

**OPINION UNDER SECTION 74A**

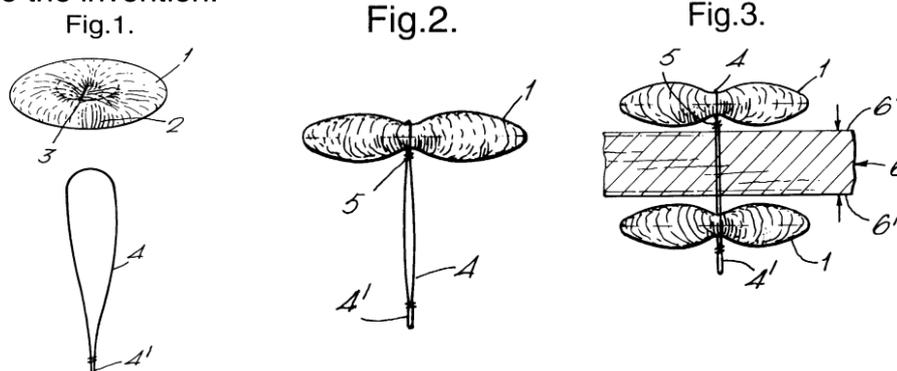
Patent	GB 2349332 B
Proprietor(s)	Handy Ltd
Exclusive Licensee	
Requester	Francis Gillam
Observer(s)	Handy Ltd
Date Opinion issued	26 May 2017

**The Request**

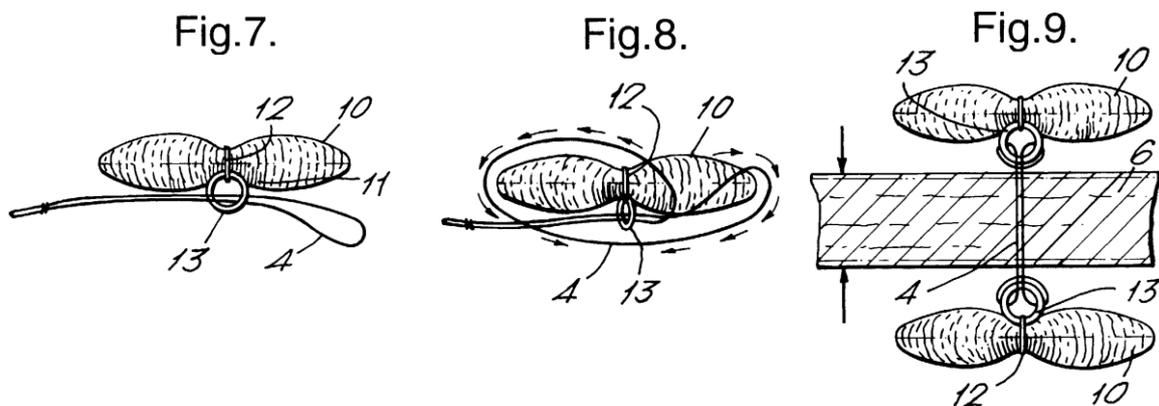
1. The comptroller has been requested to issue an opinion as to whether the product described and illustrated in the request and a corresponding method of use would infringe GB 2349332 (the Patent). The Patent was granted on 24 December 2002 and remains in force. Provided the final renewal fee is paid, it will expire on 27 April 2019.
2. Observations have been received from Beck Greener on behalf of the proprietor, Handy Limited. Observations in reply were subsequently received from the requester.

**The Patent**

3. The Patent relates to a tuft for use with upholstery, upholstery incorporating such a tuft and a method of fastening the tuft to upholstery.
4. Figures 1 to 3 of the Patent (reproduced below) illustrate a prior art tuft to provide the background to the invention.



5. Tufts of this sort may be used in upholstery to hold fibre stuffing in place. The prior art tuft comprises a rosette tuft (1) formed of loops of yarn (2) held together at their centre by a further piece of yarn (3). A tie in the form of a loop of nylon (4) is knotted directly around the rosette tuft, by means of a knot (5). The tie is passed through the upholstery to which the tuft is to be attached, e.g. a mattress (6), and a further tuft is then held between the opposite end of the loop (4') and the opposite side of the mattress (6"). It is noted that the loop (4') is not tied to the further tuft, the further tuft being held in place by compression between the mattress and the end of the loop (4'). In use this means that the further tufts can become loose and detached.
6. The invention of the Patent consists in providing the tuft with an attachment device for the tie. The tie may be a loop, as in the prior art, or in the form of a treasury tag, referred to in the Patent as a long/long tape. Figures 7 to 9 illustrate the invention being used with a loop tie and are reproduced below for comparison with the prior art are illustrated above.



7. The tuft of the invention comprises a rosette tuft (10) formed by loops of yarn (11) tied at their centre by string (12) as in the prior art. The string (12) also holds an attachment device (13), here having the form of a ring, and the tie is knotted to the attachment device (Fig. 8). In use the tie is passed through the upholstery and knotted to a second tuft on the opposite side of the upholstery. Both tufts are securely held in place by this arrangement. If a treasury tag type tie is used, the end bars of the tag are passed through the rings to securely hold the tufts in place.

## Infringement

8. Section 60 Patents Act 1977 governs what constitutes infringement of a patent; Section 60(1) reads:

*Subject to the provision of this section, a person infringes a patent for an invention if, but only if, while the patent is in force, he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say -*

(a) *where the invention is a product, he makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;*

*(b) where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;*

*(c) where the invention is a process, he disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise.*

9. In order to decide whether there is any infringement of the Patent, I must first determine whether the product of the request has all the features set out in the claims of the Patent as correctly construed.

## **Claim Construction**

10. The claims must be construed purposively following the well known House of Lords authority on claim construction *Kirin-Amgen v Hoechst Marion Roussel and others*<sup>1</sup>. This requires that I put a purposive construction on the claims, interpreting them in the light of the description and drawings as instructed by Section 125(1) and take account of the Protocol to Article 69 of the EPC. Simply put, I must decide what a person skilled in the art would have understood the patentee to have used the language of the claim to mean.

11. Section 125(1) of the Act states:

*For the purposes of this Act an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent shall be determined accordingly.*

12. The Protocol on the Interpretation of Article 69 of the EPC (which corresponds to section 125(1)) states:

*Article 69 should not be interpreted in the sense that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Neither should it be interpreted in the sense that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patentee has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patentee with a reasonable degree of certainty for third parties.*

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<sup>1</sup> *Kirin-Amgen v Hoechst Marion Roussel and others* [2005] RPC 9.

## The claims

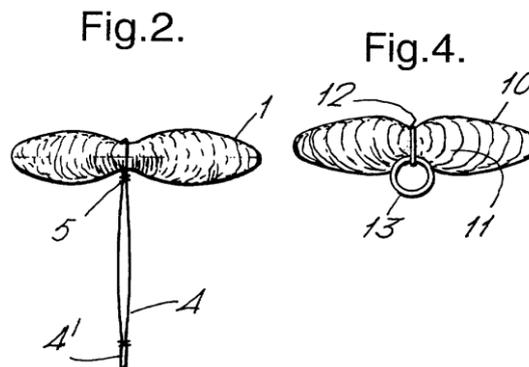
13. The independent claims read as follows (the full set of claims is included as Appendix 1):
1. *A rosette tuft for fastening to upholstery, the rosette tuft having an attachment device for allowing a tie to be attached to the rosette tuft to allow the rosette tuft to be fastened to upholstery by means of a said tie.*
  6. *Upholstery having at least one rosette tuft fastened thereto by a tie, the rosette tuft having an attachment device to which the tie is attached.*
  12. *A method of fastening a rosette tuft to upholstery, the method comprising the steps of:  
attaching a tie at a first end to an attachment device of the rosette tuft;  
passing a second end of the tie through the upholstery so that the rosette tuft is adjacent a first side of the upholstery; and,  
fixing the second end of the tie at an opposite side of the upholstery.*
  19. *A tuft, substantially in accordance with any of the examples as hereinbefore described with reference to and as illustrated by Figures 4 to 9 of the accompanying drawings.*
  20. *A method of fastening a tuft to upholstery, substantially in accordance with any of the examples as hereinbefore described with reference to and as illustrated by Figures 4 to 9 of the accompanying drawings.*
14. The requester has suggested that the terms “an attachment device” and “tie” are vague and unclear. They refer to the dictionary definition of “device” as “a thing made or adapted for a particular purpose”, to apparently support their position. I disagree with their assessment however. In particular I do not consider that “an attachment device” should be read or interpreted in isolation. It is further defined in the claim by reference to its function “for allowing a tie to be attached to the rosette tuft”, and it is clear this is what the device is adapted to do. The description refers to the attachment device in similar terms and also specifies (page 9, line 1) that it “provides a means by which a tie can be positively and securely attached to a tuft.” Examples of attachment devices are also provided, including loops, rings, hooks and T-bars. I do not see that the skilled person would have any trouble construing this phrase generally as read.
15. In relation to the term “tie”, it is clear from the description that the tie should be an elongate element capable of being attached to the attachment device and passing substantially through the thickness of the upholstery. I consider the skilled person would construe tie accordingly, i.e. an elongate tie.
16. Looking more generally at the requester’s statement, the requester appears to be trying to draw a distinction between the yarn portion of the tuft *per se*, and the tuft as a whole. I.e. the requester interprets the term tuft as referring only to the yarn portion such that the attachment device is not part of the tuft so defined. In relation to the inventive embodiments in the Patent, the term tuft *could* be used to refer solely to the

yarn portion or it *could* be used to refer to the assembly of yarn portion and attachment device. In the context of the patent it is clear that the tuft of the claims is the combination of the yarn portion and the attachment device and the skilled person would construe it accordingly.

17. The observations in reply indicate that the requester considers that the prior art illustrated in the patent, especially the assembly of tuft and tie illustrated in figure 2, falls within the scope of the claim. In particular, they argue that “figure 2 of the patent clearly shows a rosette tuft having a loop of yarn (“pre-tied nylon loop tie”)” (¶ 3). The observations in reply then continue by noting that the tie does not form part of the claimed invention and that the functional *for* statements may be largely ignored. They therefore suggest that the claim may be construed as follows:

*“A rosette tuft [suitable for ... upholstery] the rosette tuft having an attachment device [suitable for ... allowing the rosette tuft to be fastened to upholstery].*

18. On this basis the requester claims that the embodiment of figure 2 falls within the scope of claim 1. Indeed, one can see that there is a structural resemblance between the prior art of figure 2 and the invention of figure 4, the tie (4) of figure 2 being somewhat equivalent to the attachment ring (13) of figure 4 (reproduced again below for comparison). In theory a further tie could be attached to the tie (4) of figure 2.



19. The observations in reply then state that claim 1 must be construed as being clear of this prior art (¶ 5) and the argument is made that:

*The patent does refer ... to the attachment device as comprising a loop through which a portion of the tie can be passed. However, as stated in the request, this cannot be intended to extend to a loop of thread, yarn or the like but must be “a device” taking the ordinary English meaning of that word as explained in the request”*

20. The original request appears to argue that the *device* must be an extra [mechanical] device expressly provided to allow a string or tape-like tie to be attached to the tuft.
21. I have to say I do not follow the requester’s line of argument which appears contradictory in places and inconsistent. For example, in the request it is stated that

the attachment device “is *expressly provided* to allow a string or tape-like tie to be attached” [my emphasis], whilst the observations in reply would encourage me to completely ignore the tie, and interpret the attachment device as anything to which a tie could be attached. In any case the tie of figure 2, which may apparently be an attachment device, is not *expressly provided* to allow a tie to be attached. Additionally, the tie of figure 2 seems to be an extra mechanical device such that this does not distinguish the prior art from the invention.

22. Of course the skilled person would necessarily construe claim 1 so that it is distinguished from the admitted prior art and that means that it must be construed so that it is distinguished from figure 2. Ultimately it seems that the distinguishing feature of the *loops* of figures 2 and 4 is their size, in particular their length, which is related to their purpose. The purpose of the tie of figure 2 is to pass completely through an item of upholstery whilst the purpose of the ring of figure 4 is to attach a tie and not to pass any significant distance into the upholstery. Although a further tie could be attached to the loop of figure 2, such an arrangement would prove unsatisfactory when it came to attaching the tuft to upholstery. I consider that the skilled person would understand that the attachment device is intended to be short and that it does not extend into the upholstery to any significant degree
23. Taking these points together I consider claim 1 may be more accurately written as follows to reflect the skilled persons construction:
  1. *A rosette tuft for fastening to upholstery, the rosette tuft comprising a short attachment means that does not extend into the upholstery to any significant degree, the short attachment means adapted to allow an elongate tie to be attached to it to allow the rosette tuft to be fastened to upholstery by means of the elongate tie.*
24. Claim 6 is directed to upholstery comprising the tuft of claim 1, and claim 12 to a method of fastening the tuft of claim 1 to upholstery. The requester appears to accept that if claim 1 is infringed then so too are claims 6 and 12 and I shall proceed on this basis.
25. Claims 19 and 20 are omnibus claims relating to a tuft and a method of fastening the tuft to upholstery respectively. Both include the phrase “as illustrated in Figures 4 to 9” and by virtue of this phrase they will be construed narrowly in accordance with the guidance in the Manual of Patent Practice (¶¶ 14.124-14.125.1), such that their scope is limited to the illustrated embodiments .

## **The product**

26. The product described in the request is also a rosette tuft for upholstery. With reference to photographs accompanying the opinion request (see Appendix 2), it is described as follows:

*In photo 1, a pre-cut length of relatively strong yarn is tied with a simple knot to form a loop approximately half-way along the length, the knot then being pulled tight (photo 2). A length of woollen yarn is then laid across a U-shaped former (photo 3) and is wound many times around the two arms of the former (photo 4). In photo 5, the length of yarn formed in photos 1 and 2 is placed*

*over the wound turns with the loop disposed centrally on one side; the length is then pulled tight (photos 6 and 7) and knotted to hold the rosette tuft together with the loop of the pre-cut length disposed centrally of the tuft, on one side thereof (photo 8).*

27. Photographs 2, 5 and 8 are reproduced below. Photo 2 shows the strong yarn with a loop formed in it. Photo 5 shows the strong yarn being used to tie the woollen yarn loops together and photo 8 shows the completed tuft. The strong yarn would normally be chosen to be the same colour as the woollen yarn and the free ends of the strong yarn shown in photo 8 would be trimmed.

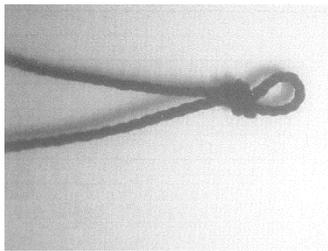


Photo 2

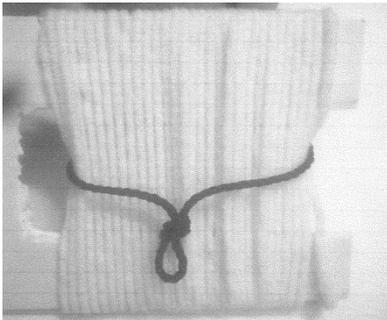


Photo 5



Photo 8

28. The potentially infringing rosette tuft is intended to be used with a treasury tag type tie in a similar manner to that specified in the patent.

## **Analysis**

29. The product is clearly a rosette tuft for fastening to upholstery.
30. The loop formed in the strong yarn (the strong yarn loop) used to hold the woollen yarn loops together is designed to enable the tuft to be fastened to upholstery by means of a tie in the form of a treasury tag. The strong yarn loop is therefore considered to be an attachment device for the purpose of the claims. Furthermore, the strong yarn loop is not intended to penetrate into the upholstery to any degree, especially as it is for use with treasury tag style ties, the ends of which are intended to lie flush against the outside surface of the upholstered item. It is therefore also considered to be a short attachment device as I have construed claim 1.
31. The requester submits that by forming a loop in the yarn which is a necessary part of the rosette tuft, the loop does not satisfy the requirement of claim 1 of "having an attachment device".

32. In their observations, the observer states that “The fact that the loop is formed from the same physical piece of yarn does not make it any less “an attachment device” within the meaning of the patent.”
33. I agree with the observer. The claim makes no distinction regarding whether the attachment device is integral or separate from the remainder of the tuft. In particular, the claim is not worded such that it requires a tuft portion and an attachment device, it merely requires a tuft having an attachment device. The fact that the attachment device is formed from the same piece of yarn as is used to hold the tuft together is immaterial.
34. The product is therefore considered to have all the features of claim 1 as I have construed it such that it falls within the scope of this claim.
35. An item of upholstery comprising the tuft also therefore falls within the scope of claim 6 and a method of fastening the tuft to upholstery falls within the scope of claim 12.
36. The product is also considered to have the feature of claim 2 (a loop through which a portion of a tie can be passed). A mattress incorporating the product by way of a tie in the form of a treasury tag having such tufts at both ends is considered to have the features of claims 7, 9, 10 and 11. A method of fastening the product in this manner to a mattress is also considered to comprise the features of claims 13, 15, 16, 17 and 18.
37. In relation to the omnibus claims 19 and 20, figures 4 to 9 of the Patent only show the attachment means in the form of a ring being attached to the tuft by a separate string. It is therefore considered that such an arrangement must be present in order to fall within the scope of these claims. Given that the described product does not possess these features it does not fall within the scope of these claims.
38. Having found that the product falls within the scope of at least claims 1, 6 and 12, the carrying out of any of the acts specified in Section 60 of the Act will infringe the patent. In particular, where the invention is a product, as in claims 1 and 6, the manufacture in the UK or importation into the UK of the product of either of these claims will infringe the patent (Section 60(1)(a)). Where the invention is a process, the use of that process within the UK infringes the Patent by virtue of Section 60(1)(b) and the importation of a product manufactured according to the process infringes by virtue of Section 60(1)(c).
39. Accordingly, the manufacture in the UK of the product is considered to infringe claims 1 and 2 of the Patent. The manufacture in the UK of a mattress incorporating the product is further considered to infringe claims 6, 7, 9 to 13 and 15 to 18 of the Patent. The importation of a mattress comprising the product is also considered to infringe these claims, albeit that claims 12, 13 and 15 to 18 are infringed by virtue of Section 60(1)(c) rather than Section 60(1)(b).

## **Opinion**

40. Based on the evidence and arguments provided, I consider that the tuft described and illustrated in the request falls within the scope of claims 1 and 2. Furthermore, I consider that a mattress comprising such a tuft falls within the scope of claims 6, 7

and 9 to 11, and a method of making a mattress comprising such a tuft as described in the request falls within the scope of claims 12, 13 and 15 to 18. Accordingly it is my opinion that the manufacture in the UK or importation into the UK of the described tuft or a mattress comprising such a tuft infringes these claims of the patent.

Matthew Jefferson  
Examiner

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**NOTE**

*This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.*

## Appendix 1

### Claims of GB 2349332 B

1. *A rosette tuft for fastening to upholstery, the rosette tuft having an attachment device for allowing a tie to be attached to the rosette tuft to allow the rosette tuft to be fastened to upholstery by means of a said tie.*
2. *A rosette tuft according to claim 1, wherein the attachment device comprises a loop through which at least a portion of a tie can be passed to attach a said tie to the rosette tuft.*
3. *A rosette tuft according to claim 2, wherein the loop is rigid or resilient.*
4. *A rosette tuft according to claim 1, wherein the attachment device comprises a hook over which at least a portion of a tie can be passed to attach a said tie to the rosette tuft.*
5. *A rosette tuft according to claim 4, wherein the hook is rigid or resilient.*
6. *Upholstery having at least one rosette tuft fastened thereto by a tie, the rosette tuft having an attachment device to which the tie is attached.*
7. *Upholstery according to claim 6, wherein the attachment device of the rosette tuft comprises a loop through which at least a portion of the tie is passed, or a hook over which at least a portion of the tie is passed, to attach the tie to the rosette tuft.*
8. *Upholstery according to claim 6 or claim 7, wherein the tie is a loop of string which is attached to the attachment device.*
9. *Upholstery according to claim 6 or claim 7, wherein the tie has a retainer at at least one end for retaining the tie on the attachment device.*
10. *Upholstery according to any of claims 6 to 9, wherein the tie passes through the upholstery from one side to an opposite side and is attached to a respective rosette tuft at each end.*
11. *Upholstery according to any of claims 5 to 9, wherein the upholstery is a mattress.*
12. *A method of fastening a rosette tuft to upholstery, the method comprising the steps of:  
attaching a tie at a first end to an attachment device of the rosette tuft;  
passing a second end of the tie through the upholstery so that the rosette tuft is adjacent a first side of the upholstery; and,  
fixing the second end of the tie at an opposite side of the upholstery.*
13. *A method according to claim 12, wherein the attachment device comprises a*

*loop through which a portion of the tie is passed to attach the tie to the rosette tuft.*

*14. A method according to claim 12 or claim 13, wherein the tie is a loop of string which is attached to the attachment device.*

*15. A method according to claim 12 or claim 13, wherein the tie has a retainer at at least one end for retaining the tie on the attachment device.*

*16. A method according to any of claims 12 to 15, wherein the step of fixing the second end of the tie at the opposite side of the upholstery comprises the step of fastening the second end of the tie to a second tuft at the opposite side of the upholstery.*

*17. A method according to claim 16, wherein the second tuft is a rosette tuft.*

*18. A method according to any of claims 12 to 17, wherein the upholstery is a mattress.*

*19. A tuft, substantially in accordance with any of the examples as hereinbefore described with reference to and as illustrated by Figures 4 to 9 of the accompanying drawings.*

*20. A method of fastening a tuft to upholstery, substantially in accordance with any of the examples as hereinbefore described with reference to and as illustrated by Figures 4 to 9 of the accompanying drawings.*

## Appendix 2

Photographs of the tuft described in the request.

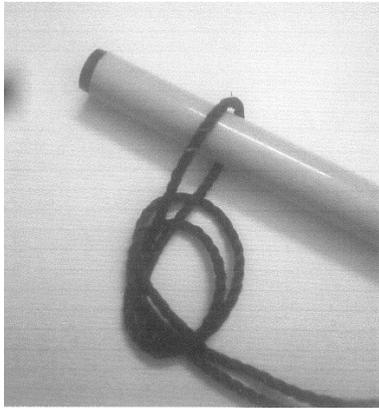


Photo 1

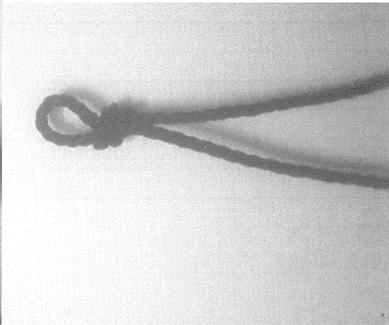


Photo 2

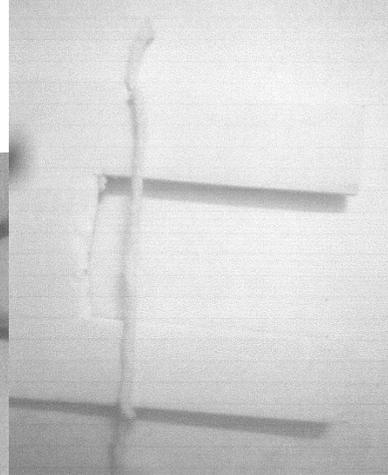


Photo 3

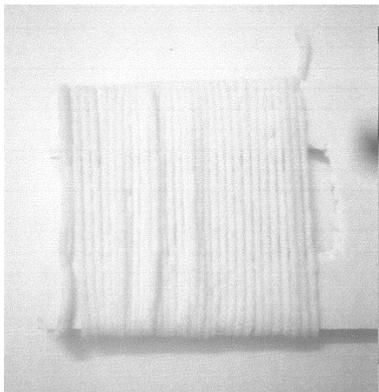


Photo 4

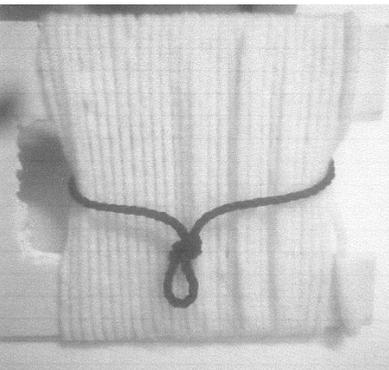


Photo 5

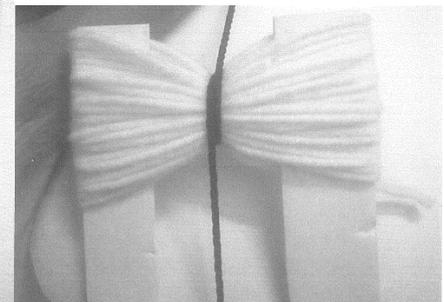


Photo 6

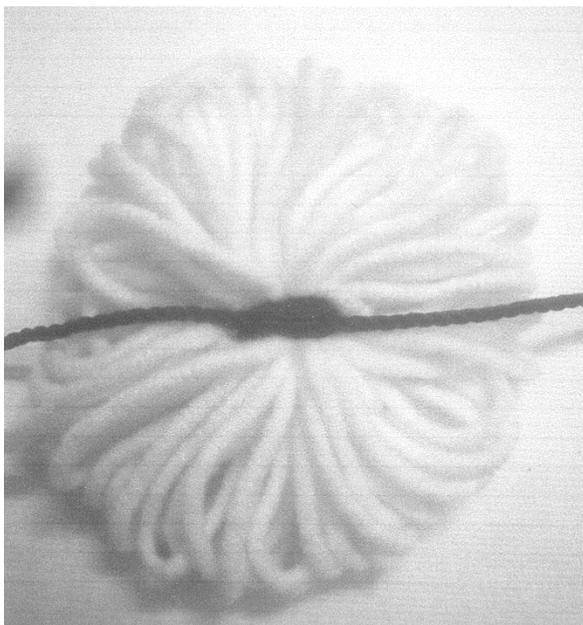


Photo 7



Photo 8