355 0174/91

PATENTS ACT 1977

IN THE MATTER OF Application
No 8716760 in the name of
Polytech Netting Industries

STATEMENT OF REASONS

The application relates to a net for restraining loads in a vehicle and was filed on 16 July 1987 with a claimed priority date of 6 November 1986.

During substantive examination the examiner raised an objection that an amendment relating to the embodiment of figures 4 and 5 of the drawings introduced matter extending beyond that disclosed in the application as originally filed, in contravention of section 76(2)(a). The applicants contested the objection and the matter came before me at a hearing via the video conference link on 22 April 1991 at which the applicants were represented by their agent Mr S Coleman and Mrs P Everett attended as the examiner in the case.

At the hearing I gave an oral decision upholding the examiner's objection and refusing progress to grant of the application unless a suitable amendment to overcome the objection be filed within the period prescribed by section 20(2) for appealing the decision, which, being a substantive issue, is 6 weeks from the date of the oral decision unless extension is granted. I stated that the reasons for my decision would be set forth in writing, which I now do.

When considering the question of additional subject matter it is necessary to look first at the teaching of the application as originally filed and accordingly I go to the original specification which, reading from line 17 of page 1 onwards states:

"It is an object of the present invention to provide in the trunk of a vehicle a means for holding the loads in place during the displacement of the vehicle.

This is achieved by providing in the trunk of the vehicle mounting points to which a load restraint net may be attached. The net is formed of a meshed fabric with a cord extending preferably in the open spaces of the fabric. Attachment means are provided at predetermined locations along the periphery of the fabric so that the net may be secured to these mounting points. The disposition of the mounting points in the trunk is such as to define a load receiving area which, due to the resiliency provided in the net, may be extended to receive loads. The net is subsequently retracted in order to maintain the loads in place in the trunk area.

In one preferred form of the invention, the cord is elastic and is the element which provides the resiliency to the net.

In another form of the invention, the fabric has a rectangular contour with the area of the fabric being greater than the area defined by the contour. In one alternative, the mounting points are located on the floor of the trunk so that the net will have a hold down effect on the loads. In another alternative, the mounting points are located on the rear lamp panel of the vehicle and on wheel wells in the trunk.

In another form of the invention, the fabric has a trapezoidal configuration, with its lower shorter side resting on the floor of the trunk.

Other objects and further scope of applicability of the present invention will become apparent from the detailed description given hereinafter. It should be understood, however, that this detailed description, while

indicating preferred embodiments of the invention, is given by way of illustration only, since various changes and modifications will become apparent to those skilled in the art."

The specification goes on to refer to accompanying drawings and states that:

"Figure 1 is a perspective view showing the rear portion of a station wagon vehicle and a load restraint net made in accordance with the present invention;

Figure 2 is an enlarged perspective view showing the attachment means of the net secured to a mounting point;

Figure 3 is a perspective view showing the trunk of a car vehicle and a net made in accordance with the present invention;

Figure 4 is a perspective view showing another embodiment of a load restraint net made in accordance with the present invention; and

Figure 5 is a perspective view of the trunk of a vehicle showing the location of mounting points therein."

A passage headed "Description of preferred embodiment" follows and reads:

"Referring to figs 1 and 2, there is shown a first embodiment of the present invention wherein the trunk section of a vehicle, such as that of a station wagon, has a floor 10 to which are secured four mounting points (three of which are shown as) 12, 14, 16.

A net 20 made in accordance with the present invention is shown extending over the floor resting on a series of loads 21 (represented here as shopping bags). The net comprises

a meshed fabric 22 having a rectangular contour 24, the contour area being smaller than the total surface area of the fabric so as to adopt the configuration shown. In this embodiment, the contour 24 is defined by a cord which is continuous passing through the open peripheral spaces of the fabric. The free ends of the cord are sewn together in one of the two opposite fold over band portions 25 of the net. The corners of the peripheral cord 24 displays loops 26 which are formed by sewings 28. A snap hook 30 is attached to each loop 26 and is engageable with the crossbar portion 32 of the anchor element 12 representing the mounting point on the floor of the trunk.

Referring to figure 3, a net 21 similar to net 20 but without fold over side portions is shown in the trunk of another vehicle. In this embodiment, two mounting points 32 and 34 are provided on the inside surface of the rear lamp panel 36 of the vehicle to which the two rear hooks 30 of the net are to be mounted. Two other mounting points 37 are provided on the wheel wells (one of which is shown as 38) for connection with the front two hooks 30 of the net. The mounting points on wheel wells 38 may consist of holes provided on the seam extension 39 of the wheel wells and located at a certain distance from the floor of the trunk. With the arrangement of figure 3, the net has a hold-down effect on the baggages in a manner similar to the net 20 of figure 1.

Referring to figs 4 and 5, another embodiment of a net in accordance with the present invention is illustrated. The net 40 has a trapezoidal shape with the shorter side thereof extending along the floor of the trunk. Mounting points 42 are provided on the inside wall of the rear lamp panel 43 in a manner similar to that illustrated in figure 3. In this embodiment, the net has a side restraining effect on the bags 44 securing the bags to rest against the rear panel. This is achieved by locating the lower mounting points 50 closer to the floor 46 of the trunk 48

(see fig 5) on the seam extension 52 of the wheel wells 54.

The fabric of the net of the present invention as well as the fold-over portions 25 are preferably made of a black colour-fast synthetic material (ie NYLON$^{t.m.}$) to ensure no leaching of dyed ions.

In one form of the invention, the cord should have a core of polyester yarn and a cover of black colour-fast multi-filament polypropylene or NYLON$^{t.m.}$ material. This material should also be capable of meeting a given pulling strength and of resisting to low temperatures.

Although the invention has been described with reference to specific forms, it will be evident to the person skilled in the art that it may be refined and modified in various ways. For example, the resiliency of the net could be obtained from the meshed fabric instead of the cord as described above. The present invention may also be used for similar applications: for example, the net assembly may be installed across the rear inside of mini-vans where it prevents the contents from falling out when the rear door is opened. The assembly may also be installed in the cargo box of light body trucks where it is mounted on the inside of the box as pocket restraint nets. It is therefore wished that the present invention should not be limited in interpretation except by the terms of the following claims."

I quote the claims in full and these read:

"1. In combination with the rear portion of a vehicle having mounting points therein, a load restraint net adapted to be attached to said mounting points to engage and restrain load placed in said rear portion, said net comprising:

- a meshed fabric;

- a cord engaging the peripheral open spaces of said meshed fabric; and

- attachment means at predetermined locations along the periphery of said meshed fabric for securing said net to said mounting points in said rear portion, the location of said mounting points in said rear portion being such as to define a load receiving area when said net is attached in said rear portion;

said net displaying resiliency so that said area may be extended to receive loads therewithin and to retract thereon to restrain said loads in position in said area.

2. A net as defined in claim 1, wherein said cord is elastic and provides the resiliency in said net.

3. A net as defined in claim 1 or claim 2, wherein said cord is continuous along the periphery of said meshed fabric; said attachment means being defined by loops formed in said cord at said predetermined locations.

4. A net as defined in claim 1, wherein said cord and said fabric are colour-fast.

5. A net as defined in claim 1, wherein said cord and said fabric are flame resistant.

6. A net as defined in claim 1, wherein said meshed fabric has a rectangular contour, the area of said fabric being greater than the area defined by said contour.

7. A net as defined in claim 1, wherein said rear portion consists of a trunk; said meshed fabric having a trapezoidal contour, the longer side thereof extending along the floor of said trunk.

8. A net as defined in claim 7, wherein said mounting points comprise two anchor points provided in a rear lamp panel of said trunk and two anchor points provided on said floor.

9. A net as defined in claim 6 or claim 7, wherein said mounting points comprise two anchor points provided in a rear lamp panel of said rear portion and two anchor points respectively provided on wheel wells in said rear portion.

10. A net as defined in claim 6, wherein said mounting points consist of four anchor points on the floor of said rear portion.

11. In combination with the trunk of a vehicle including a rear lamp panel, wheel wells and a floor, and mounting points in said truck, a load restraint net comprising:

- a substantially rectangular meshed fabric;

- an elastic cord engaging the peripheral open spaces of said meshed fabric; and

- attachment means at the four corners of said meshed fabric adapted to be secured to said mounting points in said trunk, the location of said mounting points being such as to provide a load receiving area when said net is attached to said mounting points;

- said cord providing resiliency so that said area may be extended to receive loads therein and said fabric retracted thereon to hold said loads in position in said area."

As a result of citations and other objections raised by the examiner, numerous amendments were made to the specification including the filing on 12 March 1991 of a new claim 1, now the

sole independent claim. This reads:

> "A load restraint net comprising a meshed fabric, a cord engaging in peripheral open spaces around an edge portion of said fabric and attachment means provided at intervals along the lenth of said cord for attachment to mounting points in a vehicle rear portion, said meshed fabric having an area exceeding an area defined by said cord in its operative position so that when a load is located for restraint by said net, said net is deformed by said load to a dished configuration within which said load is restrained."

My underlining emphasises a feature which, it is not disputed, was clearly disclosed in the original specification with regard to the first embodiment of figures 1 and 2 and the second embodiment of figure 3.

However, and this is where the dispute arises, the description with regard to the further embodiment of figures 4 and 5 has been revised so that in the text filed on 12 March 1991 the original paragraph on page 5, which I have quoted above, now reads, with the amendment underlined:

> "Referring to figs 4 and 5, another embodiment of a net in accordance with the present invention is illustrated. The net 40 has a trapezoidal shape with the shorter side thereof extending along the floor of the trunk. Mounting points 42 are provided on the inside wall of the rear lamp panel 43 in a manner similar to that illustrated in figure 3. In this embodiment, the net also has an area which exceeds that of the cord in its operative position and has a side restraining effect on the bags 44 securing the bags to rest against the rear panel. This is achieved by locating the lower mounting points 50 closer to the floor 46 of the trunk 48 (see fig 5) on the seam extension 52 of the wheel wells 54."

Other amendments had been made to the specification consistent with that made to page 5.

In a telephone conversation with Mr Coleman held on 28 March 1991 Mrs Everett objected that there was no disclosure in the original specification of the net of the figure 4 and 5 embodiment having an area exceeding that defined by the peripheral cord in its operative position and thus the amendments to page 5 and elsewhere contravened section 76(2). Mr Coleman disagreed and submitted further arguments in a letter dated 28 March 1991, which Mrs Everett did not find persuasive.

At the hearing Mr Coleman drew my attention to the general principle used in determining additional subject matter as set out in Van der Lely's Application [1987] RPC 61 where at page 65 the hearing officer said: "The fundamental principle in determining additional subject matter is to decide whether one document presents the informed reader with information relevant to the invention which the other document does not", the "other document" being, as Mr Coleman pointed out, the unamended version. As hearing officer in the Van der Lely case I am well familiar with these words. He also referred me to another statement of that principle in Ward's Application [1986] RPC 50 where at page 54 the hearing officer said: "matter must not be disclosed which extends, in the sense of enlarging upon, the original disclosure, ie which increases the specificity or particularisation of that disclosure". I am of course at one with Mr Coleman on the general principle.

In arguing that the amendments in contention in the present case do not breach the general principle Mr Coleman pointed out that the present form of claim 1 has been arrived at essentially by incorporating into the original claim 1 from original claim 6 the limitation that the area of the meshed fabric is greater than the area of the cord in its operative position. He added that in his view the words "in its operative position" refer to the cord area when the meshed fabric is engaged by a load and with regard to figure 4 he saw the cord area as that embracing the loads 44.

From this Mr Coleman submitted it is plain in figure 4 that the meshed fabric defining the downwardly tapering trapezoidal volume containing the loads has a greater area than the area of the cord embracing the loads. In support of this conclusion Mr Coleman drew my attention to his letter dated 28 March 1991 which after detailing the examiner's objection goes on to state:

> "In reply to this, it is pointed out that the principal embodiment of the invention is that of Figures 1 and 2 and the description of those figures refers to "a meshed fabric 22 having a rectangular contour, the contour area being smaller than the total service area of the fabric so as to adopt the configuration shown".
>
> It is normal when describing further embodiments only to describe where they differ from the main embodiment and that, we submit, is what has been done here so that it is implicit that the fabric of the embodiment of Figures 4 and 5 has the essential features of the embodiments earlier described. It is to be noted in this connection that the description of Figure 3 refers to "a net 21 similar to net 20 ..." and it is plain from Figure 3 itself that the area of the net exceeds that of the cord. By the same token, inspection of Figure 4 reveals, it is submitted, that the net of that embodiment must again exceed the area of the inlet of the cavity formed by the net.
>
> Accordingly, it is felt that on any fair view of the description as originally filed when read in conjunction with the drawings, the net of Figure 4 would be assumed to have the same feature as regards its area exceeding the area defined by the cord as is plainly present in the preceding embodiments.
>
> This particular point affects the continued presence in the application of Figures 4 and 5 and the description relating thereto. It also affects the continued presence in the application of Claim 5."

Mr Coleman's view expressed in the letter that the figure 3 embodiment incorporates the essential cord/fabric area relationship stated for the figure 1 and 2 embodiment is not disputed. However, I share the view put by Mrs Everett at the hearing that there is no suggestion in the original text that the embodiment of Figure 4 follows on to also incorporate the area relationship of the preceding embodiments. It is merely stated to be "another embodiment". Indeed Mr Coleman conceded this at the hearing.

Mr Coleman's case is not furthered by a study of the original claims since claim 7, referring to the trapezoidal contour of the fabric, has no appendancy to claim 6, the one defining area relationships, but is appendant only to claim 1.

I will now turn my attention to a careful study of what is actually shown in figure 4, the net 40 therein being described on page 5 as having a "trapezoidal shape with the shorter side thereof extending along the floor of the trunk". Mr Coleman sought to persuade me that any trapezoidal shape has six sides and that is what is shown in figure 4. I put it to Mr Coleman that what I see in the figure is a net appearing to be bounded by four sides, namely a top and a bottom side running along from one side to the other of the boot, or trunk, and then two slightly inclined sides running up to join the bottom and top sides. In other words conforming to my understanding of a trapezium as being a shape lying in a plane and having two parallel sides joined by two more sides which are not parallel.

Whilst Mr Coleman accepted my understanding of a trapezium he argued that we are considering a trapezoidal shape which is not a flat shape and I think by this and his earlier reference to six sides he means that such a shape is three dimensional. It is necessary for me to pursue this distinction because of its importance with regard to the fabric/cord area relationship of figure 4 and accordingly I note that Collins Concise Dictionary gives two meanings to "trapezoid" namely "a quadrilateral having neither pair of sides parallel" or "the usual US and Canadian

name for trapezium". The term "trapezium" is stated to be, in chiefly British usage, "a quadrilateral having two parallel sides of unequal length" and it is significant to note that the original specification is a word for word copy of the Canadian priority document. It thus seems to me that there is nothing to support Mr Coleman's contention that to be "trapezoidal" the net must have six sides.

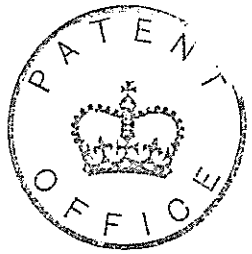
However, looking to the fabic/cord area relationship of figure 4 on the basis of his understanding of the term "trapezoidal", Mr Coleman submitted that such a form requires the net to cover the front, sides and bottom of that form whilst the cord defines the area of the top of the form and possibly also, though not entirely clear, the back of the form. Mr Coleman thus argued that there are four sides of net and two sides at the most, maybe only one, that are areas defined by cord and in his view it seemed a geometrical impossibility for the area of the net not to exceed that of the cord. He did admit however that it is not altogether clear from figure 4 just where the cord extends in its operative position and whilst certain that it extends to the top of the trapezoidal shape he believed that it may also be regarded as extending to embrace the area of the back of that shape.

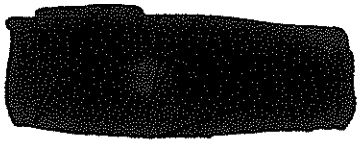
When I queried the sentence in his letter of 28 March 1991 reading: "By the same token, inspection of figure 4 reveals, it is submitted, that the net of that embodiment must again exceed the area of the inlet of the cavity formed by the net", Mr Coleman explained that at the time he was thinking in terms of the area embraced by the cord simply being the top or mouth of that trapezoidal cavity but he was now trying to construe the arrangement in the worst light that might be construed against him.

I have not found Mr Coleman's arguments sufficiently persuasive to justify any amendment that specifically states or implies the trapezoidal shaped net of the figure 4 and 5 embodiment has an area exceeding that defined by the peripheral cord in its operative position. His case appears to be based on speculation

with regard to the path of the cord and an interpretation of the term "trapezoidal" which does not accord with normal usage. In my view a clear breach of the general principle determining additional subject matter has occurred and that is why at the hearing I gave an oral decision upholding the examiner's objection under section 76(2)(a).

Dated this 7 day of May 1991.





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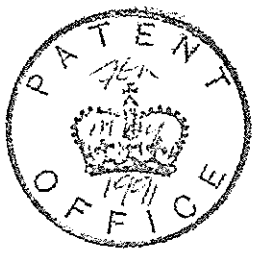
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