DECISION OF THE COMMISSIONER

STATUTORY - S 2(d) - New unobvious arrangement of Design Matter

The arrangement of the design on the textile material provides reference structural points which are utilized in the manufacture of garments. The difference from the prior art is not solely in whatever intellectual or aesthetic appeal the design has, but also in the advantages of the functional arrangement and purpose of the design.

FINAL ACTION: Reversed

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This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action, dated May 31, 1972, rejecting application 996,098. This application was filed on July 21, 1967 in the name of Jean Claude Boussac and is entitled "New types of dresses and similar garments, fabric for their manufacture and the manufactured garments obtained".

Mr F Poliquin presented his submission before the Patent Appeal Board on December 5, 1972.

In his final action dated May 31, 1972, the Examiner rejected the said application because the subject matter thereof was not considered to be patentable over the prior art cited as follows:

American Patents

1,374,970	April 19, 1921	Weyand
2,997,801	August 29, 1961	Gottlieb

In the final action the Examiner stated that the subject matter of the application disclosed a patterned fabric and a method for the manufacture of garments from this fabric. He further stated that it was not patentable because Weyand's and Gottlieb's patents showed that prior art had taught how to arrange ornamentations of

a uniformly recurring design so as to achieve the desired arrangement of those ornamentations on predetermined places on the garment. He pointed out that the patents cited showed that individual lengths of the recurring pattern were so arranged that each length made up into a complete garment.

The Examiner further stated that, given the patents cited, there was no innovation in the functional purpose by cutting out the fabric as set forth in the application, to wit, by placing the pattern on the fabric, as determined by the design of the fabric.

He concluded that the only innovation of the fabric described in the application was a certain decorative or aesthetic effect produced on the garment by the stripes outlining geometric areas on the fabric.

He added that it is well established that the application of concepts and decorative or aesthetic effects to fabric designs is not considered to be patentable.

More particularly, the applicant's disclosure discloses a coloured fabric which has a design woven into the warp and woof, which is based on the structure and elements of the pattern of the garment or dress.

In the examples of the design given, the applicant's fabric has different coloured stripes which determine certain positions and also produce aesthetic effects both horizontally and vertically.

Page 2 of the applicant's disclosure states that the purpose of the invention is to manufacture, for example, a short-length dress, that is, one requiring a length of fabric measuring 110 cm between selvages and 140 cm in width between a certain ratio identified as R.

In the first example given, a front and a back of a dress can be cut out from the area of fabric between the two selvages and the two ends of ratio R. The front and back, when sewn together, make a complete dress.

In the second example given, a front and hald of a back can be cut out from the area of fabric between the two selvages and the two ends of ratio R. The front and the two halves of the back, when sewn together, make a complete dress.

The applicant's fabric, as woven, has stripes of different colours and widths running vertically or horizontally. These stripes provide and aesthetic appeal and also serve as reference structural points used by the person who places the pattern on the material or fabric for cutting out and making up the desired pieces for a dress. The length of the fabric, that is, the length of the piece, is determined beforehand in terms of the 110 cm required for the short style in the first example. In the second example, it corresponds to the width required for a front and half a back. The width of ratio R is also determined beforehand and is based on the length required to cut out two backs in the case of the first example or to cut out the length of the pattern (110 cm) in the second example.

Some coloured stripes are so placed as to establish a very precise reference point for laying out the pattern on the fabric. Because of this reference point, the pieces can be sewn together precisely and thereby even give the impression that a much more expensive manufacturing method was used in the manufacture of the garment.

Claim 1 of the application reads as follows:

> A fabric for the manufacture of garments such as dresses, having stripes woven into the warp and woof, some stripes being continued into the material, the said stripes defining the outline of distinct geometric areas in the fabric, the said stripes and the said areas forming a recurring pattern in the fabric along the warp threads, individual lengths of pattern in the fabric being arranged to form one full length of a part of a garment in which the said stripes give the appearance of dividers characteristic of the full length of the said parts.

This claim is representative of the claims of the application. It does not clearly describe or clearly attack the points which the applicant describes as being his invention. This claim mentions that the designs are formed of stripes woven into the warp and woof, that some stripes are continued into the fabric, that the stripes define the outline of distinct

geometric areas in the fabric, that the said stripes and the said areas form a recurring design in the fabric along the warp threads, that the individual lengths of pattern in the fabric are arranged to form a full length of a part of a garment and that the said stripes give the appearance of dividers characteristic of the full length of the said parts. No where does this claim establish the importance of the positions of the various coloured stripes, their interrelationship, their relationship to ratio R and the length of the fabric, that is, the space between the selvages and the length of the pattern required for a short-length dress.

The claim submitted with the applicant's letter dated October 6, 1972 describes a fabric for the manufacture of garments that consists of various coloured striped in the warp and woof, some of these stripes being continued into the fabric, the stripes in combination with the rest of the fabric creating distinct geometric areas in the fabric, areas having border stripes whose outer edges define the outline of the areas, the said areas producing in the fabric a recurring pattern along the warp threads, individual lengths of this pattern being arranged to form full-length parts of garments, in which parts the said stripes are arranged to give the appearance of dividers characteristic of the full length of the said parts.

This claim does not clearly establish the importance of the relationship which, according to the disclosure, must exist between the position of the various coloured stripes, their interrelationship and their relationship to these stripes, ratio R, the pattern required for cutting out a short-length dress and the length of the fabric, the latter being the distance between the selvages.

Weyand's patent No 1,374,970 describes a fabric and a procedure for manufacturing the fabric. This fabric is usually made up of ordinary fabric on a bolt on which is printed some ornamentation that enhances the appearance of a garment which uses the fabric of the invention in its manufacture. The ornamentation is printed in a uniformly recurring pattern. As stated in lines 28 to 31, page 1, column 1, "The uniformly recurring ornamentations in each area or section do not in any way restrict or define the outline of the finished garment"; the ornamentation does not serve to define the outline of the pattern used for cutting out the garment. It is true that some parts of the ornamentation may coicide with certain parts of the garment once it is cut out, but the purpose of the said parts is not to establish that relationship. It should be further noted that while the disclosure of the Weyant patent seems to attach a great deal of importance to the printing of the fabric, it is not limited to that process. At lines 12 to 27 of page 2, column 1 of the patent, it mentions that the desired ornamentation may be produced by methods other than printing. A modification might be of the type described in the applicant's disclosure, that is, the colours might be obtained by weaving them into the warp and woof threads.

Gottlieb's patent no 2,997,801 discloses a printed fabric and the procedure for its manufacture. The main purpose of the invention disclosed in the patent is to obtain from a one-yard long piece of material only one skirt made out of three 120^{o} sections, with a hem measuring from 206 to 216 inches. This is made possible by the fact that the three sections of the skirt are printed precisely on one piece of fabric of standard width. Other than the ratio between the sections of the print, there is no specific relationship between the ends of the print, the different colours and the two selvages of the fabric.

Neither of the patents cited discloses a fabric which is made at the outset from a specific width between the selvages; the width is a ratio of a pattern length that will be used later by the cutter in making a dress. Furthermore, neither patent discloses a fabric which, in addition to being of a specific width, also has different coloured stripes that are arranged very precisely and between which a very specific ratio is maintained. Nor do these patents demonstrate any need to maintain a very specific ratio between the selvages, ratio R and the width of the pattern that will be used by the cutter. Because of the special arrangement of the stripes, selvages and ratio R, the cutter has only one way of laying out the pattern before cutting.

In his submission the applicant stated that according to the standard

method, the composition of the woven coloured design is left entirely up to the designer. According to this method, the fabric designed by the designer is passed on to the dress maker or cutter who must, by trial and error, relying on her eye, experience, taste and skill, determine from which part of the fabric the piece to be made must be cut out.

The applicant adds that the great advantage of the invention described rests on the very precise physical outline defined by the recurring ratios in the fabric. He points out that once these ratios are established, it is possible to create an infinite number of ornamentations by juggling the number, width and colour of the various stripes making up the fabric. The applicant is of the opinion that this rules out the possibility of considering the subject matter of the application as being exclusively in the decorative field.

The question of the design and print of a thing was discussed thoroughly. Nonetheless, it was clearly established that a new print or design arrnagement may be subject matter of a patent if that arrangement produces a combination which has a functional arrangement and purpose. On the other hand, this arrangement is not patentable if it produces only an aesthetic, intellectual or literary appeal. In this application, the Patent Appeal Board is of the opinion that the design of the print disclosed in the disclosure of the application is of the type that has a functional arrangement, and, furthermore, that the subject matter described in the application is not disclosed in the patents cited.

It is therefore recommended that the Examiner's Final Action rejecting the application be reversed.

J.F. Hughes
Acting Chairman
Patent Appeal Board

I concur with the findings of the Patent Appeal Board and reverse the final action. I am returning this application to the Examiner so that this application can be pursued further.

Decision accordingly

A.M. Laidlaw
Commissioner of Patents

Representatives of the Applicant

Marion, Robic & Robic, Montreal, Québec

Dated at Ottawa, Ontario
this 13th day of March 1973