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**Datasheet for the decision  
of 20 May 2009**

**Case Number:** T 0181/07 - 3.2.05

**Application Number:** 00106077.1

**Publication Number:** 1040908

**IPC:** B29D 30/38

**Language of the proceedings:** EN

**Title of invention:**  
Supply method of belt member

**Patentee:**  
THE YOKOHAMA RUBBER CO., LTD.

**Opponent:**  
VMI Epe Holland B.V.

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 54, 56, 104(1), 106 to 108  
EPC R. 97, 99, 101(1)

**Keyword:**  
"Admissibility of appeal (yes)"  
"Late-filed document (not admitted)"  
"Novelty (yes)"  
"Inventive step (yes)"  
"Apportionment of costs (no)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0181/07 - 3.2.05

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.05**  
**of 20 May 2009**

**Appellant:**  
(Opponent)

VMI Epe Holland B.V.  
P.O. Box 161  
NL-8160 AD EPE (NL)

**Representative:**

De Hoop, Eric  
Octrooibureau Vriesendorp & Gaade B.V.  
P.O. Box 266  
NL-2501 AW The Hague (NL)

**Respondent:**  
(Patent Proprietor)

THE YOKOHAMA RUBBER CO., LTD.  
36-11, Shimbashi 5-chome  
Minato-ku  
Tokyo, 105 (JP)

**Representative:**

HOFFMANN EITLÉ  
Patent- und Rechtsanwälte  
Arabellastrasse 4  
D-81925 München (DE)

**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted 1 December 2006  
rejecting the opposition filed against European  
patent No. 1040908 pursuant to Article 102(2)  
EPC 1973.**

**Composition of the Board:**

**Chairman:** W. Zellhuber  
**Members:** P. Michel  
M. J. Vogel

## Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division rejecting the opposition filed against European Patent No. 1 040 908.

II. The appellant requested that the decision under appeal be set aside and that the European Patent No. 1 040 908 be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed (main request) or, as an auxiliary measure, that the decision under appeal be set aside and the patent be maintained on the basis of one of the sets of claims filed as fourth to sixth auxiliary requests on 1 August 2007. In addition, an order for apportionment of costs was requested.

III. The following documents are referred to in the present decision:

D3: US-A-3,682,222

D7: US-A-4,877,468

IV. Claim 1 as granted (main request) reads as follows:

"A supply method of a belt member (B), comprising the steps of:

forming a plurality of strip sections (S') by cutting a strip material (S), made up with reinforcing cords (f) coated with unvulcanized rubber, to a predetermined length with a predetermined angle ( $\theta$ ); producing a belt member having one tire peripheral length by

splicing an integer number of the strip sections under a lined condition in order on a carrier-conveyer (7);

and characterized by:

directly supplying the belt member having one tyre peripheral length to a belt forming drum (10) via an intermediate conveyer (9)."

V. The appellant has argued substantially as follows:

It is not specified in claim 1 of the patent in suit that a belt member is produced only by splicing and not by splicing and cutting. The feature of the claim of "producing a belt member having one tyre peripheral length by splicing an integer number of the strip sections under a lined condition in order on a carrier-conveyer" is thus disclosed in document D7.

In addition, the tread plies of document D7 form a belt member and are transported by conveyors.

Document D7 thus discloses a method comprising all the steps specified in claim 1 of the main request and the subject-matter of the claim is not new.

In the event that claim 1 of the main request were to be construed as requiring that belt member is produced only by splicing, the subject-matter of claim 1 would nevertheless not involve an inventive step in view of the disclosure of document D3, which teaches that only splicing can be used to form a belt member having one tyre peripheral length. It would thus be obvious to replace the splicing and cutting arrangement proposed

in document D7 by the belt forming device shown in Figure 13 of document D3, in which an integer number of strips are spliced to form a belt member having one tyre peripheral length.

VI. The respondent has argued substantially as follows:

The appeal is not admissible, since it is not concerned with the reasons given in the decision of the Opposition Division.

The grounds of appeal consist entirely of new arguments based on a new document. No good reasons have been supplied for the late filing of document D7. The new evidence and arguments should therefore not be admitted into the appeal proceedings.

The method disclosed in document D7 does not include the steps of producing a belt member by splicing an integral number of strip sections or of directly supplying the belt member having one tyre peripheral length to a belt forming drum via an intermediate conveyer.

The disclosure of document D7 thus does not go beyond that of the prior art acknowledged in the patent in suit and the subject-matter of claim 1 according to the main request is novel.

The device of document D3 is unsuitable for combining with the apparatus of document D7 and is incompatible therewith. Furthermore, nothing in either of the documents suggests that any advantage could be obtained through such a combination. The subject-matter of

claim 1 according to the main request thus also involves an inventive step.

An order for the apportionment of costs should be made in view of the late filing of document D7 and the related arguments.

## **Reasons for the Decision**

### *1. Admissibility of the Appeal*

The appellant was adversely affected by the decision of the Opposition Division rejecting the opposition and is thus entitled to appeal in accordance with Article 107 EPC.

The statement of grounds of appeal alleges a lack of novelty of claim 1 in view of document D7 and a lack of inventive step of claim 1 in view of a combination of document D7 and document D3. Document D7 was not, however, mentioned in the procedure before the Opposition Division. Thus, all the arguments rely on a document introduced for the first time in the appeal procedure.

The conditions for admissibility of an appeal are set out in Rule 101(1) EPC, which refers to Articles 106 to 108 EPC and Rules 97 and 99, paragraphs 1(b), (c) and 2 EPC. None of these provisions gives any indication that an appeal which is based only on evidence submitted for the first time with the statement of grounds of appeal is thereby rendered inadmissible.

Thus, the mere fact that all the reasons indicated in the statement of grounds of appeal for setting aside the decision under appeal are based on a document introduced for the first time in the appeal procedure does not render the appeal inadmissible.

## 2. *Main Request*

### 2.1 *Late Submission of Document D7*

As discussed in point 1 above, document D7 did not form part of the proceedings before the Opposition Division and was introduced into the appeal proceedings with the statement of grounds of appeal. It was indicated by the appellant that the document had been found after an additional search in the patent literature. Whilst this cannot be considered to represent a good reason for the late filing, nevertheless, the Board considers that the document could be admitted into the proceedings if it were of relevance to the issues of novelty or inventive step.

#### 2.1.1 *Novelty*

Document D7 discloses a method of forming a tyre, using a manufacturing plant shown schematically in Figure 1, details of which are shown in Figures 7 and 8 and described at column 8, line 41 to column 9, line 34.

In the method disclosed in document D7, a belt member having one tire peripheral length is not produced by splicing an integer number of the strip sections under a lined condition in order on a carrier-conveyer. Rather, continuous belts are formed, which are

subsequently cut to the desired length at a cutting station (129).

In addition, the belt member having one tire peripheral length is not directly supplied to a belt forming drum via an intermediate conveyer. Rather, the belt passes from the cutting and splicing unit (105) first to an edging device (122) and then to the cutting station (129).

The subject-matter of claim 1 is thus new.

#### 2.1.2 *Inventive Step*

Whilst the appellant refers to the document US-A-4,875,959 in connection with the argument for lack of inventive step, it is apparent from the argumentation that it is, in fact, intended to refer to document D7.

It is suggested on behalf of the appellant that it would be obvious to replace the splicing and subsequent cutting arrangement proposed in document D7 by the belt forming device shown in Figure 13 of document D3, in which an integer number of strips are spliced to form a belt member having one tire peripheral length.

However, regardless of whether or not such a substitution would be practicable, no motivation is suggested which would suggest to the person skilled in the art that such a substitution should be attempted.

The present invention is intended to enable the production of small batches of belt members, thus



enabling a reduction in the amount of stock that must be stored (see paragraph [0004] of the patent in suit).

Document D3 is not, however, concerned with a solution to this problem, being instead concerned with the production of a tyre in which the reinforcing wires do not suffer from premature fatigue failure (column 2, line 64 to column 3, line 4). In addition, document D3 does not disclose a method in which the belt member having one tyre peripheral length is directly supplied to a belt forming drum via an intermediate conveyer.

Thus, the subject-matter of claim 1 involves an inventive step. Claims 2 and 3 are dependent from claim 1 and involve an inventive step for the same reasons.

2.2 In view of the lack of relevance of document D7 as discussed above under points 2.1.1 and 2.1.2, the Board does not find it appropriate to exercise their discretion to admit the document into the proceedings.

### 3. *Apportionment of Costs*

The late filing of document D7 has not given rise to significantly increased costs for the respondent. A different apportionment of costs under Article 104(1) EPC is thus not appropriate.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

D. Meyfarth

W. Zellhuber