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**Datasheet for the decision  
of 5 November 2009**

**Case Number:** T 1923/08 - 3.4.03

**Application Number:** 99304968.3

**Publication Number:** 0967850

**IPC:** H05K 13/04

**Language of the proceedings:** EN

**Title of invention:**

Top-cover-tape feeding apparatus and top-cover-tape treating apparatus to be used in a component feeder

**Patentee:**

Fuji Machine Mfg. Co., Ltd.

**Opponent:**

SIEMENS AKTIENGESELLSCHAFT

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 54, 56

RPBA Art. 13(3)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"New evidence filed at oral proceedings before the Board not admitted"

"Novelty and inventive step: yes"

**Decisions cited:**

T 0774/97, T 0382/96

**Catchword:**

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Case Number: T 1923/08 - 3.4.03

**DECISION**  
of the Technical Board of Appeal 3.4.03  
of 5 November 2009

**Appellant:** SIEMENS AKTIENGESELLSCHAFT  
(Opponent) Postfach 22 16 34  
D-80506 München (DE)

**Representative:** -

**Respondent:** Fuji Machine Mfg. Co., Ltd.  
(Patent Proprietor) 19, Chausuyama  
Yama-machi  
Chiryu-shi  
Aichi-ken (JP)

**Representative:** Garratt, Peter Douglas  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 7 August 2008  
rejecting the opposition filed against European  
patent No. 0967850 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** G. Eliasson  
**Members:** V. L. P. Frank  
T. Bokor  
E. Wolff  
J. Van Moer

## Summary of Facts and Submissions

- I. This is an appeal by the opponent against the rejection of the opposition to EP 967 850 (Article 102(2) EPC 1973).

The patent was opposed in its totality. Grounds of opposition were lack of novelty and inventive step (Article 100(a), 54 and 56 EPC 1973).

- II. At oral proceedings before the board, the appellant opponent requested that the decision under appeal be set aside and that the patent be revoked.

The respondent proprietor requested that the appeal be dismissed or, in the alternative, that the decision under appeal be set aside and the patent be maintained in an amended version on the basis of claims 1 to 14, filed as 1<sup>st</sup> auxiliary request or on the basis of claims 1 to 15 filed as 2<sup>nd</sup> auxiliary request, both filed with letter dated 5 October 2009.

He also requested that the appeal be rejected as inadmissible.

- III. The independent patent claims 1 and 12 as granted and defended by the respondent proprietor on appeal as main request read (the paragraphing of claim 1 is the one used by the appellant in the statement of grounds of appeal):

"1a) A top-cover-tape feeding apparatus (366/1040) for feeding a top cover tape peeled from an electric-component tape which additionally includes a

carrier tape having a plurality of pockets which are formed in a lengthwise direction of the carrier tape, which accommodate a plurality of electric components, respectively, and whose respective upper openings are closed with the top cover tape, the apparatus comprising:

- 1b) a pair of tape-feed rotatable members (384,386/1080,1082) which are rotatable about respective axis lines parallel to each other and whose respective outer circumferential surfaces cooperate with each other to pinch the top cover tape peeled from the electric-component tape;
- 1c) a rotary drive device (394/1090) which rotates at least one of the two tape-feed rotatable members;
- 1d) at least one of the two tape-feed rotatable members having a scraper groove (430,432/1140,1142) which is formed in the entire outer circumferential surface thereof, in an intermediate portion thereof in an axial direction thereof parallel to the two axis lines; and
- 1e) at least one scraper (434,436/1144,1146) which is provided on at least an outlet side of the two tape-feed rotatable members in a tape-feed direction in which the top cover tape is fed,
- 1f) such that a portion of the scraper is fitted in a portion of the scraper groove that corresponds to a position where the respective outer circumferential surfaces of the two rotatable members pinch the top cover tape, so that the scraper prevents the top cover tape from clinging to said at least one of the two rotatable members."

"12. A top-cover-tape feeding apparatus (1040) for feeding two top cover tapes respectively peeled from two electric-component tapes each of which additionally includes a carrier tape having a plurality of pockets which are formed in a lengthwise direction of the carrier tape, which accommodate a plurality of electric components, respectively, and whose respective upper openings are closed with a corresponding one of the two top cover tapes, the apparatus comprising:  
two pairs of tape-feed rotatable members (1080, 1082), the two tape-feed rotatable members of each of said two pairs being rotatable about respective axis lines parallel to each other, and having respective outer circumferential surfaces which cooperate with each other to pinch a corresponding one of the two top cover tapes respectively peeled from the two electric-component tapes;  
two rotary drive devices (1090) each of which comprises an electric motor (1116) as a drive source thereof and which rotates at least one of the two tape-feed rotatable members of a corresponding one of said two pairs,  
a frame (1098) which supports the two pairs of tape-feed rotatable members and the two rotary drive devices, such that the two rotatable members of one of said two pairs and the two rotatable members of the other pair are arranged in a widthwise direction of the frame that is parallel to the respective axis lines about which the two rotatable members of said one pair are rotatable and the respective axis lines about which the two rotatable members of said other pair are rotatable, and such that the respective electric motors of

the two rotary drive devices are arranged in a direction perpendicular to the widthwise direction of the frame and each of the two electric motors is connected to said one of the two rotatable members of a corresponding one of said two pairs via a rotation-transmitting shaft member (1112) and two universal joints (1114) provided at opposite ends of the rotation-transmitting shaft member;

at least one of the two tape-feed rotatable members of each of said two pairs having a scraper groove (1140,1142) which is formed in the entire outer circumferential surface thereof, in an intermediate portion thereof in an axial direction thereof parallel to the widthwise direction of the frame; and

at least two scrapers (1144,1146) each of which is provided on at least an outlet side of the two tape-feed rotatable members of a corresponding one of said two pairs, in a tape-feed direction in which a corresponding one of the two top cover tapes is fed,

such that a portion of said each scraper is fitted in a portion of the scraper groove that corresponds to a position where the respective outer circumferential surfaces of the two rotatable members of said corresponding one pair pinch said corresponding one top cover tape, so that said each scraper prevents said corresponding one top cover tape from clinging to said at least one of the two rotatable members of said corresponding one pair."

IV. The following evidence and prior art documents are cited in this decision:

B1 : Technical drawing of feeder module 00141091, drawing number 1710460-D8000-000-03-Z ("Technische Zeichnung eines Zuführmoduls "2x8mm-S tape" - Art.-Nr. 00141091 der Firma Siemens")

B2: Technical drawing of the tape disposal system of feeder module 00141091, drawing number 1710460-D8210-000-03-Z ("Vergrößerte Darstellung der Folienentsorgung des Zuführmoduls gemäß B1")

B2': Enlarged view of drawing number 1710460-D8210-000-03-Z showing the two tape-feed rotatable members also shown in B2

B7: Transcript of Mr. M's deposition during the oral proceedings before the opposition division on 16 October 2007

B8: Invoice for the sale of two feeder modules 00141091 to Manfred Zöllner Elektrotechn. Fabrik, dated 09.12.94 ("Rechnung der Firma Siemens an die Firma Zöllner in D-93499 Zandt für zwei Zuführmodule mit der Artikelnummer 00141091")

B10: Feeder module 00141091-02

B20: Spare part list of feeder module 00141091-02, marked valid from 08.11.1993, dated 01.08.2007 ("Strukturstückliste für Zuführmodule vom Typ 00141091-02 gültig ab 08.11.1993")



B23: SIPLACE Feeder Modules, Spare Parts Catalogue, Edition 12/97, Chapters 1, 2 and 3.3 ("SIPLACE Zuführmodule - Ersatzteilekatalog Ausgabe 12/97 - Deckblatt, Impressum, Kapitel 1, Kapitel 2 und Kapitel 3.3")

D1: US 4 869 393 A

V. In the decision under appeal, the opposition division found that:

- It had been proven that before the priority date of the patent the opponent sold and delivered top cover tape (TCT) feeding devices with the article number 00141091 to Manfred Zöllner Elektrotechn. Fabrik of Zandt, Germany, in December 1994 (B8) and that there was no reason not to regard this as a normal sale.
- In addition to the documentary evidence, the opposition division took oral evidence from the witness, Mr. M, and made a visual inspection of the model submitted as B10. The witness was also shown the model B10 and asked to comment on it. While he said that he only had responsibility for servicing Siemens tape feeder modules from 1999 on, he also stated that he had seen many older modules and that he was familiar with the appearance of the module shown on drawing B1 and of the (closed) model B10 as corresponding to modules he had seen at the premises of Siemens customers.
- The opposition division allowed the request of the patent proprietor not to open the module B10 for

inspection because he had previously been deprived of an opportunity to do so. The module B10 was not supplied in dismantled form and means or instructions for opening the module had not been provided. The module's means for the transport of the tape were only accessible from the outside.

- On the basis of drawings B1 and B2, in conjunction with the visual inspection of B10 and the testimony of Mr. M, the opposition division concluded that the aforementioned prior use device contained at least one scraper provided at an outlet side of one of the two tape-feed rotatable members, even though such scraper could not be seen from the outside of the model B10. However, from the evidence available, the opposition division came to the conclusion that it had not been shown that the TCT feeding device of the prior use had a portion of the scraper fitted in a portion of the scraper groove that corresponded to a position where the respective outer circumferential surfaces of the two rotatable members pinched the top cover tape.
  
- Although D1 disclosed a TCT feeding apparatus comprising a scraper or stripper, its location with respect to the two tape-feed rotatable members was not disclosed. As in the case of the prior use evidence, the subject-matter of claim 1 differed from what was disclosed in D1 in that the exact position of the scraper in the latter was unknown. The TCT feeding device of claim 1 was therefore new over the prior use according to B8 and over the apparatus disclosed in D1.

- The distinguishing feature that a portion of the scraper was provided at a location where the outer surfaces of the rotatable members pinched the cover tape, i.e. closest to the location where the origin of the problem was, improved the lifting of the tape. The TCT feeding apparatus of claim 1 was found to involve an inventive step, since there was no indication that the distinguishing feature could be applied to the device of the prior use to prevent the top cover tape from clinging to one of the two rotatable members.
  
- Since the subject-matter of independent claim 1 met the requirements of novelty and inventive step, the subject-matter of claim 12, which related to a feeding apparatus for feeding two TCT, each subunit feeding one TCT and comprising at least one scraper with the new feature mentioned above, also met the requirements of novelty and inventive step.

VI. The appellant opponent argued essentially as follows:

- The appeal was admissible, as the objections on claim 1 had been fully substantiated in the statement of grounds of appeal.
  
- Document B23 was submitted as part of the chain of evidence showing that feeder module B10 corresponded to the modules shown in drawings B1 and B2 and sold to Manfred Zöllner Elektrotechn. Fabrik (B8).
  
- Drawing B2' was an enlargement of drawing B2 showing in greater detail the parts relevant to the present

case, namely the positions of the scrapers with respect to the tape-feed rotatable members.

- Document B23 showed the feeder module 2 x 8 mm - S tape Siplace 80 (article number 00141091-03; Figure 3, page 2.1-1). The internal parts relevant to the present case were shown in the exploded drawing on page 3.3-IV. In this drawing the lower and upper scraper were identified by position numerals 2 and 6, respectively. The part list table on page 3.3-1 equated the position numerals 2 and 6 with stripping device 1 (item code 00309046 S 02) and stripping device 2 (item code 00310435 S 05), respectively, while the tape disposal unit, ie the functional unit comprising both stripping devices, had the article number 00310431-03. On page 1.2-2 the structure of the part list table was explained. It was stated there that: "The third column contains the eleven-digit article number of the part, which consists of the master code and the function state. With the function state function features can be recognized in the article number. For one-sided exchangeable parts/assemblies the master code is kept, while the function state is increased if function changes."
  
- Document B20, on the other hand, was the part list for the feeder module 2 x 8 mm - S tape Siplace 80 (article number 00141091-02). It was indicated in the upper right corner of the first page of this document that the part list was valid from 08.11.1993. The tape disposal unit was identified by the same article number as in B23 and further with the drawing number D8210, linking thus this unit to

drawing B2. The stripping devices 1 and 2 were identified by article numbers 00309046-02 and 00310435-05, respectively (pages 1 and 3).

- Consequently, from November 1993 to at least December 1997 (the edition date of B23) neither the tape disposal unit nor the stripping devices 1 and 2 had undergone any significant functional changes, since they were identified by an article number with the same function state identifier. This was so although the tape feeder module as a whole had changed its function state identifier from 02 in B20 to 03 in B23, ie it had undergone a function change meriting another version number.
  
- The sale of the two feeder modules to Manfred Zöllner Elektrotechn. Fabrik was dated December 1994 and fell within this period. The modules sold contained therefore a tape disposal unit as detailed in B20 and B23 and the same was true for module B10. Mr. M (B7) had also testified that the only modification to the feeder module he knew about was the modification of the control panel indicated by position numbers 7 or 7-1 in B23 (page 3.3-IV). He also added that some of the internal parts, eg the scrapers, had been milled for the first production series and had later been cast or moulded, a cheaper manufacturing method.
  
- The appellant opponent hence requested that the module B10 be opened and inspected according to Article 117 (1)(f) EPC so that the features and positions of the scrapers be determined to correspond to feature 1(f) of claim 1.

- Should the board consider the apparatus of claim 1 to be new over the prior use by sale, then the claimed apparatus lacked an inventive step over the disclosure of document D1. It would have been obvious to the skilled person that the optimum position for locating the scrapers was where the rotatable feed members pinched the TCT, and that this position improved control of the tape.

VII. The respondent proprietor argued essentially as follows:

- The appeal should be rejected as inadmissible. The statement of grounds of appeal did not contain the appellant's complete case, as there were no specific arguments presented against the subject-matters of claims 2 to 15 (Article 12(2) RPBA).
- The drawing B2' submitted during the oral proceedings before the board should not be admitted into the proceedings, since it was not merely an enlarged copy of drawing B2, as alleged by the appellant, but a copy taken from the original drawing, and it contained new details which were not derivable from drawing B2 even when enlarging it. Moreover, this drawing had always been in the possession of the appellant opponent and hence there were no reasons for it not having been submitted earlier.
- Evidence B23 should also not be admitted, since being a document originating from the appellant opponent, it had evidently been open to the appellant opponent to introduce the document during

the opposition period or, failing that, within the period set for making final submissions prior to the oral proceedings before the opposition division. It would therefore be an abuse of procedure and manifestly unfair to the respondent proprietor if the appellant were allowed to do so at this very late stage.

- Although document B23 had the date of 12/97 printed on it, it had not been proven that this document had been made available to the public before the priority date of the patent. In addition, document B23 related to a feeder module having an article number 00141091-03. The appellant opponent had not proven that feeder module 00141091-03 (B23) had the same construction as that of feeder module 00141091 (B1, B8) or that of feeder module 00141091-02 (B10). Furthermore, document B23 failed to teach or suggest the positional relationship between at least one scraper and two tape-feed rotatable members, as recited in claim 1 of the patent.
  
- The appellant opponent did not identify any element shown on the drawing B2 as a scraper corresponding to the claimed invention or where the scraper was provided. There was no proof that feeder module No. 00141091-02 (B10) had the same construction as that of feeder module No. 00141091 shown in B1, or that of the unnumbered module shown in B2, or that feeder module B10 had been available to the public before the priority date of the patent. The witness, Mr. M, had stated that he only had responsibility for serving Siemens tape feeder modules from 1999 onwards. Thus, he had no direct experiences on any

Siemens feeder modules that had been made available to the public before the priority date of the patent. Hence the testimony of the witness was based on his personal or subjective speculations or hypotheses. In particular, he had himself stated that he could not comment on article numbers, and that he did not know when exactly B10, which he said must have been an early version, was produced or whether it was a test or production model. In addition, when asked about the difference in the numbers D8000 on B1 and D8210 on B2, Mr M had had no explanation. There remained therefore some doubt whether B2 related to exactly the same device as B1.

- The appellant opponent argued lack of inventive step over B10 and over D1. The appellant opponent contended that since module B10 had scraper grooves, it would had been obvious to position scrapers at the location defined in the claims of the patent. The logic was that since feature (1f) of claim 1 necessarily required a scraper groove, then disclosure of a scraper groove rendered obvious feature (1f). This logic had only to be written down, for the fallacy to become clear. The appellant opponent further argued that a skilled person, taking B10 as closest prior art and facing a problem of finding improved and regular way of detaching the top-covered-tape, would arrive at feature (1f) of claim 1 without any inventive step, since it would had been obvious to a skilled person that only such positioning and such cooperation between the scraper and scraper groove would solve the problem. That a solution identified in hindsight represented the only identifiable solution to a problem, did not of



itself render the solution obvious, as there were clearly alternative solutions that might have occurred to the skilled person faced with the task of finding an improved and regular way of detaching the top-cover-tape. These alternatives included eg changing the shape or the surface characteristics of the scraper and changing the working relationship between the tape-feed rotatable members and the structure which collected the discarded cover tape.

- Turning now to lack of inventive step over D1, it was apparent that D1 contained no information concerning the solution claimed and particularly the technical feature (1f) of claim 1. The appellant opponent asserted that the skilled person would know that a modification of the design of D1 to bring it within the scope of claim 1 would lead to an improvement; specifically the improvement as compared with the original disclosure of D1 that the top-cover-tape would be regularly detached. This assertion however was based on hindsight.

## **Reasons for the Decision**

### 1. *Admissibility of the appeal*

- 1.1 The respondent proprietor requested that the appeal be rejected as inadmissible, since the statement of grounds of appeal did not contain the appellant's complete case, as there were no specific arguments presented against the subject-matters of claims 2 to 15 (Article 12(2) RPBA).

1.2 Article 12(2) RPBA requires *inter alia* that "the statement of grounds of appeal ... shall contain a party's complete case". However, what a party considers to be their complete case is left to their discretion. On its own it has no bearing on the admissibility of the appeal.

1.3 In the present case, the appellant applicant based his appeal on the lack of novelty and inventive step with respect to the top-cover tape (TCT) feeding apparatus of claim 1. The board has no doubts, and there was also no objection to this by the respondent, that this issue was fully substantiated in the statement of grounds of appeal. There is no support in the EPC for the notion of what could be termed 'partial admissibility' of an appeal; an appeal is either admissible or inadmissible (T 0774/97, reasons 1.1; T 382/96, reasons 1; both unpublished). If one aspect of the appeal is found admissible, then the whole appeal is admissible.

1.4 There were no further objections from the respondent proprietor on the admissibility of the appeal. As the board is satisfied that the requirements of Articles 106 to 108 EPC and Rule 99 EPC are fulfilled, the appeal is found to be admissible.

2. *Admission of drawing B2' into the proceedings*

2.1 Drawing B2' was submitted by the appellant opponent during the oral proceedings before the board to illustrate in greater detail what was allegedly already disclosed by drawing B2. Drawing B2 was filed within the opposition period as an A4-sized copy from the

- original A1-sized drawing, ie B2 is a copy eight times smaller than the original drawing.
- 2.2 Both the patent proprietor and the opposition division objected at the earliest possible stage of the opposition procedure that the reference signs 8a and 8b added by hand to drawing B2 could not be clearly related to particular features of the device due to the reduced size of the drawings and the large number of broken lines in the relevant regions of this drawing. To clarify the contents of the drawing, the opposition division invited the opponent to submit the originals of drawings B1 and B2. Despite of this the appellant opponent waited until the oral proceedings before the board to submit an enlarged copy of the relevant region of the original drawing showing the position and shape of the scrapers (proprietor's letter dated 30 April 2003, point 2.1.2, 3<sup>rd</sup> paragraph; communication of the opposition division dated 21 April 2005, points 5.1 and 5.2).
- 2.3 Drawing B2' is however not an enlargement of drawing B2, but a copy taken from the original A1-sized drawing. Drawing B2' is therefore a new piece of evidence, as it reveals more construction details of the feeder module than what can be ascertained from a simple enlargement of the drawing B2.
- 2.4 The appellant opponent had ignored the objection from the opposition division concerning drawing B2 and did not file an enlarged version of it in response to that objection. However, evidence not submitted in due time may be disregarded by the EPO as late filed (Article 114(2) EPC). Under the present circumstances,

the appropriate moment to submit drawing B2' as evidence of the alleged facts was with the response to the opposition division's communication or at the latest with the statement of grounds of appeal. The opposition division concluded in the decision under appeal that the evidence on file was insufficient to determine the features and the position of the scrapers in the modules sold (reasons, point 3.6). There are moreover no doubts that the opponent was at all times able to file drawing B2' if he wished to do so. Admitting drawing B2' as new evidence would require at least the adjournment of the oral proceedings, or more appropriately, remittal of the case to the opposition division for further prosecution, as it cannot reasonably be expected that the respondent proprietor deals with it at the oral proceedings appointed by the board.

2.5 The board decides under these circumstances not to admit drawing B2' into the proceedings pursuant to Article 13(3) RPBA.

3. *Admission of document B23 into the proceedings*

3.1 The respondent proprietor objected to the introduction of document B23 into the proceedings, since it was a document originating from the appellant opponent that should have been submitted during the opposition period or, at the latest, within the period set for making the final submissions prior to the oral proceedings before the opposition division. Although document B23 bears on its front page the statement "Edition 12/97", it had not been shown that it was available to the public before the priority date of the patent.

- 3.2 Document B23 was submitted by the appellant opponent with the statement of grounds of appeal, ie at the earliest possible moment of the appeal proceedings. The filing of this document is not a new line of attack on the patent. Its aim is to fill the gaps of the argumentation before the opposition division. This is the normal behaviour of a losing party.
- 3.3 When deciding on admitting new evidence *inter alia* the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy should be weighted. Document B23 does not appear to introduce any complex subject-matter which the parties or the board could reasonably not be expected to deal with at the start of the appeal proceedings.
- 3.4 Although the appellant opponent has not advanced any explanations why a document which was clearly in his possession at the start of the opposition proceedings was submitted only with the grounds of appeal, this in itself does not imply a delaying tactic or an abuse of the procedure, but may result from a not perfect working manner.
- 3.5 The board decides, for these reasons, to admit document B23 into the proceedings. The appellant opponent has however not shown that B23 was available to the public before the priority date of the patent. Consequently, it is admitted as evidence for the construction details of the feeder module 001411091, but not as prior art.

4. *Prior use by sale of two feeder modules 00141091 to Manfred Zöllner Elektrotechn. Fabrik (B8)*

4.1 It is the established jurisprudence that a case of public prior use has to prove what was made available, where, when, how and by whom. In the present case, what remains disputed is the question of what exactly was made available, since the responses to the where, when, how and by whom have already been settled during the opposition proceedings (appealed decision, reasons, point 3).

4.2 The opposition division concluded in the decision under appeal that it had been proven that Siemens AG had sold two feeder modules Siplace 001411091 to Manfred Zöllner Elektrotechn. Fabrik of Zandt, Germany in December 1994, ie before the priority date of the opposed patent (24 June 1998), and that there were no reasons not to regard this as a normal sale (reasons, point 3.4; evidence B8). This was not contested by the respondent proprietor.

The opposition division found that the feeder modules sold to Manfred Zöllner Elektrotechn. Fabrik comprised features (1a) to (1e) of claim 1 (reasons, point 3.7). The feeder modules, however, did not disclose feature (1f), ie that the scraper was fitted in a portion of the scraper groove that corresponded to a position where the respective outer circumferential surfaces of the two rotatable members pinched the top cover tape (TCT), so that the scraper prevented the TCT from clinging to one of the two rotatable members.

4.3 The appellant opponent relied on drawings B1 and B2, module B10 and documents B20 and B23 to show the details of what had been sold to Manfred Zöllner Elektrotechn. Fabrik.

He argued that this evidence showed that from November 1993 to at least December 1997 (the edition date of B23) neither the tape disposal unit nor the stripping devices 1 and 2 had undergone any significant functional changes, since they were identified by an article number with the same function state identifier. This was so even although the tape feeder module as a whole had changed its function state identifier from 02 in B20 to 03 in B23, ie it had undergone a function change meriting a new version number.

The sale of the two feeder modules to Manfred Zöllner Elektrotechn. Fabrik was dated December 1994 and fell within this period. The modules sold therefore contained a tape disposal unit as detailed in B20 and B23 and the same was true for module B10.

The appellant opponent hence requested that the module B10 be opened and inspected according to Article 117 (1)(f) EPC. This would allow the features and positions of the scrapers to be determined.

4.4 The respondent proprietor contested the reliability of the function state identifiers, since even when the function of a certain part was not modified and accordingly no new function state identifier was assigned to it, it could not be excluded that the new part had undergone changes which were relevant for assessing patentability related issues. It was

therefore uncertain whether the change in the manufacturing method of the scrapers introduced differences by varying degrees of manufacturing tolerances which at that time were considered irrelevant. Moreover, the criteria for changing the function state identifier were not clear. For example, the toothed wheel unit (article number 00327023; position number 1 on B23 page 3.3-1) had a function state identifier of 1 despite that it comprised a washer and a cover both having a function state identifier of 2.

In his view it had not been shown that module B10 corresponded to the modules sold according to B8.

- 4.5 The board is for the following reasons not convinced that the feeder module B10 corresponds to the modules sold to Manfred Zöllner Elektrotechn. Fabrik (B8).

Mr. M testified before the opposition division that he joined the development department of SIPLACE in April 1999 and that prior to that date he worked in a completely different technical field. He had therefore no direct experience on the development of the feeder modules before that date. He identified module B10 as coming from an early production series on hand of its high control panel, but could not provide any further information. He added, in particular, that defective modules were repaired and refurnished with new up-to-date replacement parts, including the scrapers, at the production site. He confirmed when asked by the opposition division that also older models could include new scrapers developed much later and that this could also be the case with module B10. When asked



whether module B10 was a test model or belonged to the normal production line he stated that he had no further knowledge on module B10.

The appellant opponent did not provide any further information on module B10, eg when it was manufactured, whether it had been refurbished with new parts, if it had been sold to a customer and then recuperated, etc. There is absolutely no information on this module on file. It remains therefore unproven that the scrapers of B10 have the same construction as the scrapers of the modules sold to Manfred Zöllner Elektrotechn. Fabrik (B8).

It follows that opening and inspection of module B10 would serve no purpose. The inspection of the feeder module B10 requested by the appellant opponent under Article 117 (1)(f) EPC is therefore refused.

- 4.6 The presence of two scrapers in respective scraper grooves on the tape-feed rotatable members can be deduced from drawing B2 in conjunction with the exploded view shown in B23 (Figure 3, page 3.3-IV). However, from this evidence it is not possible to deduce the exact position of the scrapers within the grooves, in particular whether one of the scrapers reached between the two tape-feed rotatable members up to the position where they pinched the TCT.
- 4.7 The board judges, for the above reasons, that it has not been shown that the feeder modules sold to Manfred Zöllner Elektrotechn. Fabrik (B8) comprised feature (1f) of claim 1, namely that the scraper was fitted in a portion of the scraper groove that corresponded to a

position where the respective outer circumferential surfaces of the two rotatable members pinched the TCT, so that the scraper prevented the TCT from clinging to one of the two rotatable members.

The top-cover tape feeding apparatus of claim 1 is therefore new over the prior use by sale according to B8 (Article 54 EPC 1973).

5. *Document D1*

5.1 The opposition division concluded that document D1 disclosed a TCT feeding apparatus comprising features (1a) to (1e) of claim 1 (reasons, point 5). This has not been contested in appeal and the board agrees with this finding.

5.2 D1 discloses two scrapers (tape stripper 76) extending each one into a scraper groove of each one of the two tape-feed rotatable members (upper and lower tape pulling wheels 74 and 75, respectively) (column 5, lines 17 to 22, Figures 1 to 3). It can, however, not be ascertained at what position the scrapers get into contact with the TCT.

5.3 As document D1 fails to disclose feature (1f), the TCT feeding apparatus of claim 1 is also new over this document.

6. *Inventive step (Article 56 EPC 1973)*

6.1 As has already been established, the TCT feeding apparatus of claim 1 differs from the modules sold according to B8 and the device disclosed in D1 in that

a portion of the scraper is fitted in a portion of the scraper groove that corresponds to a position where the respective outer circumferential surfaces of the two rotatable members pinch the top cover tape, so that the scraper prevents the top cover tape from clinging to said at least one of the two rotatable members, ie feature (1f) of claim 1.

6.2 Both parties agreed in that this feature allowed the continuous and regular detachment of the TCT from the rotatable members, ie improved the reliability of the tape disposal unit.

6.3 The appellant opponent argued that the skilled person would have to decide the position at which the scrapers were located when starting either from inspecting the modules sold according to B8, which comprised scrapers and scraper grooves in the teathed rotatable tape feeding members, or from the disclosure of D1.

By mere trial and error he would arrive at the claimed solution and place at least one scraper at the point where the two rotatable members pinch the top cover tape, since that was the point from which on control of the tape was required.

6.4 The board, however, is not persuaded by this argument, since it has not been shown that there was an indication in the prior art that the reliability of the tape disposal unit could be improved by relocating at least one scraper to the position as claimed.

6.5 It is therefore the board's judgment that the top cover tape feeding apparatus of claim 1 involves an inventive step in the sense of Article 56 EPC 1973.

**Order**

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

The appeal is dismissed.

Registrar

Chair

S. Sánchez Chiquero

G. Eliasson