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D E C I S I O N
of 25 September 1998

Case Number: T 0291/95 - 3.2.3

Application Number: 87850393.7

Publication Number: 0320559

IPC: D21F 7/08

Language of the proceedings: EN

Title of invention:
A needled press felt

Patentee:
Albany International Corp.

Opponent:
Filztuchverwaltungs GmbH

Headword:
"Batt-on-base" press felt/ALBANY

Relevant legal provisions:
EPC Art. 54, 112

Keyword:
"Novelty (yes)"

Decisions cited:
-

Catchword:



Case Number: T 0291/95 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 25 September 1998

Appellant: Filztuchverwaltungs GmbH
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Respondent: Albany International Corp.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 25 January 1995
rejecting the opposition filed against European
patent No. 0 320 559 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: C. T. Wilson
Members: J. du Pouget de Nadaillac
M. K. S. Aúz Castro

Summary of Facts and Submissions

I. The appeal is directed against the decision of 25 January 1995 of the Opposition division of the EPA, which rejected the opposition filed against the European patent EP-B1-0 320 559, disagreeing with the opponent that the subject-matter of Claim 1 of this granted patent lacked novelty in view of the disclosure of document D1 (EP-A2-0 303 798), this being the only ground on which the opposition was based.

Claim 1 of the contested patent, as granted, reads as follows (wording in bold; the division of this claim into numbered features introduced during the opposition proceedings is not part of the claim):

- Feature 1:** "A needled press felt for use in the press section of a papermaking machine and comprising
- Feature 2:** at least two different kinds of fibers in the batt part of the felt, of which
- Feature 3:** a first kind of fiber is of a considerably finer-dimension size than the other kinds of fibers, characterised therein that
- Feature 4a:** the fibers of the first kind of fiber which form or constitute at least part of the surface layer,
- Feature 4b:** have a diameter of 0.010 mm or less
- Feature 5:** and are essentially removed during the service of the felt on the papermaking

machine, whereas

Feature 6: the rest of the fibers are essentially resistant during the removal of the first kind of fiber."

II. The appellant (opponent) lodged the appeal and paid the relevant fee on 31 March 1995.

In the statement of grounds received on 6 June 1995 he requested that the patent be revoked on the ground of lack of novelty of the subject-matter of Claim 1 as granted in view of the state of the art described in D1. He agreed that the above features 3, 4a, 4b and 5 were not explicitly disclosed in this prior art, however argued that they were implicitly disclosed for the following reasons: On page 2 of this prior art document, it was indicated that the felts of the papermaking machine were regularly washed by means of solutions, which dissolved a particular kind of fibre of the felts. Usually the washing treatment occurred during service of the felt on the machine, so that feature 5 was in fact disclosed. Features 3, 4a and 4b characterized a well-known kind of felt of this technical field, namely the so-called "batt-on-base" felt, which comprised a smooth superficial layer of very fine fibres and a base of thicker fibres. Both layers were cited in document D1, which therefore concerned all kinds of "batt-on-base" felts. Documents D2 (US-A-2 165 772), D3 (US-A-3 392 079) and D4 (US-A-3 928 669) disclosed examples of the most commonly known "batt-on-base" felts. As to the dimension of the finer fibres, document D4 disclosed that the fibres for the smooth layer had to have diameters less than 0,027 mm, an example of fibres of approximately 0,012 mm in diameter being mentioned,

including thereby the range of dimensions according to feature 4b. The hearing of a technical expert was offered in order to confirm that features 1, 2, 3, 4a in fact all concerned a kind of felt, which was known for a long time in this technical field, and that, before the present invention, a felt was usually cleaned during its service on the machine (feature 5), in preference to the more expensive method of removing it from the machine.

- III. In a communication dated 18 April 1997, accompanying a summons to oral proceedings, the Board informed the parties that according to its provisional evaluation document D1 could not destroy the novelty of the subject-matter of the granted Claim 1, since it did not define the kind of "batt-on-base" felt as precisely as Claim 1 of the contested patent did, and, in particular, it did not disclose features 3, 4a and 4b of said claim. Patent literature, such as D2 to D4, although cited in the description of the patent in suit, did not represent the common general knowledge of the skilled person in the art.

In a letter received on 17 May 1997, the appellant reminded the Board that his evidence by means of a technical expert for proving that the kind of felt which was claimed, was one of the most widely used felts, could not be simply ignored.

- IV. By a letter received, on 19 June 1997, the respondent (patentee) indicated that he would not participate in the oral proceedings.

In a communication dated 30 June 1997 the Board pointed out that the appellant had offered evidence for an expert only in connection with features 1, 2, 3, 4a and

5 of Claim 1 of the contested patent, however not for feature 4b which was apparently also not disclosed in document D1. Therefore, even if the Board assumed that features 1, 2, 3, 4a and 5 were well-known and that the person skilled in the art, reading Claim 1, would assume that the felt defined therein could belong to the most common felts, this would all not be sufficient to render the document D1 novelty destroying. Therefore, evidence from an expert was not needed.

