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**Datasheet for the decision  
of 14 November 2013**

**Case Number:** T 1048/12 - 3.2.06

**Application Number:** 05727943.2

**Publication Number:** 1864892

**IPC:** B62D55/253

**Language of the proceedings:** EN

**Title of invention:**

CORE BAR FOR RUBBER CRAWLER

**Applicant:**

Fukuyama Gomu Kogyo Kabushiki Gaisha

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 84, 123(2)

**Keyword:**

Claims - clarity (no)  
Amendments - added subject-matter (yes)  
Novelty - (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
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Case Number: T 1048/12 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 14 November 2013**

**Appellant:** Fukuyama Gomu Kogyo Kabushiki Gaisha  
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Fukuyama-shi,  
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**Representative:** Kramer - Barske - Schmidtchen  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 2 March 2012  
refusing European patent application  
No. 05727943.2 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman:** M. Harrison  
**Members:** M. Hannam  
K. Garnett

## Summary of Facts and Submissions

I. The appellant (applicant) filed an appeal against the decision of the examining division refusing European patent application No. 05727943.2. In its decision the examining division found that the subject-matter of claim 1 of each of the main request and of the first, second and third auxiliary requests lacked novelty (Article 54 EPC) in view of

D2: EP-A-0 913 321

II. In its grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of a main request, or auxiliarily on the basis of auxiliary requests I to III.

III. The Board issued a summons to oral proceedings including a communication containing its provisional opinion. Referring to the subject-matter of claim 1 of the main request, the Board voiced serious doubts regarding clarity. It also indicated that the subject-matter of claim 1 appeared to lack novelty (Article 54 EPC) in view of the embodiment depicted in Fig. 13 of D2. Regarding the auxiliary requests, the Board indicated that it had serious doubts with respect to the clarity (Article 84 EPC) of the amended claims and with respect to the subject-matter of claim 1 of the requests having a clear and unambiguous basis in the application as originally filed (Article 123(2) EPC).

IV. In its letter dated 14 August 2013 the appellant filed replacement main and auxiliary requests I to III, arguing that, in these requests, the Board's objections had been overcome.

V. Oral proceedings were held before the Board on 14 November 2013, at the outset of which the chairman indicated that the Board preliminarily still saw claim 1 of each request as lacking clarity (Article 84 EPC) and the subject-matter of claim 1 of each request, as far as it could be understood in view of the clarity problems, as lacking novelty over at least the embodiment of Fig. 13 of D2. In response, the appellant filed a new main request, consisting of a single claim, and an auxiliary request, consisting of claims 1 and 2, which replaced all previous requests on file.

The final requests of the appellant were that the decision under appeal be set aside and a patent be granted on the basis of either the main request or auxiliary request I, both as filed during the oral proceedings.

VI. Claim 1 of the main request reads:

'A rubber crawler (3), comprising  
an endless belt forming a rubber crawler main body  
(3a),  
a plurality of core bars (1) embedded in the belt, and  
tensile reinforcements, wherein  
the core bars (1) respectively have a longitudinal  
direction corresponding to a crawler lateral direction  
and a width dimension corresponding to a crawler  
circumferential direction, and comprise respectively  
an engaged part (1a) formed to the central part,  
for engaging with a drive unit of a traveling  
device,  
a pair of guide protrusions (1b) formed at both  
right and left external sides of the engaged part

(1a) in the longitudinal direction of the core bar (1), for preventing wheels from coming off, wing parts (1c) formed at both external sides, and enlargement width parts (2) formed by elongating tip end parts of the wing parts (1c) of the core bar to the outside of the width dimension of the core bar (1).'

Claim 1 of auxiliary request I reads as for claim 1 of the main request with the following additional feature appended:

'wherein bent parts (2a) are formed by bending the elongated portions of the core bar (1) in the enlargement width parts (2) to the direction of the inside circumference of the rubber crawler.'

VII. The arguments of the appellant to the main request may be summarised as follows:

From the figures and the description as a whole it was clear that the enlargement width parts of the core bar extend beyond the width dimension of the remaining core bar. It was not possible to choose different terminology for the claim, since problems might arise with regard to Article 123(2) EPC. Claim 1 thus met the requirements of Article 84 EPC.

Whilst paragraph [0019] provided one basis for the amendment relating to the tip end parts of the wing parts, other terms were used for this feature in other embodiments e.g. 'tips of the wing parts' in example 1; 'tip range of the wing part' in example 2; 'end parts' in example 6. It was therefore possible to use any embodiment as the basis for this amendment, including examples 1, 2 and 6, none of which included the feature

of the enlargement width parts being bent. This feature did thus not have to be taken into the claim to meet the requirement of Article 123(2) EPC.

