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Datasheet for the decision of 9 December 2015

Case Number: T 0061/12 - 3.2.04

Application Number: 06124001.6

Publication Number: 1787534

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Language of the proceedings: EN

Title of invention:
A machine for manufacturing composite filters

Patent Proprietor:
G.D Societa' per Azioni

Opponent:
Hauni Maschinenbau AG

Headword:

Relevant legal provisions:
EPC Art. 83, 54(3), 56, 114(2)
RPBA Art. 12(4)

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Late submitted material

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Catchword:

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Case Number: T 0061/12 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 9 December 2015

Appellant: (Opponent)	Hauni Maschinenbau AG Kurt-A.-Körber-Chaussee 8 - 32 21033 Hamburg (DE)
Representative:	Seemann, Ralph Patentanwälte Seemann & Partner Raboisen 6 20095 Hamburg (DE)
Respondent: (Patent Proprietor)	G.D Societa' per Azioni Via Battindarno, 91 40133 Bologna (IT)
Representative:	Bianciardi, Ezio Bugnion S.p.A. Via di Corticella, 87 40128 Bologna (IT)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 2 December 2011 rejecting the opposition filed against European patent No. 1787534 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	A. de Vries
Members:	S. Oechsner de Coninck
	C. Heath

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal, received on 9 January 2012 against the decision of the opposition division dated 2 December 2011 to reject the opposition against the patent EP1787534, and paid the appeal fee the same day. The statement setting out the grounds of appeal was filed on 2 April 2012.

Opposition was filed against the patent as a whole and based on Article 100a) together with 52(1), 54(3) and 56 EPC as well as Article 100b) together with 83 EPC.

II. The opposition division held that the grounds for opposition mentioned in Article 100 (a) and (b) EPC did not prejudice the maintenance of the granted patent unamended having regard to the following documents in particular:

D1: EP 1 704 788 Al (citable under Art. 54(3) EPC)
D3: US 2004/0237972 Al
D4: EP 1 393 640 Al
D5: DE 25 34 666 Al
D7: EP 1 639 907 Al (citable under Art. 54(3) EPC)
D8: US 3521513A
D9: EP 895 723 Bl
D11: US 5 255 777 A
D13: EP 838 163 Bl
D15: DE 3 641 064 Al

III. The further following documents were cited in appeal:

D18: Voges: Tobacco encyclopedia,, Tobacco Journal International (TJI), Mainz, Pressehaus 1984, Pages 144,420 to 425 and 444 to 447

D19: Article "GD Cigarette maker" from World Tobacco review, January 1989

IV. Oral proceedings were held on 09 December 2015.

V. The appellant (opponent) requests that the decision be set aside and the patent be revoked in its entirety.

The respondent (patent proprietor) requests that the Board dismisses the appeal and maintains the patent as granted (main request), or that the case be remitted if new evidence and/or arguments are admitted, in the alternative that the decision be set aside and the patent be maintained in amended form according to a first and second auxiliary request, filed with letter of 9 November 2015.

VI. The independent claim 1 as granted reads as follows:

"A machine for manufacturing composite filters, characterized in that it comprises:
- a unit (4) by which filter plugs (7, 8) having different filtration characteristics are assembled in axial alignment to form composite groups (6);
- conveyor means (11), furnished with flutes (22, 23, 29) by which the groups (6) of plugs (7, 8) are accommodated singly and caused to advance in a direction transverse to their own axes;
- a garniture tongue (15) with two channels (15a) extending parallel one to another and substantially parallel also to the flutes (22, 23, 29) of the conveyor means (11);
- rotary cutting means (17) by which two continuous filter rods (16) formed in the channels (15a) of the tongue (15) are divided up simultaneously into single composite filters (2);

- a rotating member (13), centred on an axis (13a) extending transversely to the channels (15a) of the tongue (15) and equipped with a plurality of carriers (32) by which pairs of the groups (6) of plugs are transferred from the conveyor means (11) to the two channels (15a), in such a way as to form two continuous successions of groups (6) in the selfsame channels."

VII. The appellant argues as follows:

- With respect to sufficiency of disclosure it is not possible to simultaneously cut two filter rods with a single rotating tool at the same time. The description only mentions the cutting means in specification paragraph [0019] without any further explanation, and the knowledge of the skilled person cannot supplement the lack of disclosure as to how the simultaneous cutting operation is performed.

- As for novelty, claim 1 does not specify that the conveyor means and carriers of the rotating member should be construed as separate units, therefore the carriers (23) equipped with rotating heads (27) of D1 also fall within the scope of claim 1 thus destroying novelty , Article 54(3) EPC.

In D7 conveyor means with flutes will be implicit to the skilled person as a necessary feature of "Zusammenstelleinrichtung zur Herstellung von Multisegmentfiltern" This feature is thus also directly and unambiguously disclosed in combination with the other implicit features of the rotary cutter and the two channels. Therefore D7 also is a novelty destroying prior art under Article 54(3) EPC.

- Relating to inventive step: Starting from D5 the subject-matter of claim 1 differs from the disclosed filter manufacturing machine in that the garniture is provided with two parallel channels and the carriers transfer pairs of the groups of plugs. Increasing production speed without doubling the number of manufacturing machines is a standard problem known in the art, and the solution of doubling the production line is also a common one. D9 and D11 both relate to the related technical field of cigarette makers of which the person skilled in the art of filter production machines will be aware. Without using inventive skills the skilled person would therefore in an obvious manner replace the single transfer unit of D5 by the double drums arrangement depicted in figure 2 of D9 with its central double transfer unit also capable of working in the opposite direction thereby arriving at the solution of claim 1. Alternatively, he would in an equally obvious manner adopt the double transfer unit shown in Figure 9 of D11 thereby also arriving at the solution according to claim 1.
In a similar manner he would arrive at the claimed solution in an obvious manner by starting starting from any of the documents D3,D4,D8 disclosing single lines and applying the teaching of any of the documents D9,D10,D11,D13 or D15 exhibiting double transfer capacity.
- Finally, D19 and the submissions based thereon and filed with the grounds of appeal should be admitted, since D19 also relates to high production rate and discloses a double production line of cigarettes.

VIII. The respondent argues as follows:

- As for sufficiency, the skilled person would know how to simultaneously cut two parallel rows using two

synchronised rotary knives or a single one on a rotary drum transversal to the tongue.

- As for novelty, from a normal contextual reading of the claim wording the skilled reader directly derives that the conveying means and rotating member cannot be construed as the same entity. The subject-matter of claim 1 is thus novel with respect to D1. Likewise the disclosure of D7 is silent on the structural configuration of the transversal conveyor means and its relationship to the rod building unit, while it does not mention rotary cutting means at the outlet.

- Starting from the filter manufacturing machine of D5 the skilled person would not apply the teaching of any of the documents D9 or D11 that disclose transfer means for cigarettes, where an increase of the production speed is not necessary. Even if he did consider these teachings the skilled person would need to perform considerable structural modifications to adapt their transfer means to the single output line of D5 and he also would need to reverse the operating direction of the transfer means disclosed in D9 and D11. For similar reasons, the skilled person would not as a matter of obviousness combine the teachings of D3 and D15, D4 and D11 or D5 and D13 to arrive at the claimed invention.

- Newly filed document D19 and the arguments based thereon are late and should not be admitted. D19 does not disclose details of a filter production line and is therefore less relevant than the other submitted prior art documents.

Reasons for the Decision

1. The appeal is admissible.

2. Background of the invention, interpretation of claim 1

2.1 The patent is concerned with improving the production speed of a machine for producing composite filters so that it can match the output speed of cigarette makers, as explained in paragraphs 7 to 9 of the patent specification. The central idea is to increase the output of such a filter manufacturing machine by using an improved arrangement of conveyor means, garniture tongue and rotary carriers arrangement in order to obtain two separate rods in two channels of the garniture tongue which doubles the production rate compared with a single rod building machine.

2.2 When interpreting a claim the skilled person should try with synthetical propensity, i.e. building up rather than tearing down, to arrive at an interpretation which is technically sensible and takes into account the whole of the disclosure of a patent, see Case Law of the Boards of Appeal, 7th edition, 2013, (CLBA) II.A. 6.1.

2.2.1 Relationship between the conveyor means, garniture tongue and rotating member

In the sole independent claim 1 the central idea of the present patent is realized by the combination of conveyor means, transfer means and output garniture tongue defined in the claim as follows:

- conveyor means are provided with flutes by which groups of plugs are accommodated singly and caused to advance in a direction transverse to their own axes,

- a garniture tongue has two channels extending parallel one to another and substantially parallel to the flutes of the conveyor means,
- a rotating member centred on an axis extending transversely to the channels of the tongue and equipped with a plurality of carriers transfers pairs of the groups of plugs from the conveyor means to the two channels of the garniture, in such a way as to form two continuous successions of groups in the selfsame channels.

Using normal reading skills, that is giving the terms of the claim their normal meaning and reading them contextually, the skilled person understands the conveyor means, garniture tongue and rotating member to be constructionally and functionally separate features in a set and well-defined spatial and functional relationship. This follows in particular from the requirement that pairs of groups are transferred by the plurality of carriers of the rotary member from the conveyor means to the (garniture) channels. In a technically sensible reading this can only mean that the rotary member with carriers is intermediate and thus separate from the conveyer means on one hand and the garniture on the other. This configuration is further characterized by the relative orientation of the flutes of the conveyor means transverse to its conveyance direction but parallel to the channels, to which the rotary member axis is transversely oriented. In addition, the rotating member must be equipped with carriers that then transfer pairs of groups from the flutes of the conveyor means in succession, i.e. one after the other, to form the two continuous succession of groups in the two channels.

The above interpretation of the wording of claim 1 is also entirely consistent with the description, as is apparent from the figures and the passages relating thereto. For example figures 1 and 2, considered in conjunction with specification paragraphs 19 to 22,24 and 26 show the rotary member 31 with carriers 32 between conveying drums 18,19,25,26 with peripheral flutes 22, 23 on the one hand, and garniture 15 with channels 15a,b on the other. In figure 1 the flutes and channels are oriented perpendicular to the plane of drawing, while conveyance direction and the axis 13a of the rotary member lie in that plane.

2.2.2 Rotary cutting means

The machine for manufacturing composite filters as defined in claim 1 also includes rotary cutting means by which two continuous filter rods formed in the channels are divided up simultaneously into single composite filters.

The description briefly mentions the rotary cutting means in paragraph 19 as shown in figure 3 schematically as a block 17. In the absence of further specification, the skilled person trying to make technical sense will interpret the rotary cutting means as at least comprising one suitable cutting tool operating in a rotary manner. As a further requirement a standard definition of the term simultaneously: "existing, occurring, or operating at the same time, concurrent" will be used by the skilled reader to derive that the rotary cutting means operate in a synchronised way or concurrently on both rods. The single composite filters to be obtained after the dividing operation should be composed of the at least two filter plugs as previously defined in the claim.

3. Sufficiency of disclosure - Article 100(b) EPC

3.1 The appellant submitted that without specific detail of the rotary cutting means the skilled man would be unable to simultaneously cut two filter rods with a single rotating tool at the same time. His common general knowledge did not provide any solutions. Especially bearing in mind as disclosed in D18, page 445 that a high speed filter-making machine operates at the speed of 500 m/mn, it would be impossible for the skilled person to precisely cut out single filter plugs at their junction between two groups simultaneously on two parallel lines.

3.2 The Board does not agree with this view. The claim does not define that the step of dividing the continuous filter rods is performed by a single rotary cutting knife, much less that both rods should be touched and cut at the same time by a single knife. In view of the interpretation given to claim 1 under item 2.2.2 above, the skilled person merely understands from a contextual reading of claim 1 that this operation needs to be performed by any conventional and suitable cutting means that concurrently or in a synchronised way operates on both rods. According to established jurisprudence he may supplement any information he can glean from the patent with his common general knowledge , see Case Law of the Boards of Appeal, 7th edition, 2013, (CLBA) II.C.3.1. Suitable and conventional rotary cutting tools that his common general knowledge might suggest to him include rotary knives fitted on a single drum and cutting the two rods in one movement, or simply two synchronised drums each one provided with a knife (or other conventional cutting means) provided on either side of the two rods and operating concurrently on a respective one of the

rods. In both cases, the skilled person is able to routinely adapt one of the above standard solutions in order to obtain the defined operation of the cutting means as recited in claim 1.

As to the possibility of precisely cutting out two lines progressing at high speed while providing an exact cut location at the junction between two groups, the board concurs with the respondent that these additional requirements do not feature in claim 1. Indeed, claim 1 merely defines that the two continuous filter rods formed in the channel of the tongue should be divided up simultaneously into single composite filters. From that feature the skilled person does not infer that the single composite filters correspond to the composite groups defined previously in the claim, nor therefore (as submitted by the appellant) that the rod needs to be precisely cut at the junction between two composite groups fed by the assembly unit. Even so, given that it appears uncontested that known single rod cutting arrangements are able to cut accurately and at high speed the Board sees no reason why two of such arrangements as described above could not deliver the same or similar accuracy and speed if two parallel rods are to be cut.

3.3 It follows that the ground of opposition based on Article 100 (b) EPC does not prejudice the maintenance of the patent. The Board thus confirms the decision's findings in this respect (reasons, section 10).

4. Novelty

4.1 Document D1 is a European application from the proprietor of the contested patent published on 27 September 2006 after the priority date of the

contested patent (16 November 2005) but claiming an earlier priority of 24 March 2005. This document therefore belongs to the prior art according to Article 54(3) EPC. D1 shows a machine for manufacturing composite filters with a rotary transfer mechanism 16 operating between conveyor drums 10,11 and a garniture section 5. According to paragraphs 15 to 17 and 19 the equipment comprises a feed unit 3 with conveyor means 10, 11 with flutes 12 by which filter elements 4 are directed along a first feed path P1 extending in a first direction D1. Each filter element 4 is composed of at least two cylindrical plugs 4a and 4b aligned axially along a second direction D2 transverse to the first direction D1. The equipment 1 furthermore comprises a garniture section 5 with two parallel channels 6 and a cutting device 8 at its outlet. According to paragraph 25 the transfer unit comprises a plurality of angularly equispaced peripheral carriers 23 (twenty in the example illustrated), functioning as means by which to transfer the filter elements 4 from the feed unit 3 to the garniture section 5, whereby each carrier comprises a rotatable head 27 with two aspirating slots 28 to admit a filter element.

In his understanding of claim 1 as described above the skilled person will identify the conveyor drums 10, 11 with flutes 12 of D1 as the conveyor means with flutes of claim 1, and the rotary drum 9 with carriers 23 and rotatable heads 27 as a rotary member with carriers for transferring pairs of groups of plugs to the two channels of the garniture similar to that of claim 1.

As is apparent from figure 1 and 2 of D1, however, the two parallel channels 6 (in the plane of figure 1, cf. figure 2) are transverse to the flutes 12 of the

conveyor means 3 (perpendicular to the plane of figure 1), and thus not parallel as required by claim 1..

4.1.1 Contrary to the appellant's interpretation the carriers 23 each equipped with a rotating head 27 of D1 cannot both constitute the conveyor means and the carriers of the rotating member of claim 1 in the skilled person's reasonable understanding of its wording. Even if the carriers 23 could be said to successively carry out the functions of the conveyor means and the carriers of the claims, they cannot then in a technically sensible reading be said to transfer the plug groups from the conveyor means, i.e. themselves, to the garniture channels. As already set forth under section 2.2.1 above, the skilled person performing a technically sensible interpretation construes these features as being distinct, separate components arranged in a particular structural and functional relationship.

4.1.2 In an alternative interpretation the appellant identifies the rotary drum 17 of D1 as the claim's conveyor means 16, while the rotating head 27 corresponds to the rotating member of claim 1. .

Likewise this argumentation cannot convince the board, as in this case also the heads 27 cannot reasonably be said to transfer groups from drum 17 to the garniture. In this reading, moreover, the rotary head as rotary member does not have a plurality of carriers by which pairs (plural) are transferred.

4.1.3 From the above it follows that the subject-matter of claim 1 is novel with respect to the disclosure of D1. For this reason D1 from the same applicant as the patent does not represent the first filing for the present invention and the priority is valid.

4.2 The appellant also submits that D7 is novelty destroying for the subject-matter of claim 1. D7 is also a European application filed on 22 September 2005, published on 29 March 2006 and claiming a priority of 24 September 2004. This document therefore also belongs to the prior art according to Article 54(3) EPC.

Paragraph 12 of D7 describes an apparatus 10 for the transfer of rod-shaped articles. The apparatus 10 is described as usually arranged between an apparatus, stated as not shown, for transverse axial conveying of the articles, for example, a device for assembling groups of filter segments for the manufacture of multi-segment filters, and an apparatus also stated as not shown for longitudinal axial conveying of the articles, for example, a rod-forming apparatus. From this the appellant infers that the skilled person directly and unambiguously derives the apparatus for transverse axial conveying to correspond to the conveyor means and the apparatus for longitudinal axial conveying of the articles to correspond to the tongue of claim 1.

4.2.1 In the absence of any specific description of the conveyor means and of the axial longitudinal conveying means, the skilled person would not directly and unambiguously derive all the specific features defined in claim 1 with respect to these two units. Indeed a transverse axial conveying means could be realized differently and does not need to be provided with the required flutes. Likewise, the Board is not convinced that a garniture tongue with parallel channels is the only form the apparatus for longitudinal axial conveying mentioned in D7 might take, see e.g. the belt shaped output conveyer 34 of D5, figures 4 and 5, that does not feature channels.

Furthermore, D7 does not mention any cutting arrangement for the rod making apparatus. Even if it is accepted that cutting means will be a necessary feature of a filter manufacturing machine, the Board is not convinced that it must then be rotary and operates to simultaneously divide the two rods, so that these features are not directly and unambiguously disclosed in D7.

Hence applying the standard criteria for assessing a lack of novelty whereby all the features of claim 1 should be directly and unambiguously derivable from the disclosure of D7, the Board concludes that this criterion is at least not fulfilled for the flutes, garniture tongue and rotary cutting means of claim 1. Therefore, the subject-matter of claim 1 is also considered novel with respect to the disclosure of D7.

5. Inventive step

5.1 D5 in combination with D9 or D11

The appellant substantiated lack of inventive step in particular with respect to the document D5. D5 also discloses a machine for manufacturing composite filters with a single line (page 5, last paragraph to page 6, 1st paragraph; figures 1,4,5), wherein a conveyor means 23 is provided with flutes 78, and wherein transfer means 24 comprising a plurality of single carriers 49 each transfer one group of filters at a time to a single assembly line 34 at the end of which the cutting means 38 operate. It is common ground that its disclosure represents a suitable starting point.

5.1.1 Likewise it is undisputed that the subject-matter of claim 1 differs therefrom at least by the two channels configuration: the garniture has two parallel channels and the carriers transfer pairs of the groups of plugs.

5.1.2 The technical effect of doubling the output line is that the filters are output at double the normal production speed, which allows the machine to match the high speed of the cigarette makers and filter tip attachment machines (specification paragraphs 8, 9). The objective technical problem can be formulated accordingly as how to increase production speed as also identified in the patent.

5.1.3 In paragraph 18 of D9, see figures 1 and 2, transfer means 4 are described that operate between a manufacturing machine 1 and a filter assembling machine 3 comprising a drum type conveyor 8. A pickup unit 11 takes pairs of cigarettes from the bed 5 and transfers them to the drum conveyors 8. As defined in paragraphs 9 and 11 D9 is aimed at stabilising and avoiding misalignment of the picked-up cigarette portion during the transfer operation between two parallel production lines and drum of the filter assembling unit. Pproduction speed is not mentioned as an issue anywhere in that disclosure.

A similar arrangement is disclosed in D11 (column 3, lines 43-50, column 4 lines 25-28; figures 1, 2 and9), which also describes a transfer means 1 with transverse axis, where the cigarettes 2a are taken out of a double supply rail 3 to be fed to another conveyor means 6 with axial axis. Here in column 6, lines 52 to 57 the ability to ensure reliable retention of cigarettes even if the conveyor is driven at high speed is mentioned,

however no improvement in the production speed itself is sought.

5.1.4 Assuming as submitted by the appellant that there may be a general interest in the field of tobacco industry in increasing the production rate without doubling all the hardware, the Board is unconvinced that the skilled person would find a suitable solution for solving the problem of increasing the output of a filter manufacturing machine in either of the above documents D9 or D11. Both documents teach the skilled person to transfer cigarette portions as a main article (D9: paragraph 1; D11: column 1, lines 4-5). It may be that cigarette makers and filter manufacturing machines belong to the same general field of the tobacco industry, even if filters and cigarettes are quite different in composition, length or weight. However, the skilled person would recognise immediately that the cigarette portions coming from two parallel production lines are transferred simultaneously by pairs in order to feed a downstream conveyor drum (D11, conveyor 6) or drums (D9, rollers 47,48) exactly in the opposite direction as the one required by claim 1. Neither D9 nor D11 suggests a link or relationship between the output rate of the double cigarette lines and the input capacity of the downstream filter assembling unit, nor is either document concerned with increasing production, much less that it suggests or hints at running the transfer in the opposite direction to increase throughput. Indeed, in both mechanisms the transfer means serves primarily to match the output rate of the double channel feed to the output conveyor drum by transferring the two parallel lines into a sequence of cigarette portions. In the Board's opinion it moreover requires an insight beyond the routine skills of the skilled person to realize that this

operation may be inverted and used to benefit for doubling overall manufacturing speed.

But even if the skilled person were to realize that the mechanism of D9 or D11 if inverted could be used to double the composite filters production line shown in D5, he would still be faced with the necessary number of constructional changes to the single conveyor means. In addition to the necessary inversion of the pick up position from a continuous line as in D9,D11 to a drum surface as in D5 and delivery on a linear garniture in D5 instead of on one or two drums (D9 or D11), the skilled person would not arrive at the claimed solution by simply using the transfer means of any of D9 or D11. He would also need to adapt the upstream conveyor drum of D5 to enable it to deliver pairs of articles on the double carriers shown in D9 and D11. In the Board's view such adaptations would clearly lie beyond the normal skills of a skilled person.

5.1.5 The same conclusions must hold when considering any of the combinations of D3 and D15, D4 and D11, D5 and D13 as submitted in writing by the appellant. Indeed D3 (see paragraphs 54,58) and D4 (paragraphs 16,17,33) both disclose a composite filter manufacturing machine with a transfer means (D3,28;D4,19) to transfer the filter groups on an assembly line to form a single filter rod similar to the one disclosed in D5. Likewise D13 and D15 describe transfer units transferring pairs of cigarettes from double channels equivalent to those disclosed in D9 or D11 (e.g. D13, figures 2 pick up unit 20 from channels 14,15; D15, figure 1, pickup 7a,b from channels 3a,3b) onto a single drum as in D9, D11 (D13 figure 2) or onto two parallel drums 12a, 12b (D15, figure 1) . As in the case of D9 and

D11 these transfer mechanisms operate in the opposite direction to that of claim 1; there is no hint that inverting operation could be used to double output; nor is such a modification considered routine. Finally, any combination with D3, D4 or D5 would require adaptations beyond routine skills.

Thus, for the same reason given these combinations of teachings do not lead in obvious manner to the claimed solution.

5.2 Late argumentation

5.2.1 In the statement of grounds of appeal the appellant presents new lines of attack against inventive step of claim 1 in addition to those presented and decided in first instance and considered above. These new lines of attack are inter alia based on a new document D19, first filed with the statement of grounds and thus outside the opposition period. This late evidence is consequently subject to the discretion afforded under Article 114(2) EPC.

D19 is a press article from the review world tobacco of January 1989 and concerns a cigarette maker G.D 121. As to its prima facie relevance, it may be that this document generally refers to a twin rod system for high production rates (left-hand column), a transfer unit (second left-hand column) and a single rotary knife (third column from the left), however it contains no information as to their structure or operation. Contrary to the appellant's view, the fact that D19 may disclose a simultaneous cutting of two rods (and thus possibly shed light on the question of sufficiency) does not compensate for the lack of any details of the relevant features of a manufacturing machine, even less

from a filter manufacturing machine. Likewise the ability to operate at high production rates pertains to cigarette makers, and is not related to any specific solution apart from the general double production line. Hence on the face of it D19 fails to disclose any hint concerning the main features of the conveyor means and rotating member defined in claim 1 and is thus not more relevant than the documents already considered in the proceedings in relation to inventive step.

5.2.2 As for the new attacks submitted with the statement of appeal grounds and which combine D8 and D15 (either serving as starting point), these also prima facie do not appear to be more likely to succeed than the combinations discussed above, basically for the same or similar reasons. D8 discloses a transfer mechanism for transferring cigarette or filter rods from a single rod on a conveyor belt 176 to a drum 161 (figures 2,3) and vice versa. The same considerations mentioned above in connection with D15 apply if the skilled person starts from D8 and tasked with increasing output. If he starts from D15 on the other hand, the fact that D8 mentions operating in either direction in a single line transfer mechanism does not render inversion of the double line transfer of D15 with the specific aim of doubling speed anymore obvious.

On the face of it, the new submissions of the appellant opponent thus do not convince the Board. For these reasons it decided not to admit them into the proceedings, Art 12(4) RPBA.

5.3 The Board concludes, therefore, that the subject-matter of claim 1 as granted involves an inventive step within the meaning of Article 56 EPC.

6. In the light of the above, the Board confirms the opposition division's decision to reject the opposition, Article 101(2) EPC. Thus there is no need for the Board to consider the respondent's auxiliary requests.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar: The Chairman:

G. Magouliotis A. de Vries

Decision electronically authenticated