V. By a letter received on 4 September 1997, the appellant filed the following new documents as evidence of the general knowledge of the person skilled in the art

D5: Newspaper advertisement from the "Wochenblatt fur Papierfabrikation" July 1976, Cascade" of Thomas Josef Heimbach GmbH & Go,

D6: Original prospectus of the papermaking machine felt "Cascade" of Thomas Josef Heimbach GmbH & Co.;

D7: Kohler, "Moderne NaBfilzbespannung, deren Entwässerungs- und Laufverhalten", Wochenblatt for Papierfabrikation, Nr. 16, 1978, pages 6, 26 to 634;

D8: Advertising brochure of Firma Scandiafelt AB, received by Thomas Josef Heimbach GmbH & Co. in 1982;

D9: Lewyta, Geoghegan, "Recent developments in paper machine clothing: wet felts", Tappi Journal, April 1987, pages 57 to 62.

Moreover, since in his opinion it seems to be

iniquitous to examine novelty in a quite strict way, the appellant asked the Board to refer the following question to the Enlarged Board of Appeal:

"Is the content of an earlier, but not prior-published, European application novelty destroying against a later-filed application, ("conflicting application", Article 54(3) EPÜ), if in the earlier application a special embodiment of a main type of product is described, which is clearly applicable to all kinds of this main type, and if in the later application a particular subtype of the main type is claimed with this special improvement, the subtype being in itself well-known and frequently produced in the art?"

By a further letter received on 15 January 1998, the appellant informed the Board that he had decided not to participate in the oral proceedings and was prepared to withdraw his request for oral proceedings as soon as the patentee did so. He moreover asked the Board to take the newly filed documents into consideration when reaching a decision.

- VI. The parties were informed by a communication of the Board dated 22 January 1998 that the oral proceedings were cancelled.

Reasons for the Decision

1. The appeal is admissible.
2. Since the respondent had already informed the Board that he would not participate in the oral proceedings, he was deemed in accordance with the jurisprudence of

the Boards of Appeal of the EPA to have withdrawn his request for oral proceedings, so that the prerequisite put forward by the appellant in his last received letter had in fact already been complied with. Therefore, the appellant's request for oral proceedings is also to be considered as being withdrawn.

3. The only issue to be decided is whether the subject-matter of claim 1 as granted is new having regard to the disclosure of document D1. This document falls within the meaning of Article 54(3) EPC and was filed for all the Contracting States which are also designated in the patent under consideration, apart from Greece for which country D1 does consequently not apply (Article 54(4) EPC).

4. The reference in Claim 1 to a batt part of the felt, makes clear that the claim relates to the so-called "batt-on-base" or "batt-on-mesh" kind of press felts, which comprise at least two layers, namely a base layer made of woven or unwoven threads or (multi)filaments and a batt layer made of fibres secured on one side of the base layer by needling or other methods. Claim 1, further, specifies a "surface layer", implying thereby the surface layer of the batt layer, namely the layer in contact with the paper web in the press section of the paper machine. Feature 4a of claim 1 includes two possible embodiments: in one embodiment, the finer-dimensioned fibres, namely those of the first kind of fibre, form the whole surface layer; in the second embodiment, the surface layer comprises the first and second kinds of fibres. In both cases, Claim 1 requires the first kind of fibre to be present in the surface layer of the batt. In feature 5 of Claim 1, the indication that the removal of the fibres takes place during the service of the felt on the papermaking

machine concerns a process feature, which in the light of the description of the patent in suit does not imply structural features for the product, which is the subject-matter of Claim 1. This aspect of feature 5 is therefore to be disregarded in assessing novelty.

5. Citation D1 relates to a band, for example a press felt for paper-making machines or a drying screen or the like. Said band comprises a support layer and another layer made of fibres needled to the support layer. In a press felt, this further layer is the batt layer, which is the layer placed against the paper web in the press sections of the machine. Since, in use, the permeability and other characteristics of the felt deteriorate because of the deposit of waste particles emanating from the paper suspension, it is necessary from time to time to clean it, and the citation essentially deals with this problem. The basic principle according to D1 is to make at least some of the fibres at least partially of a material which can be dissolved by means of a washing solution. Two main practical possibilities are disclosed: Either all the fibres of the batt are made partially of the soluble material and partially of a material resistant to the solvent, or a certain number of fibres are made completely of the soluble material and are uniformly distributed among the other resistant fibres. Fibres made of different materials can have a core made of the resistant material and one or several coatings of the soluble or other materials; they may also be longitudinally divided with one half made of the soluble material. During the washing step, the soluble parts of the fibres or the entirely soluble fibres are removed, so that the waste attached to them is also removed and the original permeability of the felt can be restored.

