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D E C I S I O N
of 13 January 2004

Case Number: T 0759/01 - 3.2.3

Application Number: 96919889.4

Publication Number: 0828893

IPC: E01C 7/26, C08L 19/00

Language of the proceedings: EN

Title of invention:
Impact absorbing macadam

Patentee:
Spendlove, Peter David

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 84, 123(2)

Keyword:
"Clarity (yes)"
"Added subject-matter (no)"

Decisions cited:
-

Catchword:
-



Case Number: T 0759/01 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 13 January 2004

Appellant: Spendlove, Peter David
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Representative: SERJEANTS
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 7 December 2000
refusing European application No. 96919889.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. T. Wilson
Members: J. B. F. Kollar
M. K. S. Aúz Castro

Summary of Facts and Submissions

- I. The appeal contests the decision of the Examining Division dated 7 December 2000 to refuse European patent application No. 96 919 889.4 on the ground that the application did not satisfy the requirements of Articles 84 and 123(2) EPC.
- II. The applicant (hereinafter denoted appellant) filed the notice of appeal on 16 February 2001 and paid the appeal fee on the same day. Together with the statement of grounds of appeal he submitted, on 17 April 2001, four sets of claims corresponding to a main request and three auxiliary requests.
- III. With communication dated 13 February 2003 and issued for the preparation of oral proceedings to be held on request of the appellant, the Board informed the appellant of its preliminary opinion, expressing doubts about the allowability of the requests.
- IV. During oral proceedings held on 13 January 2004 the appellant replaced the four requests on file by a single request comprising claims 1 to 15 .

The independent claim 1 reads as follows:

- "1. A method for the preparation of an impact absorbing macadam pavement, the method comprising:
- a) admixing from 10 to 75% by weight of rubber having a particle size of up to 40 mm with from 25 to 90% by weight of an aggregate, the aggregate having a particle size of up

to 40 mm and being pre-heated to 180 to 220°C

- b) adding polymer modified bituminous binder to the rubber and aggregate mixture in an amount of from 5 to 9% by weight of the mixture at a temperature of from 150 to 200°C,
- c) further mixing the composition, and
- d) laying the macadam pavement."

V. The appellant requested that the decision under appeal be set aside and the application be referred back to the Examining Division for further prosecution on the basis of claims 1 to 15 filed in the oral proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. The independent claim 1 is based on claim 1 as originally filed specifying the mix percentages of the macadam, read in the light of paragraph 3 at page 3 of the description as originally filed. This part of the description teaches that a dry mix of aggregate and filler is preheated to $200^{\circ}\text{C} \pm 20^{\circ}\text{C}$ and to this is added the rubber particulate (step (a) of claim 1), so that the final mix is made up working from dry weight aggregate and rubber totalling 100%. Following admixture, the polymer modified bituminous binder at a temperature of 150°C to 200°C , preferably 180°C , is added (step (b) of claim 1) and further mixing is effected (step (c) of claim 1), the resultant mix being

laid down to form the macadam pavement (step (d) of claim 1).

Claim 1 thus complies with Article 123(2) EPC.

3. The wording of claim 1 as amended clearly includes both the proportions of the components of the mix and the steps of their admixture for the preparation of an impact absorbing macadam pavement. First a 100% mixture of rubber and aggregate is made, to which is added a polymer modified bituminous binder in an amount of from 5 to 9% by weight of this mixture.

Accordingly, no objection under Article 84 EPC to the current version of claim 1 arises. Dependent claims 2 to 15 concerning particular embodiments of the invention are likewise formally allowable.

Consequently the objections under Articles 84 and 123(2) EPC raised by the Examining Division have been met and the decision must be set aside.

4. The Examining Division has not yet examined whether or not a method according to Claim 1 is patentable. In these circumstances, the Board considers it appropriate to exercise its power under Article 111(1) EPC, and to remit the case to the Examining Division for further prosecution following the request of the appellant.

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 for further prosecution.

The Registrar:

The Chairman:

A. Counillon

C. T. Wilson