNG / DECISION

vom / of / du 03. August 1989

Anmelder / Applicant / Demandeur : Apparel Form Company

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Cloth forming

EPÜ / EPC / CBE Articles 54, 111, 116 and 123(2)

Schlagwort / Keyword / Mot clé :
"novelty (recognised)"
"remitting the case for further examination of
substantially amended claim"
"oral proceedings: not appropriate in these
circumstances"
"generalisation in claim supported by the
disclosure"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number : T 222/87 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 03. August 1989

Appellant : Apparel Form Company
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Representative : G. Lerwill
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Decision under appeal : Decision of Examining Division 120
of the European Patent Office
dated 5 December 1986 refusing
European patent application
No. 82 304 095.1 pursuant to
Article 97(1) EPC.

Composition of the Board :

Chairman : G. Szabo
Members : C. Andries
W. Moser

Summary of Facts and Submissions

- I. European patent application No. 82 304 095.1, filed on 3 August 1982 (publication No. 0 072 648), was refused by a decision of the Examining Division No. 120 dated 5 December 1986.
- II. The reason given for the refusal was that the subject-matter of Claim 1 lacked novelty in view of the prior art disclosed in GB-A-1 423 393 (D1).
- III. The Appellant lodged an appeal against this decision on 6 February 1987. The prescribed fee was paid on 3 February 1987. In the Statement of Grounds, submitted on 9 April 1987, the Appellant objected to the way document D1 had been interpreted by the Examining Division.
- IV. In reply to Communications of the Board of Appeal, the Appellant submitted on 26 July 1988 and on 28 June 1989, with letters dated 25 July 1988 and 26 June 1989, respectively, a revised description and a new set of claims, and invited the Board to adapt Figure 6 on sheet 2/2 of the drawings.
- V. Claim 1 as filed reads now as follows:

"A method of dyeing cloth and forming the cloth into a predetermined 3-dimensional shape comprising the steps of constructing a preformed shell of cloth, placing said preformed shell onto a mold, the cloth shell being tensioned on the mold, treating the cloth while in tension on said mold to set the shape of the cloth shell, and removing the treated cloth shell from the mold, characterised in that the shell placed on the mold is prepared from undyed and unfinished, synthetic woven cloth

and the shell has a configuration which conforms substantially to the shape of the mold, and the cloth is simultaneously dyed and treated by contact with a hot dyebath to raise the temperature of the cloth above its heat-set threshold and thereafter cooled while the entirety of the cloth shell is maintained in generally uniform tension on the mold so that the shell will retain the predetermined 3-dimensional shape after removal from the mold."

VI. The Appellant requests that the decision under appeal be set aside and a patent be granted on the basis of the following documents:

Claims 1 to 12: as filed on 28 June 1989 with letter dated 26 June 1989;

Description: pages 1, 1a, 4a, 5 to 9, 9a, 11, 12, 12a and 14 to 19 as filed on 28 June 1989 with letter dated 26 June 1989;

- page 2 as originally filed;

- pages 3, 4, 10 and 13 as filed on 26 July 1988 with letter dated 25 July 1988;

Drawings: Sheets 1/2 and 2/2 as originally filed, and wherein on sheet 2/2 the indication "1 inch" is modified into "2,54 cm (1 inch)".

The Appellant also requests oral proceedings before any decision is given resulting in rejection of this appeal and the application being refused.

Reasons for the Decision

1. The appeal is admissible.
2. **Amendments**

In the original disclosure it was not only disclosed in general terms that the shell was placed under uniform tension on a mold (page 4, last paragraph and page 5, last paragraph to page 6, first paragraph) but it was also indicated (page 9, last paragraph) that the required shell tension could be produced by different methods, so that the presence in Claim 1 now on file of the generalised feature "the cloth shell being tensioned on the mold" is according to the Board adequately supported by the original disclosure.

Thus, the present claims find support in the following parts of the original disclosure:

Claim 1: example 3 on page 18; page 4, last paragraph; Claim 12; page 8, lines 2 to 5; page 9, last paragraph; page 10, last paragraph; page 15, lines 27 to 31; page 16, line 24; and page 24, lines 12 to 14.

Claims 2 to 12:
page 9, last paragraph and Claims 1, 5, 12, 16 to 18, 20, 21, 23, 26 and 27.

The description has been adapted to the newly filed claims.

The Board is therefore satisfied that the present application documents contain no subject-matter extending

beyond the content of the application documents as originally filed (Article 123(2) EPC).

3. Clarity

The expressions "unfinished cloth" and "generally uniform tension", both used in the wording of Claim 1 are properly explained and defined in the description on page 8, lines 7 to 30 and on page 12, lines 25 to 30 respectively, and are therefore clear in their meaning, in accordance with Article 84 EPC.

4. Novelty.

4.1 Document D1 describes a former for moulding garments, and a method for moulding a garment shape comprising all the method steps present in the precharacterising portion of Claim 1.

4.1.1 It is indicated in document D1 what fabrics may be used for making a preform, provided that the material can be deformed and set (page 2, lines 119 to 128; page 5, lines 55 to 57). That means that a permanent dimensional or shape memory is not yet imparted to these fabrics. Neither does document D1 explicitly nor implicitly suggest that "undyed and unfinished, synthetic woven cloth" is to be used.

4.1.2 Although it is described (on page 2, lines 76 to 78 of D1) that the shell (or preform) is prepared having a shape approximating to that of the garment required, the Board is of the opinion that it cannot be concluded from this that this shell has a configuration which conforms substantially to the shape of the mould (former). Indeed, the mould used in this document has no proper shape as it is disclosed in the meaning of the European application, since it rather

comprises a number of interconnecting tubes as shown in Figures 1 and 4 of D1. Furthermore, such a mould can be used for the moulding of garment shapes in a wide range of sizes and styles, owing to its adjustability. Indeed, an object of the mould according to this document was to avoid a large number of moulds, so that it becomes clear from the document that it is the mould which is adjusted in accordance with the available shell, and not the other way around.

- 4.1.3 No disclosure is made in document D1 in respect of dyeing, let alone of simultaneously dyeing and treating the cloth. It is, on the other hand, suggested in document D1 that the shell is deformed three dimensionally to the required shape by adjustment of the mould and that such a deformation is obtained by applying tension to the cloth shell by such an adjustment.

There is, however, no hint (explicitly or implicitly) that a generally uniform tension in the meaning of the European application is applied to the shell, particularly since there is in document D1, as already indicated above, no requirement that that shell must have a shape that conforms substantially to the shape of the mould. This would be needed to avoid undesirable variations in tensioning in different parts of the garment during the finishing or setting treatment. Furthermore, the conditions of contact between the shell and the mould are different in different planes (chest-, hip-, and waist-plane).

- 4.2 No one of the other available documents describes that an undyed and unfinished synthetic woven cloth is dyed and simultaneously formed, while being treated by contact with a hot dye bath to raise the temperature of the cloth above its heat-set threshold, and thereafter cooled. It is only

disclosed in these other documents that dyeing takes place before or after heat-setting.

- 4.3 Therefore, the subject-matter of Claim 1 is novel within the meaning of Article 54 EPC.
5. Since the only ground for refusal indicated was lack of novelty, and since this has been overcome by filing the new set of claims, the decision under appeal must be set aside. However, the patent sought may not yet be granted because the substantive examination still has to be carried out in respect of the substantially amended claims now on file. On the other hand, there is no need of organising oral proceedings because the decision under appeal is set aside and the application is not refused.

Therefore, the Board makes use of its power under Article 111(1) EPC to remit the case to the Examining Division for further prosecution.

Order


For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The application is remitted to the Examining Division for further prosecution on the basis of the documents stated in the request (cf. Part VI).

The Registrar:


F. Klein

The Chairman:


G. Szabo