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**Datasheet for the decision  
of 30 April 2024**

**Case Number:** T 0576/22 - 3.2.05

**Application Number:** 11794966.9

**Publication Number:** 2582474

**IPC:** B21D5/12, B21D7/08, B30B5/06,  
B21C37/15, B21D22/08

**Language of the proceedings:** EN

**Title of invention:**

Method and apparatus for forming the profile of deformable materials and deformable tubular sections

**Applicant:**

The University Of Queensland

**Relevant legal provisions:**

EPC Art. 83, 84, 111(1), 116(1), 123(2)  
RPBA 2020 Art. 11, 13(1)

**Keyword:**

Amendment to appeal case - amendment overcomes issues raised (yes)  
Sufficiency of disclosure - main request (yes)  
Claims - clarity - main request (yes)  
Amendments - extension beyond the content of the application as filed - main request (no)  
Remittal (yes)



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Case Number: T 0576/22 - 3.2.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.05**  
**of 30 April 2024**

**Appellant:** The University Of Queensland  
(Applicant) St.Lucia, Queensland 4072 (AU)

**Representative:** V.O.  
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 7 October 2021 refusing European patent application No. 11794966.9 pursuant to Article 97(2) EPC**

**Composition of the Board:**

**Chairman** P. Lanz  
**Members:** M. Holz  
M. Blasi

## **Summary of Facts and Submissions**

I. The applicant (appellant) filed an appeal against the decision of the examining division refusing European patent application No. 11 794 966.9 ("the application").

In the decision under appeal, the examining division had concluded that the application as amended based on claims 1 to 12 filed on 6 September 2021 did not meet the requirements of Articles 123(2), 84, 83 and 54 EPC.

II. On 11 December 2023, the board issued a communication under Rule 100(2) EPC, specifying a period of three months for the appellant to reply. In that communication, the board provided its preliminary opinion that claims 1 and 8 of the main request filed with the statement of grounds of appeal overcame the objections under Articles 123(2), 83 and 84 EPC set out in the decision under appeal but did not comply with Article 84 EPC, as the term "large" (see features 1.6 and 8.7) gave rise to a lack of clarity (see point 6.2 of the communication).

With its letter dated 6 March 2024, the appellant replied to the communication and filed documents according to a main request as well as first, second, third and fourth auxiliary requests.

III. Claim 1 of the main request reads as follows (the feature references used by the board are indicated in square brackets):

"[1.1] An apparatus (1) for forming the profile of deformable materials, said apparatus (1) including:  
[1.2] opposed track frames (2, 3) that mount respective sets (4, 5) of die elements (6), [1.3] the die elements (6) of said sets (4, 5) being respectively arranged to travel along corresponding endless paths;  
[1.4] said paths each including a forming portion (9, 10) in which die elements (6) of each set (4, 5) are opposed to define a forming space (11) therebetween, characterised in that [1.5] a distance between the forming portion (9, 10) of each said path decreases along the length of the forming portion (9, 10) in the direction in which material travels so that the dimensions of the forming space (11) between the forming portions (9, 10) reduce along the length of the forming portion (9, 10) to simultaneously apply lateral forces to material progressing through the forming portion (9, 10) to shape said material to a determined profile, [1.6] wherein at least one of the forming portions (9, 10) of the paths is formed as a large radius curve,  
[1.7] wherein the pitch between each die element (6) in the forming portion (9, 10) of the path is small compared to the radius of the path, and  
[1.8] wherein the ratio of the pitch between adjacent die elements (6) in the forming portion of the path and the radius of the path is over 1:500."

Claim 8 of the main request reads as follows:

"[8.1] A method of forming the profile of deformable materials, said method including:  
[8.2] providing opposed track frames (2, 3) that mount respective sets (4, 5) of die elements (6), [8.3] the die elements (6) of said sets (4, 5) being respectively arranged to travel along corresponding endless paths,

[8.4] *said paths each including a forming portion (9, 10) in which die elements (6) of each set (4, 5) are opposed to define a forming space (11) therebetween; [8.5] passing the material through a forming space (11) between respective moving die elements (6); characterised in that [8.6] a distance between the forming portion (9, 10) of each said path decreases along the length of the forming portion (9, 10) in the direction in which material travels so that the dimensions of the forming space (11) between the forming portions (9, 10) reduce along the length of the forming portion (9, 10) to simultaneously apply lateral forces to material progressing through the forming portion (9, 10) to shape said material to a determined profile, [8.7] wherein each of the opposed forming portions are formed as a large radius curve, [8.8] wherein the pitch between each die element (6) in the forming portion (9, 10) of the path is small compared to the radius of the path, and [8.9] the ratio of the pitch between adjacent die elements (6) in the forming portion of the path and the radius of the path is over 1:500."*

IV. The appellant requests that the decision under appeal be set aside and that the case be remitted to the examining division for further prosecution on the basis of the main request comprising the set of claims and the description submitted with the letter dated 6 March 2024 or, as an auxiliary measure, on the basis of the first, second, third or fourth auxiliary request comprising the sets of claims and the description as submitted with the same letter.

V. With respect to the main request, the appellant submitted that the amendments to the two independent claims overcame the objections under Articles 123(2),

83 and 84 EPC set out in the decision under appeal as well as the objection raised under Article 84 EPC in the board's communication under Rule 100(2) EPC.

## **Reasons for the Decision**

### 1. Admittance of the main request (Article 13(1) RPBA)

The main request was filed with the appellant's letter dated 6 March 2024, i.e. after the appellant had filed its statement setting out the grounds of appeal and within the period specified by the board in the communication under Rule 100(2) EPC. The main request thus constitutes an amendment to the appellant's appeal case and may be admitted only at the discretion of the board, see Article 13(1) RPBA (see OJ EPO 2024, A15).

The main request overcomes, *prima facie*, the objection under Article 84 EPC raised by the board in point 6.2 of the communication under Rule 100(2) EPC, and does not reintroduce any issues under Articles 123(2), 83 or 84 EPC that had formed the basis for the objections by the examining division.

The board therefore decided to admit the appellant's main request into the appeal proceedings under Article 13(1) RPBA.

### 2. Objections under Article 123(2) EPC

In the decision under appeal, the examining division raised objections against claim 1 submitted on 6 September 2021 in view of the features "*two, three or four track frame elements (2, 3) arranged in opposed pairs*" and "*the ratio of the gap between each adjacent die element (6) in the forming portion of the path and*

*the radius of the path is over 1:500*". The examining division explained that these objections also applied to "independent claim 9".

However, claim 9 filed on 6 September 2021 is not an independent claim. The board assumes that the examining division meant to refer to independent method claim 8.

The features to which the examining division objects are not present in claims 1 and 8 of the current main request. The above objections are thus overcome in view of the main request.

The subject-matter of claim 1 of the main request is disclosed in view of claims 1, 3, 10 and 11 as well as the paragraph bridging pages 9 and 10 of the application as filed. The subject-matter of claim 8 of the main request is supported by claims 28, 30, 31, 37 and 38 as well as by the paragraph bridging pages 9 and 10 of the application as filed. The additional features of claims 2, 3, 4, 5, 7, 9, 10 and 11 of the main request are disclosed in claims 4, 7, 8, 9, 14, 48, 49 and 50 of the application as filed. The additional features of claims 6 and 12 of the main request are disclosed in claims 12 and 41, respectively, in combination with the paragraph bridging pages 12 and 13 and Figures 11(a) and (b) of the application as filed.

The requirements of Article 123(2) EPC are thus met with respect to the claims of the main request.

### 3. Objections under Articles 84 and 83 EPC

3.1 In the decision under appeal, the examining division had set out that independent claims 1 and 9 (the board assumes that the examining division meant to refer to

independent claims 1 and 8 filed on 6 September 2021 - see above) contained the feature that "*the ratio of the gap between each adjacent die element in the forming portion of the path and the radius of the path is over 1:500*". The examining division had explained that this specification also encompassed gaps greater than the radius of the path, which was not technically achievable. It was also unclear how, in the case of three-track frame elements, these track frame elements could be arranged in opposed pairs. The requirements of Article 84 EPC and, consequently also those of Article 83 EPC, were therefore not met.

The features relating to three-track frame elements and to the gaps between die elements present in claims 1 and 8 filed on 6 September 2021 are not included in claims 1 and 8 of the current main request. These objections are thus overcome.

3.2 In point 6.2 of the communication under Rule 100(2) EPC, the board set out its preliminary opinion that claims 1 and 8 of the main request filed with the statement of grounds of appeal did not comply with Article 84 EPC, as the term "large" (see features 1.6 and 8.7) gave rise to a lack of clarity.

Features 1.7 and 8.8 of claims 1 and 8 of the current main request specify that the pitch between each die element in the forming portion of the path is small compared to the radius of the path. Hence, the skilled person understands that the "large radius curve" mentioned in features 1.6 and 8.7 is a curve having a radius that is large compared to the pitch between each die element in the forming portion of the path.



The objection raised under Article 84 EPC in point 6.2 of the communication under Rule 100(2) EPC is thus overcome in view of the main request.

4. Conclusions and remittal

The requirements of Articles 123(2), 83 and 84 EPC are consequently met with respect to the main request.

In the decision under appeal, the examining division had further concluded that the requirements of Article 54 EPC were not met with respect to independent claims 1 and 9 (the board assumes that the examining division meant to refer to independent claims 1 and 8 filed on 6 September 2021 - see above). The examining division had taken the view that some features of the independent claims could not contribute to establishing novelty over the prior art as they were not clear (see point 3. of the Reasons for the decision under appeal). Since the clarity objections raised by the examining division are overcome in view of the current main request, features of independent claims that had not been considered by the examining division in the Reasons for the decision need to be taken into account for the assessment of novelty. Moreover, the question of inventive step was not addressed in the decision under appeal, as the claims were not considered allowable for other reasons.

The board therefore decided to remit the case to the examining division for further prosecution (see Article 111(1), 2<sup>nd</sup> sentence, 2<sup>nd</sup> alternative, EPC, and Article 11 RPBA).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution.

The Registrar:

The Chairman:



N. Schneider

P. Lanz

Decision electronically authenticated