

## 2004 PAPER P4

### SAMPLE SCRIPT A

*This script has been supplied by the JEB as an example of an answer which achieved a pass in the relevant paper. It is not to be taken as a "model answer", nor is there any indication of the mark awarded to the answer. The script is a transcript of the handwritten answer provided by the candidate, with no alterations, other than in the formatting, such as the emboldening of headings and italicism of case references, to improve readability.*

### CLAIMS

1. A sleeping bag comprising a gas inflatable mattress portion and a body covering portion attached thereto, in which the inflatable mattress portion comprises top and bottom major walls, the top wall comprising a layer of closed-cell foam.
2. A sleeping bag according to claim 1, in which the bottom major wall comprises a layer of closed-cell foam.
3. A sleeping bag according to claim 2, in which the layer of closed-cell foam of the the bottom major wall is harder than that of the top major wall.
4. A sleeping bag according to any preceding claim including a hood member attachable to the mattress portion.
5. A sleeping bag according to claim 4 in which the hood portion extends down the length of the sleeping bag from a head end and extends over the full length of the sleeping bag.
6. A sleeping bag as claimed in any preceding claim, wherein the body-covering portion at its head end is formed as a flap or tongue which the user may pull over his head and/or shoulders, the sides of the tongue not being attached to the mattress portion.
7. A sleeping bag according to any preceding claim in which the body-covering portion is detachable from the mattress portion.
8. A sleeping bag according to any of claims 1 to 6 in which the body-covering portion is permanently fixed to the mattress portion.
9. A sleeping bag substantially as described herein with reference to Figures 1 to 3 of the accompanying drawings.
10. A sleeping bag according to claim 9 including a hood substantially as described herein with reference to Figure 6 and either Figure 4 or Figure 5 of the accompanying drawings.

***SUGGESTED (but not filed) DIVISIONAL CLAIM***

1. A sleeping bag comprising a gas-inflatable mattress portion and a body-covering portion attached thereto, including a hood member extending down the length of the sleeping bag from a head-end over the full length of the sleeping bag.

***LETTER TO THE PATENT OFFICE***

The Comptroller  
The Patent Office

FAO Eric Rambler

Dear Sir

United Kingdom Patent Application Number 0323231.8 Bouncy Bag Limited

In response to the outstanding Examination Report on the above-mentioned application, we enclose in duplicate a set of amended claims to replace the claims as presently on file.

The claims are filed in response to the Examiner's objection that at least claim 1 as previously on file lacked novelty of inventive step with respect to GB2466566 (D1), GB1200300 (D2) and EP0500200 (D3).

***Basis for the amendments***

We submit that the amendments do not add any matter to the application. Taking each claim in turn, the basis for each amended claim is as follows:

Claim 1: This claim is based on page 2, lines 4 to 6 (which allows removal of the "detachably attached" feature of previous claim 1) and page 3 lines 13 to 16.

Claim 2: Page 3 lines 16 to 18.

Claim 3: Page 3 lines 18 to 20.

Claim 4: Page 3 lines 27 and 28.

Claim 5: Page 3 line 31 to page 4 line 2.

Claim 6: Original claim 6

Claim 7: Page 2 lines 19 and 20

Claim 8: Page 2 lines 23 to 25.

Claims 9 and 10, as omnibus claims, inherently have basis in the originally filed specific description.

### Novelty

Claim 1 has been amended to remove the requirement that the body-covering portion is detachably attached, and instead requires that the top major wall of the mattress portion comprises a layer of closed-cell foam. The top major wall is that closest to the user in the use of the sleeping bag, and providing such a foam improves the comfort of the device (see page 3, lines 20 to 25 of the description).

Taking each of the cited documents in turn:

#### GB2466566 (D1)

This document was published after the filing date of the present application but filed before and as such is only relevant to the assessment of novelty and not inventive step.

The document discloses a gas-inflatable mattress portion (3 in the figures) and a body covering part (4, 5) attached thereto. The mattress portion has top (2) and bottom (1) major walls.

Whilst there is discussion at page 2 lines 23 to 26 of providing a closed-cell foam reinforcement layer 22 on the bottom major wall, there is no such discussion of using one on the top major wall. Claim 1, and therefore claims 2 to 8 as dependent on claim 1 are all therefore novel over D1.

#### GB1200300 (D2)

This citation shows a sleeping bag having an inflatable mattress portion (19 in the figures) and a body-covering portion (4) attached thereto. The mattress portion comprises top (17) and bottom (1) major walls. However, the top major wall is described as comprising a “blanket” and, implicitly the top wall (of unspecified construction) of the mattress 19. There is therefore no disclosure of the closed-cell foam wall of claim 1. It follows from this that claim 1, and claims 2 to 8 by their dependency on claim 1, are novel over D2.

#### EP0500200 (D3)

This document discloses a sleeping bag in which an inflatable mattress portion (the area defined by jacket 3) has a body-covering portion (23) attached thereto. The jacket 3 has top and bottom walls corresponding to the top and bottom major walls of claim 1. Furthermore, the top wall has a foam sheet 7 adjacent thereto that could be considered to be part of the major wall.

However, the foam is required to be an open-cell foam (see page 1 lines 16 and 17 and lines 32 to 34). This is not the closed-cell foam required by claim 1. Accordingly, claim 1 and claims 2 to 8 as dependent therefrom, are novel over document D3.

We would deserve that the embodiments described in the Figures of the present application all have a top major wall of closed-cell foam and so omnibus claims 9 and 10 are novel over the cited prior art for the same reasons as aforesaid.

### Inventive Step

We would firstly repeat our observation that D1 is citable only as Section 2(3) prior art and so may not be considered when assessing inventive step.

### D3 alone

We submit that D3 is the closest prior art as it discloses the use of a foam sheet as part of the top major wall. However, as discussed above, the foam used in D3 is an open-celled foam.

The use of such a foam is integral to the self-inflating action of D3. The paragraph starting at line 15 of page 1 of D3 discusses how the use of an open-celled foam allows the open cells to fill with air as they return to their original shape. This would not happen with a closed cell foam.

Accordingly, the skilled man would shy away from altering the sleeping bag disclosed in D3 by using a closed cell foam in the top major wall, as this would detrimentally affect the operation of the bag.

Even considering the disclosure of page 3 lines 12 to 14 to place the upper foam sheet 7 outside the jacket 13, the skilled man would appreciate that in order to achieve the stated aim – to trap moisture – would require an open, not closed, foam. It is even questionable whether the skilled man would want to trap moisture next to a sleeping person.

The skilled man may also be armed with the common general knowledge of the closed cell foam mattresses described at page 1 line 14 to 22 of the present invention. He would not consider using one of these, as its recognised functions – cushioning and insulation from the ground – have been achieved already in D3 by use of the inflatable mattress and the heat-reflective layer 14.

The skilled man, for the reasons stated above, would therefore see no reason to introduce a closed-cell foam top major layer into the bag of D3. As this feature is present in all claims, we submit the claims are inventive over D3.

### D2 above

D2 has no teaching to include a foam layer of any type. The sheets from which the sleeping bag is constructed are described as being waterproof canvas or a plastic such as polythene. None of these materials are foams, let alone closed-cell foams.

Even considering prior art closed cell mattresses (as described in the present application at page 1 lines 14 to 22), the recognised functions of such mattresses – cushioning and insulation from the ground – are already achieved by the use of the air mattress 19.

There is nothing therefore in D2 to suggest use of any foam layer, let alone a closed cell foam layer in the top major wall. As this is required by all the new claims, we submit that the new claims are inventive over D2.

#### D3 combined with D2

As discussed above, neither of D2 or D3 alone would lead the skilled man into introducing a closed-cell foam into the top major wall.

D3, as discussed above, is submitted to be the closest prior art. If the skilled man were looking for ways to improve user comfort, there is nothing in D2 that would suggest the introduction of a closed-cell foam; as discussed above D3 is silent on this topic. Accordingly, even if D2 were to combined D3, the presently-claimed invention would not result.

Similarly, even if the skilled man were to start with D2, the most D3 would teach would be to introduce a layer of open-celled foam in the top major wall. Accordingly to the teaching of D3, this should trap moisture and therefore needs to be open-celled. It is also questionable whether the skilled man would want to trap moisture against a sleeping user.

Accordingly, considering the teaching of D3 combined into D2, the skilled man would not consider using a closed-cell foam as required by all claims. The claims are therefore inventive over D2 and D3 in combination.

#### Conclusions

We have found the amended claims to be both novel and inventive over the cited prior art. As such we submit that the application is in order for grant.

We have recently become aware of a possible infringement of this application and would appreciate the Examiner reviewing these comments as soon as possible. However, we would ask that if the Examiner is minded to grant the application, he allows us a shout period of time in which to consider filing one or more divisional applications.

We look forward to receiving a favourable communication from the Examiner in due course.

D. Drone (Mrs) CPA.

#### **NOTES TO CLIENT**

Claim 1 lacked novelty over (at least) the prior art sleeping bag cited at lines 4 to 6 of page 1 of D1 and also did not over permanently sewed on cover.

In order to provide a novel and inventive claim which covers your invention, it was therefore necessary to amend the coverage sought. As simply removing the restriction that the body-covering position was detachably attached would not result in a novel and inventive claim (it

would be anticipated by all three pieces of cited prior art) some other feature had to be used.

I settled on the top major wall of the mattress being of closed cell foam as you indicated that the mattress is still as we originally described. This provides extra comfort as we described in the original description.

Keeping an eye on the possible infringement, you note that copies of your bag are being introduced. Do these both use a closed cell foam as described? They would appear to be using your foam manufacturer as a supplier so it appears they are using the foam in some way – this should be checked.

As a possible infringement is occurring, I have asked for accelerated Examination of the patent application. We may only take action once the patent has granted.

We also have the opportunity to file divisional applications to cover further aspects of the invention should you so wish; this would provide us with another front on which to attack the alleged infringers. One such feature is that of the hood covering the length of the sleeping bag – I enclose a suggested claim. I have not filed this due to your cash flow problems, but should you consider you can afford it, I have asked the Examiner to allow us a period before grant in which to file any divisional application.

You note you are interested in exploiting the self-inflating feature of EP0500200. This application lapsed before grant and so there is no danger (assuming it has not been or it is not revived which we should check) of infringing a patent granted thereon. However, we should check there is no other equivalent (for example, a UK national application) which may be (prospectively) in force in the UK. We should also check that there are no other patents covering such a method – the application may have been abandoned as there was some relevant, in force, prior art.

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## 2004 PAPER P4

### SAMPLE SCRIPT B

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### CLAIMS

1. A sleeping bag comprising a gas inflatable mattress portion and a body covering portion attached thereto, wherein the top layer of the inflatable mattress is composed of or includes a layer of a closed-cell foam.
2. A sleeping bag as claimed in claim 1, wherein the bottom layer of the inflatable mattress is composed of or includes a layer of a closed-cell foam.
3. A sleeping bag as claimed in claim 2, wherein the bottom layer is composed of or includes a layer of closed cell foam harder than that of the top layer.
4. A sleeping bag as claimed in any one of the preceding claims, wherein the body covering portion is permanently attached to the mattress portion.
5. A sleeping bag as claimed in any one of the preceding claims [claim 2]
6. A sleeping bag as claimed in any one of the preceding claims, wherein the body covering portion attaches to the mattress portion over the greater part of its periphery.
7. [Claim 5]
8. [Claim 6]
9. A sleeping bag as claimed in any one of the preceding claims, wherein the body covering portion is provided with at least one pocket.
10. A sleeping bag as claimed in any one of the preceding claims, additionally comprising at least one hood member attachable to the mattress portion.
11. A sleeping bag as claimed in claim 10, wherein the hood extends down the length of the sleeping bag from the head end by a substantial amount.

12. A sleeping bag as claimed in Claim 11, wherein the hood extends over the full length of the sleeping bag.
13. A sleeping bag as claimed in any one of claims 10 to 12, wherein the hood is integral with the upper portion of the body covering portion.
14. A sleeping bag substantially as hereinbefore described with reference to, and as illustrated by, the drawings.

## **LETTER TO THE PATENT OFFICE**

Dear Sirs

UK Patent Application No. 0323231.8 in the Name of Bouncy Bag Limited

We write in response to the Examination Report of 5<sup>th</sup> May 2004. We enclose herewith, in duplicate, an amended schedule of claims and request that they be substituted for the claims currently on file.

### *Basis for claim Amendments*

Claim 1 has been amended to require that the top layer of the inflatable mattress is composed of or includes a layer of a closed-cell foam. Basis for this amendment can be found in the specification as filed at page 3, lines 13 to 16. "Detachably" has been removed from claim 1. Basis for this can be found at page 2 lines 3 to 5.

Basis for the dependent claims is shown in the table below:

Claim	Basis
2.	Page 3, lines 16 to 18
3.	Page 3, lines 18 to 20
4.	Page 2, lines 23 to 25
5.	Claim 2, page 2, lines 8 to 9
6.	Page 2, lines 27 to 29
7.	Claim 5, page 3, lines 5 to 7
8.	Claim 6, page 6, lines 7 to 9
9.	Page 3, lines 9 to 10, page 6 lines 27 to 31
10.	Page 3, lines 27 to 28
11.	Page 3, line 31 to page 4, line 1
12.	Page 4, lines 1 to 2
13.	Page 7, lines 15 to 16
14.	Omnibus Claim

All of the amended claims have fair basis in the application as originally filed.



### Novelty

The Examiner raised the objection that the claims are either not novel or not inventive over the prior art. We shall first deal with the issue of novelty.

GB'556 was published after the filing date of the present application, and therefore is only relevant for novelty under Section 2(3).

GB'566 disclosed a sleeping bag in which the lower part (corresponding to the mattress portion in the present application) is formed of two sheets. There is no disclosure of the composition of these sheets. However, the lower of these sheets (corresponding to the bottom layer in the present application) can be reinforced by Cellulam, which is a closed cell foam. There is no disclosure of sheet 2 (corresponding to the top layer) being composed of or including a layer of a closed-cell foam. Therefore Claim 1 is novel over GB'566.

GB'300 discloses a weatherproof sleeping bag. The sleeping bag comprises a sheet material base into which a blanket is sewn to form a lower pocket into which an inflatable air mattress can be inserted. There is no disclosure of any of the blanket, the air mattress or even the sheet material base being composed of or including a layer of a closed cell foam. Therefore claim 1 is novel over GB'300.

EP'200 discloses a self-inflating mattress with integral sleeping bag. The mattress comprises an air-tight flexible jacket and a core. The core has an upper foam sheet, which may also be provided above the jacket. This foam sheet is made of open-cell foam. There is no disclosure in EP'200 of the use of closed-cell foam. Accordingly, claim 1 is novel over EP'200

As claim 1 is novel, all of the dependent claims are also novel.

### Inventive Step

GB'566 is not relevant for the consideration of inventive step.

GB'300 is directed primarily to the production of a waterproof sleeping bag. It operates simply by providing a waterproof cover into which a conventional airbed is inserted. This cover comprises a blanket which nests on the airbed for additional comfort of the user.

Conversely, the present application relates to a sleeping bag in which the upper layer of the mattress portion is composed of or includes a layer of a closed-cell foam. This offers the benefit of being more comfortable due to the combination of thickness and resilient deformability which gives better spreading of forces at "pressure points" of the body. The combination of standard airbed and blanket would not provide this advantage. In addition, it would take up more space than the foam layer alone. Therefore, the present invention is advantageous over the sleeping bag of GB'300. In addition the person skilled in the art would have no reason, based on the reading of GB'300 to consider using a closed-cell foam as the upper layer of the mattress portion, as closed cell foams are not suggested. Accordingly, claim 1 is inventive over GB'300.

EP'200 relates to a self-inflating mattress in which there is a core of open pore foam. Where the open pore foam is positioned inside the mattress, and the valve is closed, the mattress acts like any conventional air mattress. The internal foam would have no impact on the comfort of the mattress which would depend upon the material of the jacket, which is a nylon material. The present invention uses a closed cell foam layer in the upper portion of the mattress layer, which is more comfortable as disclosed above. There is no suggestion in EP'200 of the use of a closed cell foam layer in the jacket. Therefore claim 1 is inventive over this embodiment.

Where a foam layer is positioned above the jacket, the foam layer will have some impact on the comfort. However, EP'200 only discloses an open-cell foam which would completely compress, and therefore would not offer the same comfort advantages of a closed cell foam. The purpose of the open-cell foam is to serve as a moisture absorbing layer, and therefore it would not be obvious to substitute this layer for a closed-cell foam which would not absorb water.

Therefore, claim 1 is inventive over EP'200.

There would be no reason for the person skilled in the art to combine the teaching of EP'200 and GB'300, as one relates to a self inflatable mattress, and the other to a water-proof sleeping bag. However, even if the two were combined, the result would still not be a sleeping bag within the scope of claim 1.

### Clarity

The Examiner suggested that Claim 1 could cover the known use of an airbed. Claim 1 as amended additionally includes the presence of a closed cell foam layer, such a layer is not present in an air bed. The applicant is entitled to claim the discovery that the use of this layer produces a more comfortable mattress broadly, within the scope of the initial disclosure of the present application.

The applicant has become aware of products on the market which fall within the scope of the claims of the present application. We therefore request accelerated prosecution of this application.

Favourable reconsideration is respectfully requested

Yours Faithfully

D. Drone.

## NOTES TO CLIENT

1. Claim 1 as filed was not novel – the claim was anticipated by all of the prior art documents, as well as, arguably, an air bed in combination with a sheet.
2. In addition, the “fixed” body covering portion had to be covered as this is currently selling best.
3. Therefore needed to amend claims to ensure broadest protection.
4. Noted that there are cash flow problems therefore have tried to avoid need to file divisionals – I am not recommending any at this stage, although you could file some – suggestions lower down, may be useful depending on competitor products. However, as they use Cellelam, likely to be ok.
5. Also tried to ensure that use of the self-inflating mattress was not excluded from the claims in case you choose to use it. So long as the cover is made using closed-cell foam, then a self-inflating mattress still falls within the scope of the claims.
6. I have requested accelerated prosecution to obtain a granted patent more quickly. Once we obtain a granted patent we can work out how to deal with competitors. Please do not write to them again at this stage. There is a danger of making threats if you suggest they are infringing. Sending copies of application is fine but would prefer if you checked with me before any more communication.
7. Divisional application could be filed to:
  - (i) sleeping bag and hood – no suggestion of hood anywhere, so arguably inventive.

This would mean no need to limit to use of closed-cell foam. On balance, I would not recommend filing a divisional as

- (i) expensive
- (ii) unsure of success
- (iii) unlikely to assist you with infringers.

Worth filing if you think infringers are likely to avoid use of closed cell foams. – let me know asap if you are interested in divisional.

8. Can use self inflatable mattress – patent not granted so no fears of infringement.

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## 2004 PAPER P4

### SAMPLE SCRIPT C

*This script has been supplied by the JEB as an example of an answer which achieved a pass in the relevant paper. It is not to be taken as a "model answer", nor is there any indication of the mark awarded to the answer. The script is a transcript of the handwritten answer provided by the candidate, with no alterations, other than in the formatting, such as the emboldening of headings and italicism of case references, to improve readability.*

#### **AMENDED CLAIMS OF MAIN APPLICATION GB0323231.8.**

1. A sleeping bag comprising a gas inflatable mattress portion and a body covering portion attached thereto, wherein the top major wall of the mattress portion is composed of or includes a closed cell foam.
2. A sleeping bag as desired in claim 2 wherein the body covering portion is a quilt containing a filling of insulative material.
3. A sleeping bag as claimed in claim 1 or claim 2 wherein the cover portion is attached to the mattress portion over the greater part of its periphery
4. A sleeping bag as claimed in any preceding claim, wherein the body covering portion is of greater width than the mattress portion to provide a roomy sleeping volume therebetween
5. A sleeping bag as claimed in any preceding claim, wherein the body covering portion at its head end is formed as a flap or tongue which the user may pull over his head and/or shoulders, the sides of the tongue not being attached to the mattress portion.
6. A sleeping bag as claimed in any preceding claim, wherein the body covering portion is detachable from the mattress portion
7. A sleeping bag as claimed in any preceding claim, wherein the mattress portion divided into separately inflatable body and pillow portions.
8. A sleeping bag as claimed in any preceding claim wherein each of the major walls of the mattress portion is composed of or includes a closed cell foam.
9. A sleeping bag as claimed in claim 8, wherein the bottom major wall is composed of or includes a closed-cell foam harder than that of the top major wall.
10. A sleeping bag as claimed in any preceding claim, wherein said closed-cell foam is Cellulam™

11. A sleeping bag as claimed in any preceding claim, wherein the sleeping bag further comprises a hood member attachable to the mattress portion.
12. A sleeping bag substantially as hereinbefore described with reference to the Figures.

## **RESPONSE**

Dear Sir

Re:- GB0323231.8 Our file: P42004.

I refer to the official letter dated X and issued in pursuance to s18(3) in respect of the above application. In reponse, I file in duplicate, typed sheets to replace page 12 of the claims. In addition, I submit the following comments.

### Amendments

Claim 1 has been amended to further define the sleeping bag of the invention by reference to the top major wall of the mattress portion being composed of or including a closed cell foam. Basis for this feature can be found on page 3, lines 13 to 25 of the application as filed which specifically states that either the top or bottom major walls (or both) of the mattress portion may be of closed cell foam. In addition this passage specifically points out the advantage of the closed cell foam surface. Thus a top surface of closed cell foam constituting the top major wall of the mattress portion is clearly envisaged in the application as filed. In addition, claim 1 is amended to omit the feature that the cover portion is detachable. It is clear from the application as filed (eg see page 2, lines 3 to 6), that this feature is not essential

Claim 2 corresponds to previous claim 2, further basis for which can be found on page 2, lines 8 to 10 of the application.

Claim 3 corresponds to previous claim 3, with the exception that it is also dependent on claim 1 as well as claim 2. General basis for this feature can be found on page 2, lines 27 to 30 of the application.

Claims 4 and 5 correspond to previous claims 5 and 6 respectively.

New claim 6 derives basis from page 2, lines 19 and 20 of the applications as filed.

New claim 7 derives basis from page 3, lines 8 to 10 of the application as filed.

New claim 8, further incorporates the feature that the bottom and top major walls of the mattress portion are composed of or include closed cell foam. Basis for this amendment can be found on page 3, lines 16 to 18 of the application.

New claim 9 defines the relative hardness of the bottom and top major walls of the mattress

portion, basis for which can be found on page 3, lines 18 to 20.

New claim 10, which defines the material constituting the closed cell foam, derives basis from page 5, lines 3 to 5 of the application as filed.

New claim 11 defining a hood feature derives basis from page 3, lines 26 to 29 of the application as filed.

Finally, a new omnibus claim 12 is added, basis for which can be found by reference to the description and figures as originally filed.

### Novelty

Each of the prior art citations referred to by the examiner are now considered in turn. For easy reference the documents are categorised as follows:-

GB2466566 – D1 S2(3) novelty only citatic.

GB1200300 – D2

GB0500200 – D3.

### D1

D1 describes a sleeping bag comprising upper and lower portions, the lower portion comprising a series of inflatable elements. As with the present invention, D1 describes the lower portion as being enclosed by upper and lower sheets. However unlike the invention, the upper sheet of the lower portion is not composed of or include a closed cell foam. The closed cell foam material in contrast is limited to the lower sheet.

Thus, the invention as described in claim 1 is novel over D1. Furthermore, claims 2 to 11 are also novel over D1 by virtue of their dependency on claim 1 (thus incorporating the novel feature). Omnibus claim 12 is also novel since its specific features are not described in D1.

### D2

As with the present invention, the sleeping bag of D2 comprises a base and an upper sheet (in the form of a blanket) between which an inflatable mattress is incorporated. However unlike claim 1 of the invention, neither the upper wall of the inflatable mattress nor the upper sheet blanket covering it are composed of or include a closed foam material. Thus, claim 1 of the present invention is clearly distinguished from D2 and is thus novel having regard to the prior art. Again, claim 2 to 11 are also novel for the same reasons as claim 1 as, by virtue of their dependency, they incorporate, the novel 'foam' feature of claim 1. The specific features of omnibus claim 12 also render this claim novel over D2.

### D3

D3 describes a sleeping bag wherein the mattress portion comprises a core having a lattice structure of open-cell type material foam, encased in a flexible jacket. Unlike the present invention D3 does not describe a mattress portion having an upper major wall composed of closed cell foam. Claim 1 is therefore novel having regard to the features of D3.

Claims 2 to 11 are also new for the same reasons as above, since by virtue of their dependency on claim 1, these claims incorporate the novel feature of claim 1.

Omnibus claim 12 is also novel since its specific features are not disclosed in D3.

### Inventive Step

D1 is not citable for the purposes of assessing inventive step since it was published after the filing date of the present application and is therefore only citable to novelty under s2(3).

The inventive concept of the invention could be defined as incorporating a closed cell foam on the upper major wall of the mattress portion. This modification has the advantage that the closed cell material provides much greater comfort to the user due to its resilient deformability and greater spreading at pressure points (see page 3, lines 13 to 25). The closed foam material also has the added advantage that its closed configuration allows it to form an airtight part of the wall of the inflatable mattress thereby reducing the need for a further additional airtight cover.

Starting from D2, to arrive at the invention as claimed in claim 1, the skilled person would be required to modify the sleeping bag of D2 to incorporate the closed cell foam material. Such a modification is not derivable and could not be established from the teaching of D2 alone. Indeed, D2 comprises a separate inflatable cushion, which is covered by a blanket. With this consideration, there is no requirement for a single closed foam material since the blanket provides the additional cushioning and the air cushion supplies its own airtight walls of a conventional nature. Thus the modified sleeping bag of claim 1 could not be obvious having regard to D2 alone.

Considering D3, the configuration of this sleeping bag is also such that would render any modification to incorporate a closed cell foam non-obvious. With D3 the support and comfort of the mattress lies in the use of an open-cell foam. It would not be obvious to modify this to a closed cell foam firstly because, the open cell foam is required to self inflate the mattress and secondly because the airtight seal is provided separately by way of the airproof enclosing jacket.

On this basis, having regard to D3, the sleeping bag so claimed in claim 1 could not be obvious.

Even if D2 and D3 were combined, the skilled person would still not be able from such combined teaching to arrive at the present invention as claimed in claim 1. This is because as when taken in isolation, D2 and D3 combined do not teach or suggest the modification of the

mattress portion to include a closed cell foam in its top major wall.

On this basis claim 1 is not obvious having regard to D2, or D3 in isolation, or when combined. Claims 2 to 11 are also not obvious since, by virtue of their dependences on claim 1 these claims also incorporate the inventive feature of claim 1.

Finally, the specific features of omnibus claim 12 is cannot be obvious over the cited art due to their specificity.

All amendments made to this application at this time are made without prejudice. The applicant specifically reserves the right to reinstate subject matter or to file one or more divisionals in relation to such subject matter.

Your faithfully.

## **MEMORANDUM TO CLIENT**

Mention that the application has been filed in clients absence and on time. Provide copy for file and for review

### *Why amendment was required*

Firstly if customers are buying bags which have quilt permanently sewn on, do not want to limit claim to the cover being detachable.

Not considering detachable feature, claim 1 was not novel over D1 to D3 as all these docs disclosed sleeping bag with inflatable mattress portion and cover portion. Amendment was required.

### *Why Amendment Chosen*

Arguable basis for incorporating the closed cell from in the top layer (see page 2). Also, the clients main selling point is the mattresses comfort provided by the closed foam material. This seemed to be minimum essential feature which provided advantage to added comfort, but which provides client with good degree of protection. Also, this feature is not disclosed in prior art.

Also dependant claim provides back-up features, partially in relation to mattress having both walls of the closed cell foam type. This is advantageous because of ease of manufacture and because of increased resilience.



Divisionals

I see no need for one at this stage, particularly considering the client's lack of funds. Should mention however deadlines for filing i.e. during pendency of application and before end of r34 period.

Specific Comments on Letter From Client

Self inflating feature: From a review of application, I have not found basis for introducing this feature – my attempt would therefore lead to added matter.

Two competitors: I need client's instructions to request EXPEDITED PROCEEDING review of competitors. Need to ensure rapid grant so action can be taken to stop acts of infringement. Should provide copy of amended claims as soon as possible to competitors and to supplier of Cellulam to ensure provisional protection. Need to be careful when notifying competitors of rights. Suggest to client that I write the letter of notification (must not be threatening).

Note: Supply of Cellulam by supplier even though Cellulam may be a staple commercial product, may be an infringement when patent is granted. If supplier is inducing competitors to use in sleeping bags as claimed. A dependent claim covering Cellulam's use in bag construction has been incorporated to cover this embodiment.

Note Other Possible Amendments Which I Did Not Choose

I thought of limiting to have both major walls of the closed foam but felt this restriction is unnecessary since limiting to top wall had basis and was usually novel and inventive. It is now a back-up feature should it be required.

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