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**D E C I S I O N**  
**of 14 March 1994**

**Case Number:** T 0301/92 - 3.2.5

**Application Number:** 84111237.8

**Publication Number:** 0137377

**IPC:** D03D 47/23

**Language of the proceedings:** EN

**Title of invention:**

Weft holding member in weft carrying grippers for weaving looms

**Patentee:**

Vamatex S.p.A.

**Opponent:**

Picanol N.V.

**Headword:**

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**Relevant legal norms:**

EPC Art. 54

**Keyword:**

"Novelty (no)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0301/92 - 3.2.5

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.5  
of 14 March 1994

**Appellant:** Vamatex S.p.A.  
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**Representative:** Vatti, Paolo, Dr. Ing.  
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**Respondent:** Picanol N.V.  
(Opponent) Polenlaan 3-7  
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**Representative:** Dauster, Hansjörg, Dipl.-Ing.  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office dated 7 February 1992  
revoking European patent No. 0 137 377 pursuant to  
Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** C.V. Payraudeau  
**Members:** A. Burkhart  
H.P. Ostertag

**Summary of Facts and Submissions**

- I. The Appellant (Proprietor of the patent) lodged an appeal against the decision of the Opposition Division, by which the European patent No. 0 137 377 had been revoked on the ground that its subject-matter was not new with respect to the teachings disclosed by the document GB-A-1 557 802 (D1).
- II. In his Statement of Grounds dated 5 June 1992, the Appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form based on a new Claim 1.
- III. In a communication of the Board dated 27 October 1993, the Board was of the preliminary opinion, that the newly introduced term free in the phrase free flexible metal lamina in the characterizing part of newly filed Claim 1 could not be interpreted in the sense that the flexible metal lamina "is not subjected to engagements or actions from other elements", as contended by the Appellant in his statement of grounds. According to the Board, the meaning of the word free in the cited phrase derived from the cantilevered mounting of the lamina, i.e. the lamina projects freely beyond its support. In order to overcome the objection of lack of clarity raised by the Board with respect to Claim 1, the applicant filed a new Claim 1 on 28 January 1994 with letter of 25 January 1994.
- IV. Oral proceedings were held.
  - (i) The Appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of Claim 1 filed on 28 January 1994, and Claims 2

and 3 of the patent as granted with the Figures 3 to 6 and 12 to 15 of the patent as granted and the corresponding amendments to the description.

The Respondent (Opponent) requested that the appeal be dismissed.

- (ii) Claim 1 of the patent on file at the time of the decision reads as follows:

"1. Weft holding member in weft transport grippers for weaving looms, of the type comprising a stiff arm mounted oscillating on the gripper and having a first end subjected to the action of a spring and a second end which carries means to engage the weft yarn and press the same against the gripper body to which the weft holding member is associated, **characterized in that** said weft yarn engaging means consists of a flexible metal lamina (14, 50, 60, 70), fixed in a cantilevered manner to said second end of said stiff arm and projecting freely therefrom."

- (iii) The Appellant essentially argued as follows:

The important improvement of the present invention over the prior art known from document D1, which shows a weft holding member of the type comprising a stiff arm at the end of which there is attached a flexible metal lamina, is that the lamina of the invention **projects freely** from the stiff arm. This means that both the gripping and the holding of the weft yarn occur exclusively between the lamina and the gripper

body - without engagement of or action on the lamina by other elements.

In contrast, in the construction of the device according to D1, an additional leaf spring exerts a pressure on the lamina, which results in a sudden pressure variation exerted on the yarn at the point where the leaf spring contacts the lamina. The gripping force between the lamina and the gripper body in the present invention is thus more gradual, more continuous than in the device according to document D1.

The Appellant further argued that the embodiment according to Claim 3 of the invention merely defines a second lamina **superimposed** on the first lamina, and that this second lamina cannot be compared with the leaf spring according to document D1.

- (iv) The Respondent disagreed with the Appellant and essentially argued as follows:

The device according to document D1 substantially discloses the subject-matter of Claim 1, since also in this device the weft yarn engaging means consists of a flexible metal lamina, which is fixed in a cantilevered manner to one end of a stiff arm and which projects freely therefrom. That the lamina is associated with a leaf spring does not alter the fact that the yarn is gripped and held between the lamina and the gripper body. Consequently, the subject-matter of Claim 1 is not new.

The additional feature of Claim 3, i.e. that a second, equal or different, flexible metal lamina is **associated** to the first lamina, would, when read in combination with the features of Claim 1, also exactly describe the device according to document D1. The associated second lamina would correspond to the leaf spring according to document D1. The subject-matter of Claim 3 is not limited to a mere doubling of the lamina. On the contrary, the claimed second lamina is said to give rise to a **different** flexibility, as would be the case with an additional leaf spring. Document D1, of course, already discloses that the single lamina can be replaced by a laminated element, composed of two or more laminae.

When the features of Claim 1 are construed to mean a device according to D1, but with the leaf spring left out, such a device would not be operative without adding further features to Claim 1, e.g. that the stiff arm and the gripper body just touch upon each other, as in Figures 3 and 4. The subject-matter of Claim 1 construed in this way would also lack an inventive step, since the gripping and holding of the yarn in the device according to the invention is not different from the engagement of the yarn in the device according to D1.

## Reasons for the Decision

### 1. *Admissibility of amendments*

The new Claim 1 differs from Claim 1 as granted in that (added subject-matter in boldface):

1. The stiff arm has a **first end** subjected to the action of a spring.
2. The stiff arm has a **second end** which carries weft yarn engaging means **consisting** of a flexible metal lamina.
3. The lamina is **fixed in a cantilevered manner to said stiff arm and projecting freely therefrom.**

The added terms clearly restrict the scope of the granted Claim 1 and can be derived from the original Figures 3 to 6, and from the original description, page 3, lines 10 and 14.

Therefore, the Claims fulfil the requirements of Article 123(2) and (3) EPC.

### 2. *Novelty*

Document D1 discloses (see e.g. page 1, line 88 to page 2, line 49 and Figures 1 to 3) a weft holding member in weft transport grippers for weaving looms, comprising a stiff arm (lever 6) mounted oscillating on the gripper and having a first end subjected to the action of a spring (9) and a second end which carries a flexible metal lamina (4) to engage the weft yarn and press the same against the gripper body (3) to which the weft holding member is associated.

Document D1 further discloses that the lamina (4) is mounted by screw (11) to the second end of stiff arm (6). Associated to the lamina (4) is a leaf spring (5), which is also mounted by screw (11) to the second end of the stiff arm (6). Thus the lamina (4) is fixed in a cantilevered manner to the second end of the stiff arm, i.e. it projects freely from the point where the lamina is fixed.

The forked end part of the leaf spring is not fixed to the lamina at the point where the leaf spring engages the lamina. It follows that the presence of the leaf spring does not alter the fact that the other end of the lamina (4) projects freely beyond the second end of the arm (6), whether or not the leaf spring is considered as a part of the lamina, of the arm, or as an additional part.

Although the Board appreciates the fact that a leaf spring associated to the lamina is not described in the patent in suit, this does not weaken the observation, that the wording of Claim 1 can be read onto the device according to D1.

The phrase "in a cantilevered manner" in Claim 1 means that the lamina is fixed at one end only, i.e. part of the lamina projects outwards beyond its support. The argument of the Appellant, that the phrase "fixed in a cantilevered manner to said second end of said stiff arm and projecting freely therefrom" should be interpreted in the sense that the flexible metal lamina "is not subjected to engagements or actions from other elements" cannot be accepted by the Board, since no basis for this contention is found in the original disclosure.

On the contrary, the wording of Claim 3, that "a second, equal or different, flexible metal lamina is **associated** to said first lamina, in order to obtain a different flexibility" confirms that the term "projecting freely therefrom" in Claim 1 should not be interpreted in the sense that the flexible metal lamina "is not subjected to engagements or actions from other elements".

The Board further disagrees with the contention of the Appellant, that the wording of Claim 3 must be interpreted in the sense that a second lamina is superposed to the first lamina and that the second lamina should not be spaced apart from the first lamina as in the case of a leaf spring (5) according to document D1. No basis for this contention is found in the description. The wording **associated** in Claim 3 is identical to the wording in document D1, where the leaf spring is also said to be **associated** to the lamina.

The subject-matter of Claim 1 of the patent as granted is therefore not new within the meaning of Articles 52(1) and 54(1) and (2) EPC.

**Order**

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

The appeal is rejected.

The Registrar:



A. Townend

The Chairman:



C. Payraudeau