6. It is not disputed that D1 discloses the so-called "batt-on-base" press felt. Moreover, as seen above, this citation teaches to use in one of its embodiments two kinds of fibres for the batt layer, one kind of fibre being removed during the cleaning process, implying that the other kind of fibre remains during this process. Thus, features 1, 2, 5 and 6 of the granted Claim 1 of the patent in suit are disclosed in this prior art.

7. It is not in dispute, therefore, that D1 fails to disclose at least explicitly:
 - (i) the different finenesses of the fibres between the two kinds of fibre of the batt layer;

 - (ii) a surface layer of the batt layer which has to be made at least of the first kind of fibre, namely the finer-dimension fibres, and

 - (iii) a diameter size of 0.010 mm or less for the fibres of said first kind.

8. The appellant has argued that felts including these features (i) to (iii) are well known in the art. He has referred in this respect to documents D2 to D4, and has offered a technical expert also to confirm this. D1, in his opinion, would therefore be interpreted by the person skilled in the art as disclosing implicitly these features in accordance with the well known prior art.

The Board cannot follow this argumentation. The appellant has admitted that there are other well known types of felt, so that the person skilled in the art is

not led inevitably to read D1 as disclosing any particular type, e.g. that disclosed in D4.

The appellant's argument would therefore lead to the result that any general disclosure, e.g. of the use of metal, would have to be read by the person skilled in the art as disclosing the use of any well known metal, e.g. of steel, which is clearly inconsistent with the established jurisprudence of the Boards of Appeal, according to which a specific disclosure destroys the novelty of a general disclosure, but not vice versa (see Singer/Lunzer, *The European Patent Convention*, (1995), Article 54, paragraph 54.14). The Board would also point out that patent literature cannot normally be considered to reflect the common general knowledge of the person skilled in the art.

Thus, contrary to the appellant's opinion, a strict approach to novelty is to be followed and the common general knowledge of the person skilled in the art can only be called into play, insofar as it may be useful to reveal the explicit and eventually implicit, but still direct and unmistakeable, content of the prior art document. Important is the disclosure of the document as read by a skilled person and not what could be the general knowledge of said skilled person for other purposes, for example for inventive step assessment. The appellant himself has recognised in his grounds of appeal, page 6, that D1 contains no limitations or recommendations as to the kind of "batt-on-base" press felts. It follows that a clear and unmistakeable indication of a particular kind of batt-on-base felt is not present in D1. Therefore, it is not relevant whether such felts are well known per se, or indeed whether they are disclosed in the documents D2 to D4.

9. Thus, the subject-matter of claim 1, as granted, of the patent in suit is new.

10. As for the request for referral of the legal question quoted above in point V to the Enlarged Board of Appeal, the Board considers it unnecessary in view of Article 112(1) EPC, because the appellant does not even fulfill the conditions he himself has set out in his question. The appellant did not provide sufficient evidence for his allegation that "batt-on-base" press felts comprising the above features (i) to (iii) belong to the common general knowledge of the person skilled in the art, feature (4b) not being included in the appellant's offer for evidence.

Moreover, it cannot be said that under the definition of batt-on-base felt, the provision of the particular kind of felt according to features (i) and (ii) is implicitly disclosed as being associated with the further feature (iii).

Furthermore, the general literature D7 to D9 submitted by the appellant does not show that, at the date of D1, a batt-on-base felt necessarily meant a felt having the features (i) and (ii) and, as seen above, D1 provides no specific information in the direction thereof.

Also, the diameter range defined by feature (iii) is below - thus, outside of - the range from 0.03 to 0.09 mm given in D9 as usual diameter sizes for the fibers of the batt layer and corresponds to extremely fine fibres. According to the description of the patent in suit, the main object of the present invention is to eliminate the drawbacks inherent in press felts during their running-in period, which is the period immediately following the mounting of a new press felt on the papermaking machine. It is mainly during this period that the pores of the felt become clogged by impurities. The choice of fine-dimension fibres, by providing very minute pores on the surface of the batt, improves the water-retaining ability of the felt on the one hand, while, on the other hand, it necessarily reduces the removal time of the fibres, which in the present invention can occur by abrasion, heat or chemical degradation. Therefore, the choice of the claimed dimension range is not arbitrary. Hence, feature (iii) alone fulfills the conditions of a new selected range.

Thus, the subject-matter of Claim 1, as granted, of the patent in suit is new.

In conclusion the jurisprudence is clear and uniform in respect of general versus specific disclosure, (see paragraph 8 above) and no important point of law has arisen in that respect.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for referral to the Enlarged Board of Appeal is refused.

The Registrar: The Chairman:

N. Maslin

C. T. Wilson