

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

D E C I S I O N
of 28 March 2006

Case Number: T 0548/03 - 3.2.03

Application Number: 96116074.4

Publication Number: 0768427

IPC: E01C 5/06, B28B 17/00

Language of the proceedings: EN

Title of invention:
A method of obtaining a modular block paving element

Applicant:
Pavesmac S.r.l.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 56, 123(2)

Keyword:
"Inventive step - (yes) after amendment"
"Closest prior art"

Decisions cited:
T 0835/00, T 0686/91

Catchword:
-



Case Number: T 0548/03 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 28 March 2006

Appellant:

Pavesmac S.r.l.
Via Boves 269
IT-10024 Peveragno (CN) (IT)

Representative:

Lotti, Giorgio
c/o Ing. Barzanò & Zanardo Milano S.p.A.
Corso Vittorio Emanuele II, 61
IT-10128 Torino (IT)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 28 November 2002
refusing European application No. 96116074.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: U. Krause
Members: G. Ashley
K. Garnett

Summary of Facts and Submissions

I. Patent application No. 96116074.4 concerns modular paving blocks, which are made by splitting a concrete slab into smaller blocks. This appeal lies from the decision of the examining division, dispatched on 28 November 2002, to refuse the patent application for lack of inventive step with respect to documents DE-U-9013618 (D1) and BE-A-728991 (D2).

Notice of appeal was filed on 24 January 2003, and the appeal fee was paid at the same time. A statement containing the grounds of appeal was filed on 25 March 2003, together with an amended set of claims. A communication dated 26 October 2005 set out the provisional opinion of the Board regarding compliance of the amendments with Article 123(2) EPC, and novelty and inventive step of the claimed subject-matter. In a letter dated 26 January 2006 a new set of claims and a revised description were filed. Following a telephone conversation with the applicant's representative on 24 March 2006, further amendments to the claims and description were filed by facsimile the same day.

II. The claims read as follows:

"1. A method of obtaining a modular paving block element (20), of substantially cubic shape having, at least, one rough face; the method being characterised by comprising the steps of :

- providing a concrete block (10) of substantially square shape in cross section and elongate shape in the longitudinal direction;

- splitting said concrete block in such a manner to obtain at least one of said modular paving block element (20) of substantially cubic shape, having no more than two split rough faces (21), these faces being opposite to each other.

2. A method as set forth in claim 1 characterised in that the modular paving block element (20) has only one rough face (21).

3. A paving formed by the union of a plurality of the modular block elements (20) obtained according to the method of claim 1 or 2 with their rough faces (21) upwardly directed, to form a paving having the surface rough like a conventional porphyry paving."

III. Request

The appellant requests the grant of a patent based on the following documents:

Claims 1 to 3 filed by facsimile on 24 March 2006;

Description pages 1 and 2, filed by facsimile on 24 March 2006, and pages 1a, 3 and 4 filed with the letter of 26 January 2006;

Figures 1 and 2 filed with the letter of 26 January 2006.

Reasons for the Decision

1. The appeal is admissible.

2. *Article 123(2) EPC*

The subject-matter of amended claim 1 finds support in the application as originally filed, in particular in original claims 1 and 2, the description at column 1, lines 51 to 53 and 57 and in the embodiment depicted in Figure 1. The requirements of Article 123(2) EPC are thus satisfied.

3. *Inventive Step*

3.1 The examining division refused the application for lack of inventive step, and since neither D1 nor D2 discloses all the features of claim 1, it is clear that this is the issue at the centre of this appeal.

3.2 The application relates to a method for obtaining paving blocks by splitting a concrete block into smaller pieces. By splitting rather than cutting the concrete block, rough faces are created, which provide a surface having good anti-slip characteristics.

D1 describes a method of making paving blocks by splitting a concrete slab into smaller blocks; D2 relates to splitting a block of stone into panels, which are then used for cladding walls.

The examining division considered D2 to be the closest prior art to the invention. They argued that, although the blocks of D2 are used for building façades, these blocks would require no modification for use as paving blocks; the mere fact that the blocks obtained by the method of claim 1 are subsequently used for paving

provides no distinguishing feature for the claimed method beyond that disclosed in D2. Therefore the examining division concluded that the method of claim 1 differs from D2 only in that the concrete block is defined as being of substantially square cross-section, and that the paving block is substantially cubic (the feature that the concrete block is "self-locking" has been deleted from the present claim). In light of D1, these features were considered to be obvious for the skilled person.

- 3.3 In assessing novelty, it is often sufficient to show that a known object is suitable for an intended purpose for it to be novelty destroying. So, for example, in this case, if novelty were in issue, it might be argued that the façade blocks of D2 having all the claimed features would be suitable for use as paving. However, it is not novelty, but inventive step that is in issue here, and in analysing inventive step it is of the utmost importance to determine the appropriate starting point for the invention, as set out in T 835/00 (not published in the OJ EPO). A wrong choice as a starting point for the application of the problem/solution method of analysing inventive step means that no technical problem can be formulated without hindsight.

A large body of case law from the Boards of Appeal (see Section I.D.3 of the Case Law of the Boards of Appeal, 4th Edition, 2001) points out that a disclosure qualifies as closest prior art if it relates to the same purpose as the invention, or is concerned with the same problem as that underlying the invention. As set out in T 686/91 (not published in OJ EPO), a document not mentioning a technical problem that is at least

related to that derivable from the patent specification does not normally qualify as a description of the closest state of the art on the basis on which the invention should be assessed, regardless of the number of technical features it may have in common with the subject-matter of the patent concerned (Reasons for the Decision, point 4).

The patent application itself concerns blocks for laying paving (see column 1, lines 1 to 2). The problem underlying the invention is to provide blocks with better anti-slip properties (see column 1, lines 18 to 20 and column 1, line 58 to column 2, line 15).

The closest prior art must therefore be D1, as this is concerned with making paving blocks, rather than stone cladding for walls as in D2; the most appropriate starting point for an invention concerning an improvement to paving blocks has to be a document describing paving blocks, rather than one concerned with wall cladding. In addition, the problem of anti-slip is not relevant to wall cladding; according to D2, a rough surface is obtained for decorative or aesthetic reasons (see page 2, paragraphs 1 and 2).

- 3.4 The method shown in D1 results in paving blocks having a rough surface, and it is reasonable to assume that these would have anti-sliding characteristics. Nevertheless, the method defined in claim 1 differs from the disclosure of D1 in that the splitting is carried out to give a block having either one rough face or two rough faces opposite to each other. It can be seen that when blocks are split from the slab shown in Figure 2 of D1 this arrangement of the faces does

not occur; rather, the method of D1 results in at least two rough faces being located next to each other.

- 3.5 Starting from D1, the objective problem to be solved can be seen as how to improve the paving made from such blocks.
- 3.6 The arrangement of rough faces defined in claim 1 means that the blocks can be laid so that, whilst a rough surface is uppermost, it is the smooth faces that abut against each other. This enables the blocks to be set close together, so that dust, water and ice cannot penetrate the blocks, and the paving remains in good condition for longer.

The blocks produced according to D1 have at least two rough faces adjacent to each other. This means that they cannot be laid with only smooth faces in contact, and consequently the gaps between the blocks are larger than those of the invention.

In forming the wall cladding of D2, the adjacent rows of blocks are joined in the usual way by using mortar, or as shown in figure 7, by gluing. Thus, the problem of penetration of dust, water and the like does not occur.

- 3.7 Since neither D1 nor D2 describes either the objective problem or its solution, and it would be inappropriate to start an inventive step analysis from D2, the method of claim 1 and dependent claim 2 involves an inventive step.

3.8 Claim 3 is directed to paving formed from the blocks obtained by the method of claims 1 and 2, laid to form paving having a rough surface like conventional porphyry paving. Since D2 concerns wall cladding, D1 is considered to be the closest prior art for the reasons given above, and consequently the paving of claim 4 also has an inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance, with the order to grant a patent based on the following documents:
 - Claims 1 to 3 filed by facsimile on 24 March 2006;
 - Description pages 1 and 2, filed by facsimile on 24 March 2006, and pages 1a, 3 and 4 filed with the letter of 26 January 2006;
 - Figures 1 and 2 filed with the letter of 26 January 2006.

The Registrar:

The Chairman:

A. Counillon

U. Krause