The tip end parts of the wing parts were clearly understood by the skilled person to extend to a maximum of one third of the longitudinal extension of the core bar. The enlargement width parts had to meet the condition of having a greater width than the normal width of the core bar over the entire longitudinal extension of the tip end part, i.e. including at the very tip of the core bar, since the tip end parts included the tip. This was clearly not the case in Fig. 13 of D2, such that claim 1 was novel over D2 (Article 54 EPC).

VIII. The arguments of the appellant with respect to the auxiliary request may be summarised as follows:

The taking up of the additional feature in claim 1, when compared to claim 1 of the main request, overcame the objection under Article 123(2) EPC since all features disclosed in combination were now incorporated into claim 1.

The subject-matter of claim 1 was novel since D2 failed to disclose the tip of the core bar being elongated beyond the width dimension of the core bar.

## **Reasons for the Decision**

1. Non-admittance of the main request
  - 1.1 The subject-matter of claim 1 *prima facie* fails to satisfy the requirements of Articles 84, 123(2) and 54

EPC. The request is thus not admitted. The reasons for this are as follows.

1.2 Article 84 EPC

- 1.2.1 The Board finds that at least the feature 'enlargement width parts formed by elongating tip end parts of the wing parts of the core bar to the outside of the width dimension of the core bar' of claim 1 suffers from such severe linguistic problems that the feature is unclear, contrary to the requirements of Article 84 EPC.

In attempting to understand this feature, the Board noted that the wording 'width dimension of the core bar' must be interpreted as a linear dimension describing the amount by which the core bar extends in its width direction. The wording 'the outside of the width dimension of the core bar' used in claim 1 must thus be the outer extent of the core bar in the width direction, i.e. that part defined by the two opposite surfaces which themselves define the outer extent of the core bar in its width dimension. Continuing this analysis still further, something 'extending to the outside of the width dimension of the core bar' therefore extends only as far as at least one of the opposite and parallel surfaces defining the outer extent of the core bar in its width dimension.

Applying this understanding to the above identified feature in claim 1, the enlargement width parts can thus extend only as far as at least one of the opposite and parallel surfaces defining the outer extent of the core bar in its width dimension. With this being the case, however, the enlargement width parts are indistinguishable from the remaining parts of the core bar as they have at most a width identical to that of

the core bar itself. This has the result that the claim defines no meaningful characteristic of the enlargement width parts and their inclusion in the claim makes the claim unclear.

1.2.2 Regarding the appellant's argument that the enlargement width parts are clearly described in the description and shown in the figures as extending beyond the normal width of the core bar, the Board holds that this is however not how the feature is defined in claim 1. As, according to Article 84 EPC, it is the claims which define the matter for which protection is sought, it would be necessary for the alleged intent of the appellant, regarding the enlargement width parts extending beyond the 'normal' width of the core bar, in some way, to be included in the wording of the claim. Lacking this definition in the claim, the lack of clarity in claim 1 remains. The appellant's argument that it was limited by the requirement of Article 123(2) EPC in amending the claim further in this respect, does not alter the Board's conclusion on the objection under Article 84 EPC.

1.2.3 For at least this reason, the Board finds claim 1 *prima facie* not to meet the clarity requirement of Article 84 EPC.

1.3 Article 123(2) EPC

1.4 The Board finds that at least the added feature 'enlargement width parts formed by elongating tip end parts of the wing parts of the core bar to the outside of the width dimension of the core bar' of claim 1 defines subject-matter *prima facie* extending beyond the content of the application as originally filed, contrary to the requirement of Article 123(2) EPC.



1.4.1 The above identified added feature is explicitly disclosed in paragraph [0019] (example 3) of the application as originally filed. Yet this paragraph specifically describes an embodiment of the invention and describes this added feature specifically in combination with further structural features of the enlargement width parts, such as the elongated portions of the core bar being bent to the direction of the inside circumference of the crawler. Extracting this added feature from an embodiment in the patent application disclosing the feature in combination with other features and adding this to the other features of claim 1 thus has no basis.

It should furthermore be noted that precisely this issue was identified by the Board as a potential problem in the annex to the summons to oral proceedings (see item 4).

