

Internal distribution code:

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

**Datasheet for the decision
of 4 December 2018**

Case Number: T 0393/16 - 3.2.01

Application Number: 09179826.4

Publication Number: 2202099

IPC: B60C23/04

Language of the proceedings: EN

Title of invention:

RFID enabled tire control system and method

Patent Proprietor:

The Goodyear Tire & Rubber Company

Opponent:

MICHELIN Recherche et Technique S.A.

Headword:

Relevant legal provisions:

EPC Art. 111(1)
EPC R. 103(1)(a)

Keyword:

Remittal to the department of first instance - (yes)
Fundamental procedural defect - (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0393/16 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 4 December 2018

Appellant: MICHELIN Recherche et Technique S.A.
(Opponent) Route Louis Braille 10
1763 Granges-Paccot (CH)

Representative: Desbordes, Guillaume
Manufacture Française des
Pneumatiques Michelin
CBS/CORP/J/PI - F35 - Ladoux
23, place des Carmes-Déchaux
63040 Clermont-Ferrand Cedex 9 (FR)

Respondent: The Goodyear Tire & Rubber Company
(Patent Proprietor) 1144 East Market Street
Akron, OH 44316-0001 (US)

Representative: Kutsch, Bernd
Goodyear S.A.
Patent Department
Avenue Gordon Smith
7750 Colmar-Berg (LU)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
11 December 2015 concerning maintenance of the
European Patent No. 2202099 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: H. Geuss
P. Guntz

Summary of Facts and Submissions

- I. The appeal is directed against the interlocutory decision of the Opposition Division of the European Patent Office posted on 11 December 2015 concerning maintenance of the European Patent No. 2202099 in amended form.
- II. The opposition division decided to maintain the patent in amended form according to the auxiliary request 4 (amended version) as filed during the oral proceedings before the opposition division.

The opposition division held that the subject-matter of claim 1 of the 4th auxiliary request was novel and based on inventive step with regard to the alleged prior use "eTire II".

The alleged prior use **eTire II** is supported by documents

E2: Michelin Shrinks Its eTire Pressure Monitor",
RFID Journal, 8 January 2007

E2 quater: Declaration of Frédéric Marques,
10 December 2013

- III. Oral proceedings were held on 4 December 2018.

The appellant (opponent) requested that the decision under appeal be set aside and that the European patent be revoked.

It further requested a reimbursement of the appeal fee. The request for a reimbursement of the appeal fee was solely based on the alleged procedural violation not to hear Mr Marques as a witness.

The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained in amended form based on one of 1st to 4th auxiliary requests as submitted with the letter dated 21 December 2016.

IV. Claim 1 of the main request reads as follows:

A tire control system for a vehicle (62) having at least one wheel unit, the wheel unit including a wheel rim (32) and a tire (22) mounted to the wheel rim (32), the control system comprising:

a pass-through portal (50) operatively entered and exited by the vehicle (62); at least one first antenna (52, 54) positioned within the portal (50) for operatively receiving at least one data transmission,

characterised in that

at least one tire-based RFID tag (10) is mounted to the tire (22) and having a tire serial number stored within a tag memory accessible to an external reader (40);

the first antenna (52, 54) is positioned within the portal (50) for operatively receiving at least one data transmission of the tire serial number from the at least one tire-based RFID tag (10) as the vehicle (62) can move through the portal (50);

at least one first RFID reader (40A, 40B) is coupled to the at least one first antenna (52, 54) for operably reading and storing within a database the tire serial number data;

and a gate mechanism (58) for sensing a movement of the vehicle (62) within the portal (50), the gate mechanism being coupled to the at least one first RFID reader (40A, 40B) for operatively initiating at least one new data collection sequence within the portal (50).

V. The appellant's submissions as relevant to the present decision may be summarized as follows:

The public prior use "eTire II" discloses all features of claim 1 of the main request. E2 shows features and is evidence in support of the prior use "eTire II". Moreover, technical details of "eTire II" and the confirmation that "eTire II" was available for the public at the priority date of the invention in suit were given by Frédéric Marques in a declaration according to Article 117 g) EPC (E2 quater).

In particular, also the last feature of the characterizing portion of claim 1 is shown by "eTire II" ("a gate mechanism (58) for sensing a movement of the vehicle (62) within the portal, the gate mechanism being coupled to the at least one first RFID reader (40A, 40B) for operatively initiating at least one new data collection sequence within the portal (50)").

In E2, page 2, it is clearly stated that the gate mechanism initiates the reading of all tags, the vehicle tag and the tyre tags. The beginning of reading all tags is triggered by a light gate, once the vehicle enters the portal.

It is considered appropriate to remit the case to the first instance to examine the public availability of "eTire II".

However, already in opposition proceedings it was requested to hear the witness F. Marques. He would have been able to confirm technical details as laid down in E2quater and the public character of the beta test phase in Ontario.

Since the opposition division did not hear Mr. Marques, a substantial procedural violation occurred in the first instance proceedings.

VI. The respondent's rebuttal was essentially the following:

It is not directly and unambiguously derivable from E2quater that the gate is coupled with the RFID reader to initiate the reading process. E2quater only states that the vehicle tag and the tire tags are read in the portal when the vehicle is in the portal. This does not automatically mean that the reading process is started by the gate. In particular, no connection between the gate and the RFID reader is disclosed in E2 respectively E2quater, both forming the documentation for the alleged prior use "eTire II".

Further, it is not proven that eTire II and the beta test phase in Ontario were public at the priority date of the present invention.

In the event that the alleged prior use is found relevant, it is requested to remit the case to the first instance department to decide on the public availability of "eTire II".

Reasons for the Decision

1. Having regard to the documentation submitted by the appellant, the Board comes to the conclusion that the alleged public prior use "eTire II", if proven, would disclose all features of claim 1 of the main request .

1.1 The appellant supported its allegation of public prior use of the "eTire II" system inter alia by document E2.

E2 is a paper, published in "RFiD Journal" and describes the development of the eTire II system, based on the antecedent eTire system.

Furthermore a declaration from the witness Frédéric Marques was submitted (E2quater) which should prove the public availability and support further technical details as far as they are relevant for the contested invention.

Thus, both, E2 and E2quater together form the basis for the alleged public prior use "eTire II".

1.2 Both parties agreed that all features of claim 1 according to the main request beside the last feature of the characterizing portion are disclosed in the paper (E2).

Considering also that the Opposition Division concluded (see page 12 of the decision under appeal) that neither E2 nor E2quater disclose a coupling between the gate mechanism and the readers of the antennas, the crucial question is whether or not the last feature of the characterising portion, namely

a gate mechanism (58) for sensing a movement of the vehicle (62) within the portal, the gate mechanism being coupled to the at least one first RFID reader (40A, 40B) for operatively initiating at least one new data collection sequence within the portal (50)

can be derived from E2 or the declaration of the witness according to E2quater.

1.3 In particular it has been disputed by the respondent that the last sentence in the first paragraph of page 2 (E2quater) can be understood as a coupling of the gate mechanism to the RFID reader for operatively initiating a new data collection sequence in the sense of the last feature of claim 1.

The respondent argues that the sentence "une première cellule photoélectrique déclenchait la lecture de l'identifiant du camion" merely means that a process is triggered to enable the reading process of the RFID-reader, but it remains open whether or not in fact the reading process is started and the RFIDs are read. A connection which would prove a coupling is not mentioned in E2quater.

The Board does not follow this view and comes to a conclusion different from that of the opposition division.

The last sentence in the first paragraph of page 2 clearly states that the first photoelectric cell (i.e. a light gate) activates ("déclencher") the reading of the vehicle RFID tag. In the second paragraph of page 2 it is explained that subsequently by moving through the portal the tire RFID tags are read.

Thus, once a vehicle enters the portal by passing the first light gate, the RFID reading procedure is started, beginning with the vehicle tag and followed by

the tire tags. Since the light gates are part of the gate mechanism (which was not contested by the respondent) the gate mechanism starts the reading of all tags, which has to be seen as a coupling in the sense of the last feature of claim 1.

2. The case is remitted to the first instance department for further prosecution, Article 111 (1) EPC.

The respondent contests the public availability of the prior use (eTire II) as laid down in E2 and E2quater. In particular the respondent denied that the beta test phase of eTire II in Ontario as described in paragraph 5 of page 2 (E2quater) was available to the public at that time.

The gate mechanism feature (see above, 1.2) of claim 1 in suit is only disclosed in the declaration E2quater. Thus the content of E2quater is of essential relevance for the issue of novelty (cf. point 1, above) and it has to be determined whether or not eTire II (as shown in E2 and E2quarter) is a state of the art according to Article 54 (2) EPC.

Since the first instance department did not yet examine whether eTire II is a prior use forming a state of the art according to Article 54 (2) EPC, the Board considers that a remittal to the first instance for further prosecution is appropriate. This view was shared by the parties.

3. The request of reimbursement of the appeal fee is rejected since no substantial procedural violation occurred in first instance proceedings, Rule 103 (1) a) EPC.

- 3.1 The opponent/appellant submits that a procedural violation took place in first instance proceedings since the witness F. Marques was not heard, although the opponent stated that the witnesses Marques and King would have been able to confirm that the beta test phase in Ontario was public (cf. E2quater, page 2, paragraph 5) and its results were available to everybody at that time.
- 3.2 However, the Board takes the view that the opposition division had no reason to hear the witnesses, because it came to the conclusion that - even considering all allegations of F. Marques according to E2quater as correct and that the beta test phase was public - the alleged prior use of the "eTire II" system according to E2 and E2quater did not disclose or render obvious the subject-matter of the invention in suit. In fact, the witnesses could only have corroborated the allegations of public prior use but not supplemented the relevant features thereof as put forward in writing, and the latter were found by the opposition division to be not relevant for novelty and inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.
3. The request for a reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated