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**Datasheet for the decision  
of 28 September 2006**

**Case Number:** T 0332/05 - 3.2.07

**Application Number:** 99910916.8

**Publication Number:** 1064211

**IPC:** B65G 43/00

**Language of the proceedings:** EN

**Title of invention:**

Conveyor and plant for baling paper pulp

**Applicant:**

Valmet Fibertech Aktiebolag

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 111(1), 123(2)

**Keyword:**

"Amendments not going beyond the application as filed"  
"Remittal to the first instance"

**Decisions cited:**

T 0063/86, T 0047/90

**Catchword:**

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Case Number: T 0332/05 - 3.2.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.07  
of 28 September 2006

**Appellant:** Valmet Fibertech Aktiebolag  
S-851 94 Sundsvall (SE)

**Representative:** Hopfgarten, Nils  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 5 October 2004  
refusing European application No. 99910916.8  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** C. Holtz  
**Members:** K. Poalas  
H. Hahn

## Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the Examining Division refusing European patent application 99 910 916.8.

In its decision, the Examining Division held that the subject-matter of claim 1 as filed with letter of 21 September 2000 was not inventive in view of the teaching of document

D1: EP 0 564 430 A.

- II. Oral proceedings before the Board of Appeal took place on 28 September 2006. During the oral proceedings the appellant requested that the decision under appeal be set aside and that the case be remitted to the first instance with claims 1 to 5 as filed during the oral proceedings.

- III. Amended claim 1 reads as follows:

"A paper pulp bale stationary conveyor system for use in baling paper pulp, having a frame (8) supporting a carrier device (32, 34) for paper pulp bales, said carrier device being movably supported in relation to the frame, whereby the carrier device comprises two conveyor chains (32,34) supported by gear wheels attached to the conveyor frame (8) and driven by a driving motor (6), the driving motor is connected via gear wheels and separate drive chains to a shaft common to both conveyor chains (32, 34) so that they are all the time driven at the same speed,

sensors are arranged to contactless detect the position of the carrier device (32, 34) in relation to a reference position on the conveyor frame (8) by detecting the rotation of the gear wheels for establishing the rotation of the conveyor chains (32, 34) in relation to the reference position and to deliver a corresponding train of pulses, each pulse corresponding to a certain distance of movement for determining the position of the carrier device by counting pulses, spring limit position indicators (10, 12) being arranged at the ends of the conveyor for defining said reference position when affected by a load when carried by the carrier device passed onto one end of the conveyor, and the limit position where the load is leaving the conveyor being used as a safety device."

IV. The appellant argued as follows:

New claim 1 is a combination of one alternative of claim 1 as originally filed together with the information on page 4, lines 10 to 29 of the PCT-application "WO 99 46192 A" as published (corresponding to the application as originally filed). Claims 2 to 5 correspond to the originally filed claims 6, 8, 9 and 10. Therefore, claims 1 to 5 fulfil the requirements of Article 123(2) EPC.

Substantial amendments have been made in claim 1 by incorporating features from the description into said claim. The amendments made, in particular the fact that claim 1 is now directed to a stationary conveyor system disclosing spring limit position indicators and having

the limit position used as a safety device, have the effect that the reasons given for refusing the present application no longer apply since these specific amendments are substantial in the sense that in particular the assessment of inventive step has to be carried out on a new basis. Thus, the case should be remitted to the first instance for further prosecution.

### **Reasons for the Decision**

1. *Amendments - Article 123(2) EPC*

The Board follows the appellant's argument that amended claim 1 is a combination of one alternative of claim 1 as originally filed together with the information on page 4, lines 10 to 29 of the PCT-application "WO 99 46192 A" as published (corresponding to the application as originally filed) and that claims 2 to 5 are based on originally filed claims 6, 8, 9 and 10.

Therefore, the Board concludes that claims 1 to 5 fulfil the requirements of Article 123(2) EPC.

2. *Remittal to the first instance*

Substantial amendments have been made in claim 1 by incorporating features from the description into said claim. The amendments made, in particular the fact that the claim 1 is now directed to a stationary conveyor system disclosing spring limit position indicators and having the limit position used as a safety device, have the effect that the reasons given for refusing the present application no longer apply since these

specific amendments are substantial in the sense that in particular the assessment of inventive step has to be carried out on a new basis. Thus, amended claim 1 gives rise to fresh issues which require a substantial further examination in relation to both the formal and substantive requirements of the EPC and which have not yet been addressed in the examination proceedings constituting a "fresh case" (see e.g. decisions T 63/86, OJ EPO 1988, 224; T 47/90, OJ EPO, 1991, 486).

Under these circumstances the Board considers it appropriate to exercise its discretion under Article 111(1) EPC to remit the case to the first instance for further prosecution.

Thus, the appellant has the opportunity to have its case considered without loss of an instance.

**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:

G. Nachtigall

C. Holtz