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**D E C I S I O N**  
**of 29 November 2001**

**Case Number:** T 0813/00 - 3.2.1

**Application Number:** 95101659.1

**Publication Number:** 0673692

**IPC:** B21C 47/26

**Language of the proceedings:** EN

**Title of invention:**

Method to extract and deposit coils in a rolling line and  
device to perform the method

**Patentee:**

DANIELI & C. OFFICINE MECCANICHE S.p.A.

**Opponent:**

VOEST-ALPINE Industrieanlagenbau GmbH

**Headword:**

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**Relevant legal provisions:**

EPC Art. 54(2), 56

**Keyword:**

"Public prior use (yes)"

"Inventive step (yes, after amendment)"

**Decisions cited:**

-

**Catchword:**

-



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Boards of Appeal

Chambres de recours

**Case Number:** T 0813/00 - 3.2.1

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.1**  
**of 29 November 2001**

**Appellant:** DANIELI & C. OFFICINE MECCANICHE S. p. A.  
(Proprietor of the patent) Via Nazionale, 19  
I-33042 Buttrio (IT)

**Representative:** Petraz, Gilberto Luigi  
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Piazzale Cavedalis 6/2  
I-33100 Udine (IT)

**Respondent(s):** VOEST-ALPINE Industrieanlagenbau GmbH  
(Opponent) Stahlstr. 21a  
4020 Linz (AT)

**Representative:** VA TECH Patente GmbH  
Stahlstrasse 21a  
4020 Linz (AT)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 26 June 2000  
revoking European patent No. 0 673 692 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** F. Gumbel  
**Members:** S. Crane  
J. Van Moer

## Summary of Facts and Submissions

I. European patent No. 0 673 692 was granted on 8 July 1998 on the basis of European patent application No. 95 101 659.1.

II. The granted patent was opposed by the present respondents on the grounds that its subject-matter lacked novelty and/or inventive step (Article 100(a) EPC).

As state of the art they relied upon public prior use constituted by the sale, delivery and putting into service of a device to extract and deposit coils leaving a coiling machine in 1989 to a company named Böhler in Kapfenberg (Austria). Various pieces of documentary evidence, documents D1 to D5, were filed in support of the allegation of prior use (see point I.1 of the contested decision for details).

III. The Opposition Division revoked the patent with its decision posted on 26 June 2000. It held that the public prior use had been satisfactorily proven and that the device involved fully anticipated the subject-matter of granted independent claims 1 and 6.

IV. A notice of appeal against this decision was filed on 3 August 2000 and the fee for appeal paid at the same time. The statement of grounds of appeal was filed on 25 October 2000.

The appellants (proprietors of the patent) argued that the Opposition Division had not adequately taken account of various aspects of the alleged prior use, *inter alia* that the company to which the device had

been sold was well known for the care it took in keeping its operations confidential. They therefore requested that the decision under appeal be set aside and the patent maintained as granted. In the alternative they requested maintenance of the patent in amended form on the basis of new claims filed with the statement of grounds, of which claim 1 was based on granted claims 1 to 4 and claim 4 on granted claims 6, 7, 9 and 10.

- V. With a letter dated 19 April 2001 the respondents gave further support to their allegation of public prior use by filing a declaration of Dr. Walter Zleppnig of Böhler.

They conceded the novelty of the subject-matter of the claims filed with the grounds of appeal and stated that they had no objection to the patent being maintained with these claims.

- VI. With response to a communication from the Board posted on 18 June 2001 the appellants filed a new set of amended claims 1 to 6 with their letter dated 2 August 2001.

Independent claims 1 and 4 read as follows:

"1. Method to extract and deposit coils leaving a coiling machine, the coiling machine (11) forming the coils (22) according to an axis inclined to the horizontal and depositing the coils (22) directly onto a removal conveyor belt (12) positioned with its axis substantially horizontal, the coils being made of wire whose constituent material has a strength of up to 700N/mm<sup>2</sup>, including a coil-retaining assembly (13)

having a first working position and a second inactive or release position, wherein said coil-retaining assembly (13), at the beginning of the coil-forming process and a little before the termination of the coils, closes at least partly the outlet of the coils (22) from the coiling machine (11) for a period sufficient to permit the formation and accumulation of a desired number of respectively leading-end coils and trailing end coils within said coiling machine (11) and is then opened in its second release position, in which it frees the outlet of the coils (22) from the coiling machine (11) and enables said number of leading-end coils to fall simultaneously onto the removal conveyor belt (12), which, due to the force of their own weight, are flattened on the removal conveyor belt, there being included a coil overturning and flattening assembly (14) positioned downstream of the coiling machine (11) having a first lowered working position and a second raised inactive position and providing a first track means (18a) and a second track means (18b), said first (18a) and second (18b) track means having different relative speeds, the speed of the first track means (18a) being the greater, and taking up their relative first lowered working position so as to act by pressure from above downwards by flattening at least the leading-end coils and/or trailing-end coils on the removal conveyor belt (12)."

"2. Device to extract and deposit coils leaving a coiling machine (11), which forms the coil according to an inclined axis and lays them on a removal conveyor belt (12) positioned with its axis substantially horizontal, said device cooperating with the coils (22) in overturning them and laying them on the removal conveyor belt (12), there being included a coil-

retaining assembly (13), comprising at least two retaining blades (15) positioned opposite to each other and circumferentially to, and at the sides of, and in direct cooperation with the outlet of the coiling machine (11), these retaining blades (15) having a first closed working position (15a), at which they close at least partly the outlet for the coils from the coiling machine (11) so as to prevent the emerging of the coils (22), and a second open release position (15b), in which they do not obstruct the coils (22) leaving the outlet of the coiling machine (11) and comprising an assembly (14) to overturn and flatten the coils which is installed downstream of the coil-retaining assembly (13), on the same axis as the removal conveyor belt (12) and positioned thereabove (12), said coil-overturning and flattening assembly (14) including first track means (18a), downwardly inclined and advancing in the direction of feed of the removal conveyor belt (12) and raised thereabove (12) by a desired value, and also second track means (18b) positioned substantially parallel to the removal conveyor belt (12) and raised thereabove (12) by a desired value, the first track means (18a) being inclined in relation to the removal conveyor belt (12) and being translated at a speed greater than the speed of outlet of the coils (22) from the coiling machine (11) while the second track means (18b) are translated at a speed near the speed of advance of the removal conveyor belt (12)."

Claims 2 and 3 relate to preferred embodiments of the method according to claim 1 and claims 5 and 6 to preferred embodiments of the device according to claim 4.

In response to a second communication of the Board posted on 20 August 2001 the appellants confirmed with their letter dated 20 September 2001 that the claims filed with their letter dated 2 August 2001 constituted their sole request and submitted correspondingly amended pages of the description.

### **Reasons for the Decision**

1. The appeal complies with the formal requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC. It is therefore admissible.
  
2. The patent is concerned with problems arising in equipment for forming the rod issuing from a rolling mill into a series of coils which are carried away on a removal conveyor. In certain circumstances at least the leading and trailing ends of the rod may exhibit excessive stiffness which prevents them lying flat on the conveyor. This can lead to serious consequences in downstream handling equipment.

As now claimed two measures are adopted to ensure that the coils are properly arranged on the removal conveyors. Firstly, a coil-retaining assembly is employed which can accumulate a predetermined number of coils as they are formed and then release them together as a group, their weight tending to ensure that they come to lie flat. Secondly a coil overturning and flattening assembly is arranged downstream of the coiling machine. This assembly comprises first and second track means running at different speeds, with the speed of the first track means being the greater. The assembly is movable from an inactive position into

a lowered working position where it is effective to exert pressure on the coils to flatten them.

3. In its communication of 18 June 2001 the Board pointed out with respect to the equipment sold by the respondents to the company Böhler that the decisive question was whether the latter was free to dispose over the equipment in any way it wished, this being sufficient, in the absence of special circumstances, to make the equipment "available to the public" in the sense of Article 54(2) EPC. In the circumstances under consideration nothing pointed to this not having been the case. Furthermore, the suggestion that the company Böhler would have had an interest in keeping the equipment secret, and also the means to do so, was difficult to square with the nature of the equipment involved and also contradicted by the statement of Dr Zleppnig of Böhler.

The appellants did not seek to challenge that assessment, which in the circumstances need not be entered into in any further detail. The state of the art against which the novelty and inventive step of the claimed subject-matter has to be judged comprises therefore the device illustrated in particular in document D4. This device comprises a coil-retaining assembly of the type set out in the present independent claims. It also comprises an assembly for overturning and flattening the coils. That assembly does not however correspond to what is claimed since it does not comprise two track means operating in sequence at different speeds. According to the uncontroverted opinion of the appellants this arrangement is important in flattening the coils quickly.



In the absence of any relevant prior art on the file or any arguments that the distinction over the prior used device is one lying within the routine design competence of the skilled person the Board can come to no other conclusion than that the subject-matter of present claims 1 and 4 is novel and not obvious and therefore involves an inventive step (Article 56 EPC).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent in amended form on the basis of the following documents:
  - claims 1 to 6 filed with letter dated 2 August 2001;
  - description pages 1 to 3, 8, 11 and 12 as originally filed, pages 4, 5, 5a, 6, 6a, 7, 7a, 9, and 10 filed with letter dated 20 September 2001;
  - drawings as granted.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel