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**Datasheet for the decision
of 7 October 2008**

Case Number: T 0543/07 - 3.2.04

Application Number: 99918194.4

Publication Number: 1006778

IPC: A01G 25/02

Language of the proceedings: EN

Title of invention:

Method and device for the manufacturing of a drip irrigation
conduit

Applicant:

Dermitzakis, Emmanuil

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 54(3), 123(2)

Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

"Added subject-matter (no)"

"Inventive step (yes)"

"Reimbursement of the appeal fee (no)"

Decisions cited:

J 0006/79

Catchword:

-



Case Number: T 0543/07 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 7 October 2008

Appellant: Dermitzakis, Emmanuil
(Applicant) Larnakas Street 4
GR-15669 Athens (GR)

Representative: -

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 30 October 2006
refusing European application No. 99918194.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
C. Heath

Summary of Facts and Submissions

- I. This appeal is against the decision of the Examining Division dated 30 October 2006 to refuse the patent application. The Examining Division considered that the subject-matter of claim 1 as amended did not comply with the requirements of Article 123(2) EPC. The Appellant's notice of appeal was received on 19 December 2006, the appeal fee was paid on 28 December 2006; the statement setting out the grounds of appeal was received on 2 March 2007.
- II. The following documents played a role in the present proceedings:
- D1: EP-A-0 480 632
D2: EP-A-0 872 172
D3: EP-A-0 344 605
D4: US-A-5 324 379
- III. Oral proceedings took place on 7 October 2008 before the Board of Appeal.

The Appellant (applicant) requested that the decision under appeal be set aside, that a patent be granted on the basis of the sole claim filed during the oral proceedings and that the appeal fee be reimbursed.

He mainly argued as follows:

D1 discloses a method for manufacturing drip irrigation conduits wherein the emitter's final welding is achieved by the compression between two opposite surfaces outside and inside the tube. The surface outside the tube is

formed by wheels. These wheels are neither driven nor do they form an elastic support. None of the cited documents discloses to design the outer surface as a driven endless band forming an elastic support.

Therefore, there was no hint which could have led the skilled person to the claimed invention.

Furthermore, the way the Examining division conducted the proceedings was misleading. This constituted a procedural violation justifying the reimbursement of the appeal fee.

IV. Claim 1 reads as follows:

"1. Method for the manufacture of drip irrigation conduits with, internally welded individual emitters (4) introduced and welded inside the tube (3) during its production phase, occupying only a part of the circumference of the tube (3) and slightly protruding in its internal part wherein the hot tube (3) passes via a fixed calibrator (5), characterised in that, emitter's final welding is achieved by the compression between two opposite surfaces outside and inside the tube, one of them which is outside (18) the tube (3), downstream of the fixed calibrator (5), is a driven endless band, which forms an elastic support background to the pipe, and which moves with a speed similar to that of the tube (3) being produced."

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments:*

2.1 In the decision under appeal, the Examining division was of the opinion that there was no basis in the application as originally filed for claiming:

- a driven surface outside the tube other than an endless band or wheels, and
- that this driven surface no longer forms an "elastic support background to the pipe".

2.2 Since present claim 1 specifies that there is an outer surface in form of a "driven endless band, which forms an elastic support background to the pipe", the Board is satisfied that the requirements of Article 123(2) EPC are met.

3. *Inventive step:*

3.1 D1 (claim 1, column 11, lines 8 to 11) discloses a method for the manufacture of drip irrigation conduits with, internally welded individual emitters (15) introduced and welded inside the tube (12) during its production phase, occupying only a part of the circumference of the tube (figures) and slightly protruding in its internal part wherein the hot tube (12) passes via a fixed calibrator (21), wherein the emitter's final welding is achieved by the compression between two opposite surfaces outside and inside the tube, one of them which is outside the tube (12), downstream of the fixed calibrator, is formed of wheels providing a support background to the pipe, wherein the surface of the wheels which contacts the tube moves with a speed similar to that of the tube being produced.

3.2 Thus, the claimed method differs from that known from D1 in that:

the surface which is outside the tube is a driven endless band, which forms an elastic support background to the pipe.

3.3 Thus, starting from the closest prior art, the problem to be solved can be seen in reducing the friction forces between the tube and the support surface at the moment when the emitters are pressed against the internal surface of the tube so as to avoid any excessive reduction of the tube thickness or even the destruction of the tube at the welding area (see patent application page 6, lines 19 to 22).

3.4 None of D1, D3 or D4 suggests the provision of an external driven endless band forming an elastic support for the tube when the emitters are pressed against the tube. They do neither address the same problem nor provide the same solution as the present invention:

D1 teaches to use an external support surface for the tube during the final welding stage in the form of a series of wheels. This document does however neither suggest that this series of wheels could be driven so as to move at a speed similar to that of the tube, nor that these wheels should form an elastic support background to the pipe.

D2 has been published after the priority date of the present application and is thus comprised in the state of the art according to Article 54(3) EPC. According to Article 56 EPC such a document shall not be considered in deciding whether there has been an inventive step.

D3 teaches to accelerate the emitters so that there is almost no difference in speed between the emitters and the tube when they come into contact with each other. In this document the external support surface when the emitters are pressed against the internal surface of the tube and welded thereto, is formed by the fixed calibrator.

D4 teaches to attach the emitters spaced apart along a continuous thread. A first emitter is attached to the tube, whereby the subsequent emitters are drawn in the tube by the thread so that they travel at the same rate as the tube during the heat welding of the emitters onto the internal surface of the tube. During the heat welding stage of the emitters, the tube is externally supported by the fixed calibrator.

Consequently, there is no disclosure or suggestion in D1, D3 or D4 of providing an external support surface during the heat welding stage of the emitters onto the internal surface of the tube, which is in form of a driven endless band or "elastic".

3.5 Accordingly, the subject-matter of claim 1 involves an inventive step with respect to D1, D3 and D4 taken alone or in combination with each other.

4. *Reimbursement of the appeal fee:*

Such a reimbursement is ordered in accordance with Rule 67 EPC 1973 in the event of a substantial procedural violation.

A substantial procedural violation is to be seen not only in the failure to apply procedural rules in the manner prescribed by the Convention, but also in the giving of incorrect information by the EPO about rules of procedure (J 6/79, EO EPO 1980, 225).

The Appellant wrote three letters to the Examining division.

A first letter dated July 2003 was received on 30 July 2003; therein the Applicant stated "I would like to discuss further in order to divide the published international application in more independent parent applications."

Such a statement which solely indicates an intention of the Applicant did not require any reaction from the Examining division.

A second letter dated July 2004 was received on 13 August 2004; therein the Applicant stated "... in order to divide this application in more than 2 independent patent applications, I have started with ..." and "We would like to continue with the task of dividing the application in more independent ones."

Here again these statements simply indicate that the Applicant wishes to file divisional applications and has started limiting the parent application accordingly. No question is formulated to the Examining division and hence no answer is to be expected.

A third letter dated December 2005 was received on 21 December 2005; therein the Applicant stated "You have never answered or made any comment about this divisional proceedings ... I am acting this time as if there was a divisional proceeding in progress." and "It is obvious that, if you agree that, "there is a divisional

procedure in progress" which I am asking all this time, all the above remarks will be automatically answered". This letter, for the first time informed the Examining division that the Applicant believed that a divisional application was in progress.

In response to this letter the Examining division informed the Appellant that no divisional application had been filed.

From the foregoing it follows that contrary the Appellant's submissions the Examining division did not give any incorrect information about the filing of a divisional application, so that there is no procedural violation on the part of the department of first instance.

Furthermore, the Appellant alleged that he has been misled by the EPO, i.e. the Examining division. This point of view cannot be shared either, since the Examining division did never notify anything to the Applicant that could have led him to the assumption that a divisional application was already in progress. Moreover the Examining division notified to the Applicant that no divisional application had been filed as soon as it became clear that the Applicant wrongly thought that a divisional application was in progress.

Therefore, the request for reimbursement of the appeal fee is to be refused.

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 main request filed during the oral proceedings before the Board and a description to be adapted thereto.
3. The request for reimbursement of the appeal fee is refused.

The registrar:

The Chairman:

G. Magouliotis

M. Ceyte