

**Internal distribution code:**

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

**Datasheet for the decision  
of 21 June 2012**

**Case Number:** T 2168/09 - 3.2.06

**Application Number:** 06250705.8

**Publication Number:** 1837204

**IPC:** B60C7/10, B60C7/12

**Language of the proceedings:** EN

**Title of invention:**

Non pneumatic tyre for a remotely operated stair-climbing  
vehicle

**Applicant:**

Remotec UK Limited

**Relevant legal provisions:**

EPC 1973 Art. 54  
EPC Art. 113  
EPC R. 103

**Keyword:**

Novelty - (no)  
Right to be heard - examination procedure - violation (no)



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 2168/09 - 3.2.06

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.06**  
**of 21 June 2012**

**Appellant:** Remotec UK Limited  
(Applicant) Unit 5, Quinn Close  
Manor Park  
Whitley, Coventry CV3 4LH (GB)

**Representative:** Downing, Michael Philip  
Fry Heath & Spence LLP  
The Gables  
Masset Road  
Horley  
Surrey RH6 7DQ (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted 11 May 2009  
refusing European patent application  
No. 06250705.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman:** M. Harrison  
**Members:** G. Kadner  
K. Garnett

## **Summary of Facts and Submissions**

- I. This appeal is from the decision of the Examining Division, posted on 11 May 2009, refusing European patent application No. 06250705.8 filed on 9 February 2006.
- II. In the decision under appeal the Examining Division considered that the subject-matter according to claim 1 lacked novelty when compared with the teaching of several prior art documents:
- D1: US-A-5 167 439  
D2: JP-A-03-28002 (Abstract)  
D3: JP-A-04-059491 (Abstract)  
D4: US-A-2 620 844  
D5: GB-A-117 773
- III. The appellant (applicant) lodged an appeal on 2 July 2009 against this decision and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was filed on 10 September 2009.
- IV. In a communication dated 26 March 2012 the Board took the view that, since the scope of claim 1 was rather broad, the Examining Division's conclusion of lack of novelty appeared correct since all features of claim 1 seemed to be disclosed in D1. In this regard, the Board also indicated which features of D1 corresponded to those features claimed. Further, the Board did not agree that there had been a procedural violation by the Examining Division which would justify reimbursement of the appeal fee.

- V. Oral proceedings were held on 21 June 2012, which the appellant, as announced in its letter dated 21 May 2012, did not attend.

In its statement of grounds of appeal (a) the appellant had requested that the decision under appeal be set aside and that the application be remitted to the Examining Division with instructions to grant a patent on the basis of the application documents set out in paragraph 4 (page 1) of the decision under appeal and (b) that the appeal fee be reimbursed on the basis of a substantial procedural violation by the Examining Division.

- VI. Claim 1 reads as follows:

"A tyre (10, 50) adapted to fit one or more wheels of a remotely-operated vehicle, comprising a layer (52) whose stiffness in its radial direction varies around its circumference."

- VII. In support of its request, the appellant essentially made the following submissions:

The arrangement of D1 could not be described as "a tyre" in the conventional sense, and no tyre was described in that document anywhere. Likewise also "a layer" was not present in the known "tread" of D1 because it did not have a layered structure. The Division's conclusion that the arrangement of D1 was suitable for a remotely operated vehicle (ROV) was wrong in view of the examples given in the Guidelines for Examination. Moreover, the claimed tyre was differently propelled than the wheel of D1 and therefore was not suitable for being mounted to a ROV.

With respect to the other prior art documents the claimed solution also was novel and involved an inventive step.

A substantial procedural violation had occurred since the examining division had refused the application after having only issued one substantive communication and thus denied the applicant the chance to discuss the application further at first instance and forcing it to file an appeal.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Novelty (Article 54 EPC 1973)*
  - 2.1 In its communication the Board expressed its opinion that the Examining Division's decision was correct in the following manner:

*The scope of claim 1 is rather broad such that the conclusion of lack of novelty when compared with at least D1 appears to be correct. Particularly, the terminology "comprising a layer" can mean any layer at any position of the tyre. The tread 1 of the wheel 10 can in the common sense be identified as a "tyre". The heel portions 3 above the bearing elements 16 can be seen as parts of the layer which are stiffer than the toe portions 4. Therefore all features of claim 1 seem to be present in D1. If the tyre known from that prior art is suitable for being mounted to a remotely operated vehicle, it lacks novelty as correctly assessed by the division. No features seem to be*

*present which would qualify the claimed tyre for special use with such a remotely operated vehicle.*

The appellant did not file any response to this communication and the Board sees no reason to alter its preliminary conclusion.

- 2.2 "A tyre", which (also according to dependent claim 2) can be a non-pneumatic one, is understood by a skilled person to be any outer peripheral covering of a wheel for transmitting force to the ground. Therefore, contrary to the appellant's argument, the "tread" 1 surrounding the wheel 10 can indeed be identified as "a tyre".
- 2.3 Although the appellant argued that D1 did not have a layered structure and as a consequence no layer, the Board notes that the term "layer" is not further defined in claim 1, so that it can (as also mentioned in the Board's communication) be any layer at any position of the tyre. Therefore the tyre ("tread") 1 in D1 comprises a layer, e.g. the outermost surface 13.
- 2.4 Since the heel portions 3 of the tyre 1 are stiffer than the toe portions 4, the stiffness of the layer in its radial direction varies around its circumference.
- 2.5 Whilst the appellant argued that the wheel disclosed in D1 was not suitable for a remotely operated vehicle (ROV), the tyre disclosed in D1 can however equally be mounted to the wheel of a ROV. It is thus suitable for an ROV, as explained in the Board's communication. No feature of claim 1 provides any limitation as to any further suitability requirements when using an ROV. It may also be added that, as is shown in Fig. 3A to 3C of D1, the varying stiffness is anyway suitable for

climbing steps, which property is also desired according to the application.

- 2.6 Since all features of claim 1 are disclosed in D1 its subject-matter lacks novelty.
- 2.7 The appellant did not file any auxiliary request on the basis of which the grant of a patent could be considered. Therefore, since the subject-matter of claim 1 of the sole request on which grant of a patent was requested lacks novelty, the appeal must be dismissed.
- 3. *Reimbursement of the appeal fee*
  - 3.1 According to Rule 103(1) EPC, the appeal fee shall be reimbursed, *inter alia* where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.
  - 3.2 In its communication the Board had already stated that it could not identify a procedural violation which would justify reimbursement of the appeal fee. However, since the appellant's appeal is anyway not allowable, the basis for any refund of the appeal fee is lacking so that any further reasoning regarding lack of a procedural violation is obviated.

## Order

### For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated