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Chambres de recours  
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Aktenzeichen

File Number

Numéro du dossier

T 0 5 9 8 1 9 1 - 3 2 2

In der Anlage erhalten Sie

- eine Kopie des Berichtigungsbeschlusses
- ein korrigiertes Vorblatt (Form 3030)
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- \_\_\_\_\_

Please find enclosed

- a copy of the decision correcting errors
- a corrected covering page (Form 3030)
- a headnote / catchword (Form 3030)
- \_\_\_\_\_

Veillez trouver en annexe

- une copie de la décision rectifiant des erreurs
- une page de garde (Form 3030) corrigée
- un sommaire / une phrase vedette (Form 3030)
- \_\_\_\_\_

Anmeldung Nr. / Patent Nr.:

Application No. / Patent No.:

Demande n° / Brevet n°:

(soweit nicht aus der Anlage ersichtlich)

(if not apparent from enclosure)

(si le n° n'apparaît pas sur l'annexe)

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File No.: T 0598/91 - 3.2.2  
Application No.: 86 202 065.8  
Publication No.: 0 223 317  
Classification: B29D 30/26, B29D 30/38  
Title of invention: A device for supplying and stitching a belt plus tread onto the carcass for manufacturing a pneumatic tyre

**DECISION**  
of 3 June 1993

Applicant: -  
Proprietor of the patent: VMI EPE Holland B.V.  
Opponent: Fried. Krupp AG Hoesch-Krupp

Headword: Tyre/VMI EPE

EPC: Art. 54, 56, 133 and 134

Keyword: "Representation and pleading; assistance at oral proceedings" -  
"Novelty (yes)" - "Inventive step (yes)"

**Headnote**

*Article 133 EPC does not exclude the possibility of pleading by an assistant at oral proceedings in technical or legal matters, in addition to pleading by the professional representative, the authorised employee or the party himself, where he is a natural person, provided that the Board and the party for which the assistant speaks have given their permission and that the representative, employee or person continues to supervise the proceedings and bears full responsibility (cf. point 2.2 distinguishing T 80/84).*

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**Headnote**

Headnote follows



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Boards of Appeal

Chambres de recours

Case Number: T 0598/91 - 3.2.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 3 June 1993

**Appellant:** Fried. Krupp AG Hoesch-Krupp  
(Opponent) Postfach 10 22 52  
D - 45143 Essen (DE)

**Representative:**

**Respondent:** VMI EPE HOLLAND B.V.  
(Proprietor of the patent) Gelriaweg 16  
NL - 8161 RK Epe (NL)

**Representative:** Kooy, Leendert Willem  
Octrooibureau Vriesendorp & Gaade  
PO BOX 266  
NL - 2501 AW The Hague (NL)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office dated 14 June 1991  
rejecting the opposition filed against European  
patent No. 0 223 317 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** G. Szabo  
**Members:** P. Dropmann  
J. Van Moer

### Summary of Facts and Submissions

- I. European patent No. 0 223 317 was granted with effect from 12 April 1989 on the basis of European patent application No. 86 202 065.8 filed on 21 November 1986.
- II. An opposition was filed against this patent on the grounds of lack of novelty and inventive step (Article 100(a) EPC) in the light of the prior art reflected by the following documents:
- D1: English translation of JP-A-57-208 231,  
D2: US-A-3 976 532,  
D3: US-A-3 475 254, and  
D4: FR-A-2 289 327.
- III. The Opposition Division rejected the opposition in a decision dated 14 June 1991. According to the decision, the subject-matter of the claim was novel and involved an inventive step.
- IV. On 7 August 1991, a Notice of Appeal was filed against the decision by the Opponent. The appeal fee was paid on the same date. In the Statement of Grounds received on 2 October 1991, the Appellant mentioned, in addition to documents D1 to D4, document
- D6: DE-C-3 202 575.
- V. Oral proceedings were held on 3 June 1993. At these proceedings, the European representative of the Respondent when pleading was assisted by a qualified Dutch patent attorney who has not yet been entered on the list of European professional representatives according to Article 134 EPC.

- VI. In the course of the oral proceedings, the Respondent submitted a modified single claim together with a correspondingly revised description.

The claim reads as follows:

"A device for supplying and stitching a belt plus tread onto a carcass for manufacturing a pneumatic tyre, the device comprising a unit (3) with a drum (4) for carrying the carcass, a transfer ring (5) with radially displaceable segments (6) for carrying the belt plus tread, said transfer ring (5) being movable along its centre axis to and from a position in which the transfer ring extends concentrically about the drum (4) for the carcass, and a stitching unit (9, 10, 11, 14, 16, 17) freely disposed from the transfer ring (5), said stitching unit (9, 10, 11, 14, 16, 17) comprising a group of coaxial rolls (9, 10), **characterized in that**, the stitching unit (9, 10, 11, 14, 16, 17) comprises in addition to the group of coaxial rolls (9, 10) at least one roll (11), each roll (9, 10, 11) being displaceable between two adjacent segments (6) in order to stitch the belt plus tread onto the carcass, one gate (13) being present in the circumference of the transfer ring (5) for each roll (11) and another gate (12) for each group of coaxial rolls (9, 10), each gate (12, 13) being bounded by the transfer ring (5) in both axial directions."

- VII. The arguments presented by the Appellant in its written submissions and at the oral proceedings, insofar as these are still relevant to the present claim, can be summarised as follows:

Document D1 disclosed a green tyre transporting device E comprising a transporting frame 10 having an opening 11 in its circumference. On page 2, second and third paragraphs, it was stated that the device enabled a stitching operation to be carried out even if the device was located on the forming drum 3 and that the opening was arranged at an associated working device K such as a stitching device 6. It followed from these statements that, contrary to the interpretation of the Opposition Division, the disclosure of document D1 was not restricted to a device having a sickle- or C-shaped frame and an opening having the shape of a big gap as depicted in Figures 2 and 4. The drawings just represented one example. The whole content of the meaning of the terms "frame" and "opening" in document D1 rather comprised also a ring-shaped transfer frame, i.e. a transfer ring, and an opening in the form of a gate being bounded by the transfer ring in both axial directions, as specified in the claim of the contested patent.

Hence, all of the features of the claim were known from this citation with the exception of the feature concerning the presence of a plurality of gates in the ring, each allowing the passage of a roll or group of rolls. If, however, the presence of one opening or gate was not novel or at least not inventive, then the provision of several gates could not involve an inventive step. It followed directly from document D1 that, when two or more rolls were needed, the skilled person would necessarily provide the transfer ring with the corresponding number of openings. Moreover, no advantageous effect of such a plurality of openings was asserted by the Respondent. The subject-matter of the claim was thus obvious in the light of document D1.

In addition and also contrary to the statements in the decision under appeal, citation D3 disclosed a ring-shaped transfer frame as well as stitching rolls which were disposed freely from the transfer ring and had a drive. Furthermore, it was known from document D4 to mount stitching rolls on the transfer ring which rolls were displaceable between two adjacent segments in order to stitch the belt plus tread onto the carcass.

VIII. In contesting these arguments, the Respondent essentially argued that none of the prior art documents suggested providing a transfer ring with a plurality of gates being bounded by the transfer ring in both axial directions. Document D1 disclosed that the opening had the form of a gap and that the frame had the shape of a sickle and not that of a closed ring. This clearly resulted from the statement in D1 at the bottom of page 10 and in the third paragraph of page 11. According to this statement, the transporting device could be moved from the waiting position to the taking-out position **during** a stitching operation. This movement would not be possible if the ring and the opening were closed at the sides. Furthermore, the frame 10 and the displaceable segments 8, 8', 8" of the known device were not capable of carrying a belt plus tread representing a rather limp assembly, since the segments could not form a complete and uniform support for the assembly. The claimed device, however, enabled such a uniform support despite the presence of a plurality of gates.

IX. The Appellant requested that the decision under appeal be set aside and the patent be revoked in its entirety.

The Respondent requested that the decision be set aside and the patent be maintained on the basis of:



- the single claim and the introductory part of the description (the remark on page 1 concerning the part of the description to be replaced should read "to replace ... of the patent 0 223 317") as submitted at the oral proceedings, and
- column 2, line 36 to column 5, line 3 of the description and the figures as granted.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Representation and pleading at the oral proceedings*

As stated in point V above, the European representative of the Respondent, when pleading at the oral hearing, was assisted by a Dutch patent attorney who has not yet been entered on the list of European professional representatives.

The Board permitted this assistance on the following grounds and conditions:

- 2.1 The only texts in the EPC which fall to be considered are Articles 133, 134 and, possibly 125 EPC.

The following facts appear to be relevant to the question of pleading:

- (a) The case law of the Boards of Appeal on this point is limited to decision T 80/84 (OJ EPO 1985, 269), which essentially held that an unqualified and unauthorised person, not entitled to represent a

party, may not present part of a party's case at oral proceedings, even under the direct supervision of that party's authorised representative.

(b) On the other hand, according to the general practice of the Boards of Appeal for several years, representatives have been authorised to be assisted at oral hearings by assistants or experts who were explaining matters and pleading in lieu of the representative in certain areas of the discussions.

2.2 In the view of the Board, Article 133 EPC does not exclude the possibility of pleading by an assistant at oral proceedings in technical or legal matters, in addition to pleading by the professional representative, the authorised employee or the party himself, where he is a natural person, provided that the Board and the party for which the assistant speaks have given their permission and that the representative, employee or person continues to supervise the proceedings and bears full responsibility.

2.3 The Board is of the opinion that Articles 133 and 134 EPC create exclusive rights of representation before the EPO and have to be interpreted in a restrictive way, linked to the question of who bears ultimate responsibility.

Thus, it is certain that the said rights are limited to representation in any procedure, written or oral, before the EPO.

In all cases, therefore, not falling within the concept of representation, and contrary to decision T 80/84, the Board agrees that, subject to the restrictions mentioned below, any suitable assistant or expert can be allowed

to plead on behalf of a party at oral hearings before the Board.

- 2.4 Decision T 80/84 did not distinguish between the concepts of "pleading" and "representation". Indeed, in the Board's view, "representation" comprises acting in lieu of someone for the purpose of exercising a right and "pleading" merely comprises developing arguments orally in court.

As a consequence, for example, when the party, being a natural person himself, is present at an oral hearing, only pleading (and not representation) is involved or requested which suffices to illustrate the substantial difference between these two concepts.

- 2.5 The foregoing does not detract from the fact that representation during oral proceedings must comply with Articles 133 and 134 EPC.

- 2.6 Moreover, the Board considers that the oral intervention of an assistant or expert at the hearing, whether in a technical or legal sphere but necessarily in addition to the pleading by the person supervising him, could be beneficial in resolving the case at issue as long as relevant technical or legal matters are developed in this manner.

In the Board's view such an intervention is in essence and character no different from the written statements these assistants or experts introduce into the proceedings. Moreover, there is no doubt that, in practice, many submissions of the parties and representatives have been investigated and written by assistants or auxiliaries.

The fact is that, regularly, the complexity and the number of the cases to be managed make it necessary to delegate tasks and that recourse to assistants is therefore indispensable and results in these assistants' being particularly well-informed concerning these cases.

- 2.7 It is also apparent that a discrepancy exists between those applicants and patentees who are within the jurisdiction of the Member States and those outside. The former are in a position to authorise any employee to represent them without the employee having to be qualified for the purpose, whilst the latter must, of course, hire a professional representative. There are good reasons for the distinction but this should not necessarily mean that those who are knowledgeable about the case, its background and technical relevance cannot assist in both situations by pleading themselves.

Finally, insofar as these assistants act under the supervision and responsibility of the person they are assisting, it can *prima facie* be assumed that they are competent.

- 2.8 It is within the discretion of the Board to give or withdraw its permission for the assistant to plead.

The pleading must of course be within the framework of the Rules of Procedure of the Boards of Appeal. Where the pleading becomes, for example, confused, too impassioned or counterproductive in any way, the permission may, where appropriate, be withdrawn.

- 2.9 It is, of course, also necessary that the party, on behalf of which the assistant speaks, has agreed to the assistant's intervention and that the representative,

employee or person continues to supervise the proceedings and bear full responsibility throughout.

3. *Amendments*

The amended claim meets the requirement of Article 123(2) EPC, since the features which have been incorporated into the claim and concern the plurality of gates and rolls and the shape of the gates are disclosed in the application as originally filed, cf. Figures 2 and 3 and pages 7 and 10 of the description.

Furthermore, the features introduced into the claim represent a clear limitation of the scope of protection in comparison with the granted claim. The amended claim, therefore, does not contravene Article 123(3) EPC either.

4. *Clarity*

The claim is clear as prescribed by Article 84 EPC. In particular, the shape of the gates, which are defined as being present in the circumference of the transfer ring and being bounded by the transfer ring in both axial directions, is clear.

5. *Novelty*

- 5.1 In view of the Appellant's allegation that, except for the feature concerning the presence of a plurality of gates in the transfer ring, all other features of the claim are known from document D1, more detailed reasons will be given in the following when discussing the novelty of the claimed device. This would also assist the subsequent evaluation of the inventive step.

5.2 Document D1 discloses a device E for transporting a green tyre. The device comprises a transfer frame 10 having an opening 11 in its circumference. The frame with its segments 8, 8', 8" serves to remove the green tyre from the green tyre forming drum 3. It does not serve to supply and position a belt plus tread around a carcass and is not suitable for carrying the belt plus tread as is the case in the patent, because the segments 8, 8', 8" (cf. Figures 2 and 4) do not and, due to the opening 11 in the frame, cannot form a uniform and complete support for the belt plus tread assembly which support is necessary since the assembly is rather limp. The tyre constituting materials are, rather, supplied to the forming drum by a servicer device 7 (cf. pages 4 and 8).

Therefore, due to the different purposes and implied consequential different structures of the frame described in D1 on the one hand and the transfer ring of the claimed device on the other, the frame already differs from the transfer ring.

5.3 Moreover, the features "transfer ring" and "gate being bounded by the transfer ring **in both axial directions**" are not anticipated by document D1 for the following reasons:

Firstly, it should be considered that, according to page 10, last paragraph of D1, the transporting device E (frame 10) can be moved from the normal waiting position I (cf. Figure 3) to the taking-out position H **during** a working operation such as a stitching operation (see also page 11, third paragraph). This movement can only be carried out when the opening 11 is not limited at the sides. This means that the frame has the shape of a C or a sickle and not that of a ring and, further, that the

opening is a gap and does not have the shape of a gate bounded by the transfer ring in both axial directions.

Secondly, even if the Appellant's argument that the meaning of the terms "frame" and "opening" in document D1 generically covers also a ring and an opening being bounded at its sides by the ring were to be accepted, these terms could not deprive the features "ring" and "gate being bounded by the transfer ring in both axial directions" of novelty. In fact, a general term such as "frame" or "opening" does not usually take away novelty of a specific example falling within the scope of this term, particularly if specific functions are associated with the particular choice.

Thirdly, the features "ring" and "gate bounded by ..." are novel over document D1 because they are neither explicitly disclosed in D1 nor implied by that document, i.e. directly and unequivocally derivable therefrom.

5.4 Hence, novelty over document D1 of the claimed device is based on the features "transfer ring", "ring with ... segments for carrying the belt plus tread" and all of the characterising features with the exception of the feature that a group of rolls is displaceable between two adjacent segments.

Novelty over the other documents of the proceedings was not disputed by the parties and is acknowledged by the Board.

## 6. *Closest state of the art*

The preceding discussion of novelty has shown that the type of device claimed in the patent differs in several respects from that of the device known from document D1.

Whilst in the claimed device the belt plus tread sub-unit is carried and transported to the carcass drum by the transfer ring, the tyre constituting materials, in the known device, are supplied onto the forming drum by the servicer device 7 and not by the green tyre transporting frame 10.

In view of this difference in a generic sense, the Board takes the view that it is document D3 which represents the state of the art which is closest to the claimed subject-matter. Indeed, this reference discloses a device for supplying and stitching a belt plus tread onto a carcass for manufacturing a pneumatic tyre, which device comprises all the features specified in the pre-characterising portion of the claim, i.e. it reveals (cf. in particular Figures 1, 5, 7, 18, 19) a device comprising a unit with a drum 1 for carrying the carcass, a transfer ring 31 with radially displaceable segments 311 for carrying the belt plus tread (assembled on drum 2), said transfer ring 31 being movable along its centre axis to and from a position in which the transfer ring extends concentrically about the drum 1 for the carcass, and a stitching unit 130, 131, 132, 136, 138 freely disposed from the transfer ring 31, said stitching unit comprising a group of coaxial rolls 130.

7. *Problem and solution*

- 7.1 The device known from document D3 has the disadvantage that the transfer ring, after supplying the belt plus tread onto the carcass, has to be slid away in order to enable the rolls of the stitching unit to be pushed against the tread for carrying out the stitching of the belt plus tread on the carcass. Upon completion of the stitching operation, the rolls are retracted and the transfer ring has to be arranged again about the tread



and belt and carcass assembly so as to finally remove the stitched assembly from the carcass drum. This double movement of the transfer ring, which is necessary in order to avoid interference between the transfer ring and the stitching unit, takes time and energy and increases wear of the bearings of the transfer ring on its sliding track. This wear results in a deterioration of the centring of the belt plus tread with respect to the carcass.

7.2 The objective technical problem underlying the contested patent is, therefore, to be seen in overcoming the above disadvantages caused by the necessity to remove the transfer ring before the stitching operation takes place.

7.3 It is true that this problem has already been solved in accordance with document D4 by mounting the stitching units on the transfer ring so that they are moved together with the transfer ring and the stitching rolls mounted inside the ring are displaceable between two adjacent segments. However, this solution has numerous disadvantages, such as a severe increase of the weight and diameter of the transfer ring, which increase requires an additional amount of energy for starting and stopping the movement of the transfer ring. A further disadvantage is that flexible conduits are necessary for passing hydraulic fluid to the stitching units moving together with the transfer ring.

7.4 According to the patent, the problem set out in point 7.2 above is solved by the features specified in the characterising portion of the claim. By providing the transfer ring with a plurality of gates having limitations at the sides, it is possible to use the stitching rolls without removing the transfer ring. Thus

the above problem is effectively overcome, i.e. time and energy are saved and wear is reduced. In addition, the disadvantages connected with the device known from document D4 are avoided.

8. *Inventive step*

8.1 Amongst the documents cited during the proceedings D1 is the only one that could have given a hint to provide the transfer device with a gate. Indeed, D1 (cf. page 1, last paragraph) describes how a mechanical interference between a transporting frame and a stitching device can be avoided and thus mentions a problem which is similar to that underlying the contested patent. The document discloses a transfer frame having an opening in its circumference. However, as remarked upon in point 5 above, it neither explicitly nor implicitly reveals that the frame is a ring and the opening is a gate bounded at its sides by the ring, nor does it disclose the presence of a plurality of openings and of at least one roll in addition to the group of rolls.

Hence, even if the teachings of D3 and D1 were to be combined, the skilled person would not yet arrive at the subject-matter of the claim.

8.2 The question arises whether or not, in the light of reference D1 and the common general knowledge, it was obvious to the person skilled in the art and faced with the above problem to provide the transfer ring of the device known from document D3 with bounded gates for the rolls and with the other features mentioned in the characterising part of the claim.

8.3 As explained in point 5.3 above, the opening in the frame of the device known from document D1 has the shape of a gap and not that of a bounded gate. Otherwise it would not be possible to move the frame from the waiting position to the taking-out position and vice versa during the stitching operation. The replacement of such a gap by a gate bounded by the ring in both axial directions would mean renouncing the advantage of this possible movement. The gate is thus not a mere alternative to the gap. This already indicates that the choice of a gate instead of a gap would not be obvious.

8.4 Moreover, the provision of a plurality of gates instead of a single opening is considered neither derivable from document D1 nor obvious in the light of the common general knowledge. Due to the fact that the transfer ring has to be stable to provide support of the belt and tread assembly, it is not obvious to make several gates in the wall of the ring, which have to be of a size sufficient to enable the stitching rolls to be moved through the gates when stitching of the assembly onto the carcass is to be carried out, and thereby create discontinuities which would reduce stability.

In particular, the provision of the said plurality of gates is not obvious since it is known in the art (e.g. from D3) that the segments of the transfer ring should form an almost complete and uniform support for the belt and tread assembly which is limp. The rolls, each being displaceable between two adjacent segments, would, however, lead to a reduced support. This would rather dissuade the skilled person from the claimed solution.

The Appellant's argument that, when several rolls are needed, the skilled person would necessarily arrange the corresponding number of openings, leaves out of

consideration that a further possibility would be to enlarge the opening disclosed in D1 such that more than one group of rolls can move through the opening. The situation is therefore not analogous to a "mere multiplication of existing means" since the latter assumes that other properties of the device would not be adversely affected or become problematic.

8.5 Document D4 relates to an apparatus for building green tyres in which apparatus the stitching rolls with their displacement units are mounted on the transfer ring such that the stitching rolls are inside the ring. Holes are provided in the frame in order to allow piston rods carrying the stitching rolls to pass. However, the holes are not such that the stitching rolls can move through them. Thus, as to the question whether this document suggests the provision of gates of corresponding size, the observations set out in point 8.4, first paragraph, apply.

8.6 The contents of documents D2 and D6 are farther away from the claimed subject-matter than those of documents D1, D3 and D4. There is no information in these documents that could render the claimed device obvious.

8.7 It follows from the preceding considerations that the claimed device cannot be derived in an obvious manner from the cited state of the art and thus involves an inventive step. The advantages of this device are mentioned in point 7.4 above.

9. The device according to the claim as amended is, therefore, patentable having regard to Articles 52(1), 54(1), (2) and 56 EPC.

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent on the basis of the documents indicated in point IX above.

The Registrar:



S. Fabiani

The Chairman:

  
G. Saabo

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JM 27-10-93