1.4.2 Regarding the appellant's argument that further embodiments of the invention disclosed structurally equivalent features to the 'tip end parts of the wing parts' and that in these embodiments the elongated portions of the core bar were not bent, the Board is not persuaded differently by this argument. In the embodiments referred to by the appellant, other expressions to 'tip end parts of the wing parts' are used, namely 'tips of the wing parts' in example 1, and 'tip range of the wing part' in example 2. The selection of different expressions in different embodiments suggests to the reader respectively different structural features, rather than identical structural features. The reader is furthermore supported in such an understanding since features of different structure can be understood to be described

by the different expressions in the examples: e.g. 'tips of the wing parts' would suggest just the very tips of each of the wing parts, whilst 'tip range of the wing part' suggests a greater extent of the wing part in the region of the tip. It thus follows that the examples 1 and 2 disclose significantly different structures to the 'tip end parts of the wing parts' in example 3 and that therefore examples 1 and 2 cannot be used to generalise what example 3 in fact discloses as a complete disclosure in combination with the 'tip end parts of the wing parts'.

1.4.3 For at least this reason, the Board finds that the subject-matter of claim 1 *prima facie* does not meet the requirement of Article 123(2) EPC.

1.5 Article 54 EPC

1.5.1 The Board finds that the subject-matter of claim 1, in as far as it can be understood, lacks novelty at least in view of D2.

1.5.2 The third embodiment disclosed in D2, and depicted in Figs. 13-15, discloses the following features of claim 1:

A rubber crawler, (see [0001]) comprising

- an endless belt forming a rubber crawler main body (col.1, lines 1-3 and 14-16),
- a plurality of core bars (74) embedded in the belt, and
- tensile reinforcements (col.2, lines 38-41), wherein
- the core bars (74) respectively have a longitudinal direction corresponding to a crawler lateral direction (implicitly present in rubber crawlers of the type disclosed in D2) and a width dimension corresponding to

a crawler circumferential direction (implicitly present), and comprise respectively

- an engaged part (22) formed to the central part, for engaging with a drive unit of a traveling device,
- a pair of guide protrusions (25,26) formed at both right and left external sides of the engaged part (22) in the longitudinal direction of the core bar, for preventing wheels from coming off,
- wing parts (23,24) formed at both external sides.

The appellant also did not contest that these features of claim 1 were all known from D2.

The Board finds that, even accepting the appellant's interpretation of claim 1 that the enlargement width parts extend beyond the outside width dimension of the core bar, this feature of claim 1 is also known from D2 as this shows enlargement width parts (see the outermost width portions of the slant portions 78 shown in Fig. 13) formed by elongating tip end parts (the entire portion of the core bar shown in Fig. 13) of the wing parts of the core bar (74) to the outside of the width dimension of the core bar (i.e. they extend beyond the outside lateral borders of the core bar).

The Board notes that, during oral proceedings, the appellant asserted that the skilled person would interpret the 'tip end parts of the wing parts of the core bar' as extending from the tip to approximately a third of the longitudinal extension of the core bar. Adopting the appellant's interpretation (even though this is not based on any particular part of the application), it is clear that the enlarged core bar width portion depicted in Fig. 13 will also be located

in this tip end part of one of the wing parts of the core bar, with the result that the embodiment of Fig. 13 also discloses this final feature of claim 1, namely 'enlargement width parts formed by elongating tip end parts of the wing parts of the core bar to the outside of the width dimension of the core bar'.

- 1.5.3 The Board cannot concur with the appellant's argument, that the claimed enlargement width parts were clearly defined to extend beyond the core bar width dimension over the entire longitudinal extension of the tip end part, particularly so as to include the tip itself. Whilst such a feature may be derivable for individual embodiments of the application, such as example 6 depicted in Figures 10 and 11, this was not included in the subject-matter of claim 1. In claim 1 it is simply stated that the tip end parts are elongated to the outside of the width dimension of the core bar; this does not put any limits on any particular portion of the tip end parts being so elongated. The claim fails to recite, for example, either that the entire longitudinal extension of the tip end part or that the tip of the tip end part (i.e. the very end of the tip end part) is so elongated. The feature as defined in claim 1 was thus clearly anticipated by the third embodiment as depicted in Fig. 13 of D2.

The appellant presented no arguments that other features of claim 1 were not disclosed in D2.

- 1.5.4 The Board thus finds that the subject-matter of claim 1 is *prima facie* not novel (Article 54 EPC) at least over the third embodiment of D2.
- 1.6 For these reasons claim 1 *prima facie* fails to fulfil the clarity requirement of Article 84 EPC and its

subject-matter *prima facie* fails to meet the requirements of Articles 123(2) EPC and 54 EPC. Since this request was filed during the oral proceedings (and thus after the appellant filed its grounds of appeal), the request is an amendment to the appellant's case as dealt with in Article 13 of the Rules of Procedure of the Boards of Appeal (RPBA). The Board thus exercised its discretion under Article 13(1) RPBA not to admit the request into proceedings.

2. Non-admittance of auxiliary request I

2.1 Claim 1 *prima facie* fails to overcome objections under Articles 84, 123(2) and 54 EPC made against claim 1 of the main request. Since this request was also filed for the first time during oral proceedings before the Board (thus after the appellant had filed its grounds of appeal), the Board (again) exercised its discretion under Article 13(1) RPBA not to admit the request into proceedings. The reasons for this are as follows.

2.2 Article 84 EPC

2.2.1 The feature of claim 1 of the main request found to be unclear, namely 'enlargement width parts formed by elongating tip end parts of the wing parts of the core bar to the outside of the width dimension of the core bar', is present unchanged in claim 1 of auxiliary request I. The amendment added at the end of claim 1 has no effect on the clarity of the aforementioned terminology, nor did the appellant argue that it did. With no clarifying amendments having been carried out, the Board remains of the view that the feature 'enlargement width parts formed by elongating tip end parts of the wing parts of the core bar to the outside of the width dimension of the core bar' is *prima facie*

unclear for the same reasons as presented in point 1.2.1 to point 1.2.2 above.

2.2.2 For at least this reason the Board finds claim 1 *prima facie* not to meet the clarity requirement of Article 84 EPC.

2.3 Article 123(2) EPC

2.3.1 The Board finds that the amendment made in claim 1 also fails *prima facie* to overcome the objection under Article 123(2) EPC raised against claim 1 of the main request.

2.3.2 Regarding the objection to claim 1 of the main request, this resulted from a feature being extracted from the embodiment of example 3, which extracted feature was disclosed in the application as originally filed only in combination with further features having a technical or functional relationship with the extracted feature. In order to overcome this objection in auxiliary request I, it would be necessary for all features so related to the extracted feature to additionally be taken up in claim 1. The Board finds that this has not been achieved.

Whilst the appellant has added one further feature to the claim, it is to be noted that many further features are disclosed in the embodiment of example 3 which have a direct bearing on the nature of the enlargement width parts such as, for example, the end edge parts of the core bar being bent (see lines 8-9 of example 3 in Paragraph [0019]). It is to be noted that, having been filed at oral proceedings, the amendments made must meet the standard of *prima facie* overcoming an objection in a previous request. This standard has

however not been achieved as regards this amendment since further features are disclosed in combination in example 3 with those taken up into the present claim 1, even indeed further features in the same paragraph from which the amendment is taken. Exactly which structural and functional relationship these further features have in combination with the earlier features of the paragraph can remain undecided, but at first sight the features appear to define further limitations to the way in which the bent parts are orientated.

2.3.3 For at least this reason, the Board finds that the subject-matter of claim 1 *prima facie* does not meet the requirement of Article 123(2) EPC.

2.4 Article 54 EPC

2.4.1 The Board finds that the subject-matter of claim 1 also *prima facie* lacks novelty at least in view of D2.

2.4.2 Compared to claim 1 of the main request, the subject-matter of claim 1 of the auxiliary request has the added feature:

'wherein bent parts are formed by bending the elongated portions of the core bar in the enlargement width parts to the direction of the inside circumference of the rubber crawler.'

The third embodiment of D2, depicted in Figs. 13-15 shows enlargement width parts (the outermost width portions of the slant portions 78 shown in Fig. 13) which are bent in the direction of the inside circumference of the rubber crawler (see the side elevation depicted in Fig. 14 and col.6, lines 7-16).

This added feature thus *prima facie* fails to provide claim 1 with novel subject-matter.

- 2.4.3 The appellant argued solely, as it had for the main request, that D2 failed to disclose the tip of the core bar being elongated beyond the width dimension of the core bar and that this feature alone thus imparted novelty on the subject-matter of claim 1.

In this respect the Board thus has no reason to change its view that the wording in claim 1 is to be interpreted such that any portion of the tip end part may comprise elongated enlargement width parts.

- 2.4.4 The Board thus finds that the subject-matter of claim 1 remains *prima facie* not novel (Article 54 EPC) at least over the third embodiment of D2.

- 2.4.5 For these reasons the subject-matter of claim 1 *prima facie* fails to satisfy the requirements of Articles 84, 123(2) and 54 EPC. As with the main request, the Board thus exercised its discretion not to admit this request into the proceedings. With this outcome, no separate decision regarding claim 2 of this request is necessary.



**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated