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**Datasheet for the decision
of 10 November 2025**

Case Number: T 0761/24 - 3.4.02

Application Number: 16847680.2

Publication Number: 3353520

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B62D55/24, B62D55/26,
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Language of the proceedings: EN

Title of invention:
Smart Track System Having Embedded Sensors and Method of Using
the Same

Patent Proprietor:
Soucy International, Inc.

Opponent:
Compagnie Générale des Etablissements Michelin

Headword:
Smart Track System / Soucy International

Relevant legal provisions:
EPC Art. 100(c), 123(2)
RPBA 2020 Art. 13(2)

Keyword:

Grounds for opposition - added subject-matter (yes)

Amendments - added subject-matter (yes)

Amendment after summons - exceptional circumstances (no) -
taken into account (no)



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Case Number: T 0761/24 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 10 November 2025

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 2 April 2024
revoking European patent No. 3353520 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman R. Bekkering
Members: F. Giesen
W. Ungler

Summary of Facts and Submissions

- I. The appeal by the patent proprietor is against the decision of the opposition division to revoke European patent EP 3 353 520.

The grounds for the decision were that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted (main request), that auxiliary requests 1 to 3 (filed with letter dated 9 January 2024) did not comply with Article 123(2) EPC, and that auxiliary request 4 (filed during the oral proceedings before the opposition division on 12 March 2024 did not comply with Article 123(3) EPC.

- II. In a communication under Article 15(1) RPBA dated 21 July 2025, the board summoned the parties to oral proceedings and indicated its preliminary opinion that the main request and auxiliary requests 1 to 4, which remained unchanged, were not allowable.
- III. By letter dated 16 October 2025, the patent proprietor filed auxiliary request 5 and informed the board that it would not be represented at the oral proceedings. It also amended its requests such that auxiliary request 4 was no longer pursued; instead, auxiliary request 5 was pursued.
- IV. Consequently, the board cancelled the summons to oral proceedings.
- V. The written requests of the parties are thus as follows:

The patent proprietor requests

as a main request that the decision under appeal be set aside and that the opposition be rejected (which corresponds to the maintenance of the patent as granted), or

as an auxiliary measure that the patent be maintained on the basis of the claims of one of auxiliary requests 1 to 3, filed with the statement of grounds of appeal or of auxiliary request 5, filed with letter dated 17 October 2025.

The opponent requests in essence

that the appeal be dismissed.

VI. Claim 1 according to the main request, i.e. as granted, reads as follows:

- C1 *"A track system of a vehicle, the track system comprising:*
- C2 *a) a track (100) including a carcass (140) having an outer face (142) and an inner face (144), a plurality of drive lugs (124) on the inner 5 face of the carcass;*
- C3 *b) a first idler wheel (220);*
- C4 *c) a frame (270);*
- C5 *d) a drive wheel (210);*
- C6 *e) an autonomously powered sensor,*
- C7 *wherein the autonomously powered sensor is embedded within the track,*
- C8 *wherein the autonomously powered sensor is configured to sense at least one of the*

following parameters of the track: temperature, acceleration, angular moment, magnetic field or geolocation,

C9 *wherein the autonomously powered sensor comprises:*

C9-1 *- at least one sensor (300) embedded in the drive lugs (124), and*

C9-2 *- at least one sensor (320) embedded in the carcass (140)."*

(Feature labels are taken from the decision under appeal in point 10.)

VII. Claim 1 of auxiliary request 1 includes in addition to the features of claim 1 of the main request the feature

" - at least one sensor (310) embedded in the guide lugs (122)",

inserted between feature C9 and C9-1.

VIII. In claim 1 of auxiliary request 2 features C9, C9-1 and C9-2 have been amended as follows:

" wherein the autonomously powered sensor comprises:

- ~~at least one sensors~~ (300) embedded in the drive lugs (124), and

- ~~at least one sensors~~ (320) embedded in the carcass (140)".

IX. In claim 1 of auxiliary request 3 the features C9, C9-1 and C9-2 of claim 1 as granted have been amended as follows:

"wherein the autonomously powered sensor comprises:

- sensors (310) embedded in the guide lugs (122),
- at least one sensor (350) embedded in the drive lugs (124), and
- sensors (330) embedded in the carcass (140)
- ~~at least one sensor (300) embedded in the drive lugs (124)~~
- ~~at least one sensor (320) embedded in the carcass (140)".~~

X. In claim 1 of auxiliary request 5 the features C9, C9-1 and C9-2 of claim 1 as granted have been amended as follows:

"wherein the autonomously powered sensor comprises:

- *one sensor (310) embedded in the guide lugs (122),*
- *~~at least one sensor (300) embedded in the drive lugs (124), and~~*
- *at least one two sensors (320) embedded in the carcass (140)."*

Reasons for the Decision

1. Admissibility

The appeal meets the requirements of Articles 106 to 108 EPC as well as of Rule 99 EPC. It is therefore admissible.

2. Main request - ground for opposition under Article 100(c) EPC
- 2.1 The ground for opposition pursuant to Article 100(c) EPC prejudices the maintenance of the patent as granted.
- 2.2 It is disputed whether claim 1 of the main request contains subject-matter extending beyond the content of the application as filed, due to the inclusion of features C9-1 and C9-2.
- 2.3 In the decision under appeal (Reasons, points 23 to 27), the opposition division found that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted. The reasons were:
 - (a) In figure 2, sensor 350 was shown beneath the drive lug, not embedded within it.
 - (b) Figure 2 disclosed only two sensors embedded in the carcass, not a plurality. Figure 4 disclosed only a single sensor in relation to the carcass, not a plurality. The disclosures in Figure 4 and paragraph [0092] could not be used to generalise the teaching of figure 2.
 - (c) Claim 1 was found to be an unallowable intermediate generalisation. The sensor in the guide lug shown in figure 2 was omitted, although all sensors in figure 2 contributed specific information. Omitting one of them would change the nature of that information. Thus, the sensor in the guide lug was considered inextricably linked to the others.
- 2.4 The proprietor argued in essence (see point 4.2 of the statement setting out the grounds of appeal) that

- (a) There was no need to limit claim 1 to sensors in the guide or traction lugs. Paragraph [0130] of the application as filed referred to a technical problem whose solution did not require such sensors. A skilled person would recognise that not all track systems included guide or traction lugs. Figures 10 and paragraph [0091], as well as figures 2 and 11 with paragraph [0075], disclosed embodiments that did not show sensors in guide or traction lugs, thereby supporting the omission of those features. These arguments responded to point (i) in paragraph 24 of the decision. (See statement setting out the grounds of appeal, point 4.2.c)
- (b) The reference in paragraph [0130] to "comparing the difference in temperature between the track drive lug and other portions of the track" implied specific combinations of sensor locations. The four specific combinations listed on page 25 (last paragraph) of the statement of grounds of appeal demonstrated that the sensor in the guide lug was not inextricably linked to other sensors. This addressed point (iii) in paragraph 26 of the decision. (See loc. cit., point 4.2.c)
- (c) As to feature C9-1 ("at least one sensor embedded in the drive lugs"), figure 2 and paragraph [0075] disclosed a single sensor embedded in the drive lug. Figures 10 and 11 and paragraph [0092] disclosed multiple sensors in drive lugs (see point 4.2.d of the grounds of appeal).
- (d) Regarding feature C9-2 ("at least one sensor embedded in the carcass"), the proprietor referred to figure 4, which showed a single sensor in the carcass, and to figures 2 and 11, which showed multiple sensors (see point 4.2.e of the grounds of appeal). (See loc. cit., 4.2.e).

2.5 The opponent argued that paragraph [0075] of the application as filed did not disclose specific combinations of sensors. Thus, any amendments would have to be based solely on figure 2. However, figure 2 did not disclose:

- the absence of a sensor in the drive lugs
- the expression "at least one" in feature C9-1 (figure 2 disclosed only a single sensor under a single drive lug)
- the term "embedded" in feature C9-1, because figure 2 only disclosed a sensor "under" a drive lug
- the expression "at least one" in feature C9-2 (figure 2 only disclosed two sensors in the carcass).

2.6 The board is of the following view:

2.6.1 All parties rely primarily on figure 2 and paragraph [0075] as an original disclosure of the amendments to claim 1 as granted.

The board considers figure 2 to be a schematic summary of the embodiments disclosed in paragraph [0075].

According to the first embodiment of paragraph [0075] "the sensors 330 are laterally inserted underneath area [sic] where the road wheel are [sic] in contact with the inner portion of the track band 100, between the guide and drive lugs 124". Figure 2 schematically shows these locations as dashed rectangles between a drive lug and the adjacent guide lugs. Only a portion of the track band is shown.

The board agrees with the opposition division that figure 2 shows two sensors in the carcass, not a

plurality, as now claimed (see point 3.4(i) of the decision).

2.6.2 According to the embodiment mentioned second in paragraph [0075] "the sensor 350 is inserted under or within one of the drive lug 124 [*sic*]".

The board agrees with the finding that this discloses only one sensor in the drive lug, not "at least one" as in claim 1. Therefore, this passage does not provide a direct and unambiguous disclosure of the amended subject-matter.

2.6.3 Even if figure 2 were taken as an independent embodiment rather than a summary, it only shows a specific combination: A sensor in or under the drive lug, two sensors between the guide and drive lugs, and one sensor in the guide lug. Since the figure shows only part of the track band (which in practice is a closed loop), there is no direct and unambiguous disclosure of additional sensors not depicted. Furthermore, the figure includes guide lugs, which claim 1 no longer requires. The board agrees with the opposition division's view in point 3.4(iii) of the decision that figure 2 cannot support the broader claim.

2.6.4 Thus, even if figure 2 were accepted as a stand-alone disclosure, it would not provide a direct and unambiguous basis for the amended subject-matter of claim 1

2.7 The proprietor's counter-arguments are not persuasive.

2.7.1 The statement of a subjective technical problem is not a direct and unambiguous disclosure of the full range

of possible solutions to this problem. Established case law confirms that deleting a feature from an originally filed claim can violate Article 123(2) EPC if the result no longer solves the stated subjective technical problem. The proprietor seeks to invert this logic by arguing that there was no added subject-matter because features of a specific embodiment were not needed to solve the subjective technical problem. However, this approach is incorrect. If a patent application is drafted in accordance with the EPC, then it contains a statement of a subjective technical problem, and the independent claim contains all essential features for the solution to this problem. It is apparent that if a random selection of originally optional features were added to the original claim, the resulting subject-matter would still solve the original subjective technical problem. Thus it would follow from the proprietor's argument that amendments adding any combination of selected originally optional features would not contravene Article 123(2) EPC, irrespective of whether they were only disclosed in combination or not. The fact that there are further embodiments that do not have guide lugs, or that guide lugs are not essential for the solution to the original subjective problem does not permit to conclude that the amended subject-matter of claim 1 does not have to have guide lugs.

2.7.2 Similarly, pointing to other embodiments (e.g. figures 10 and 11) that lack sensors in the guide or traction lugs does not justify their omission in an embodiment based on figure 2 or paragraph [0075]. These are distinct embodiments and cannot be freely combined. Reading a passage in its context, is not tantamount to freely combining selected elements from different

embodiments or to create an embodiment that has all those features common to several different embodiments.

2.7.3 The same applies to the number of sensors. The presence of multiple sensors in the drive lugs in figures 10 and 11 or paragraph [0092] does not justify combining this aspect with other, different embodiments.

2.7.4 In summary, claim 1 as granted contains subject-matter which extends beyond the content of the application as originally filed. Accordingly, the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted.

3. Auxiliary request 1 - added subject-matter

3.1 The amendments made to claim 1 of auxiliary request 1 are not suitable to overcome the deficiencies identified in the previous point.

3.2 Claim 1 of auxiliary request 1 includes in addition to the features of claim 1 of the main request the feature

" - at least one sensor (310) embedded in the guide lugs (122)",

inserted between feature C9 and C9-1.

3.3 This amendment does not address the added subject-matter arising from the expressions "at least one" sensor in the drive lugs and "at least one" sensor embedded in the carcass. These formulations were already present in claim 1 of the main request and remain unaddressed in auxiliary request 1.

4. Auxiliary request 2 - added subject-matter

4.1 The amendments made to claim 1 of auxiliary request 2 are not suitable to overcome the deficiencies identified in the previous sections.

4.2 In claim 1 of auxiliary request 2 features C9, C9-1 and C9-2 have been amended as follows:

" wherein the autonomously powered sensor comprises:

- ~~at least one sensors~~ (300) embedded in the drive lugs (124), and*
- ~~at least one sensors~~ (320) embedded in the carcass (140)".*

4.3 This amendment does not resolve the issue of added subject-matter arising from the use of the expressions "at least one" sensor in the drive lugs. Figure 2 only discloses one sensor in the drive lugs and two sensors in the carcass between the drive and guide lugs.

5. Auxiliary request 3 - added subject-matter

5.1 The amendments made to claim 1 of auxiliary request 3 are not sufficient to overcome the deficiencies identified in the previous sections.

5.2 In claim 1 of auxiliary request 3 the features C9, C9-1 and C9-2 of claim 1 as granted have been amended as follows:

" wherein the autonomously powered sensor comprises:

- sensors (310) embedded in the guide lugs (122),*

- at least one sensor (350) embedded in the drive lugs (124), and
- sensors (330) embedded in the carcass (140)
- ~~at least one sensor (300) embedded in the drive lugs (124)~~
- ~~at least one sensor (320) embedded in the carcass (140)".~~

5.3 Figure 2, together with paragraph [0075] discloses only one sensor ("the sensor 350") inserted under or within one of the drive lugs - not "at least one". Moreover, as previously explained, figure 2 and paragraph [0075] disclose only two sensors located on either side of a single drive lug, positioned between the drive lug and the adjacent guide lugs. Claim 1, however, is still not limited to this specific configuration.

6. Auxiliary request 5 - admittance

6.1 Auxiliary request 5 is not taken into account under Article 13(2) RPBA.

6.2 The patent proprietor has not provided any reason for filing auxiliary request 5 only after receipt of the communication under Article 15(1) RPBA, nor has it submitted cogent reasons demonstrating exceptional circumstances. It merely argued that the scope defined in claim 1 of the fifth auxiliary request was explicitly limited to the interpretation made by the board of appeal.

6.3 The issue of added subject-matter has been the central and decisive issue both in the decision under appeal and in these appeal proceedings. The board has not introduced new aspects but relied on the reasons given

in the decision under appeal and by the opponent. In these circumstances, the board's preliminary opinion to confirm the decision under appeal cannot be regarded as surprising. There are therefore no exceptional circumstances justifying the late filing of auxiliary request 5.

6.4 In any event, the board is not convinced that auxiliary request 5 complies with Article 123(2) EPC. While claim 1 has been limited as to the number of sensors, the board indicated in its preliminary opinion that—even if, *arguendo*, figure 2 were considered a stand-alone disclosure, it would at most provide a direct and unambiguous disclosure of two sensors positioned between the guide and drive lugs. This limitation is still not reflected in claim 1 of auxiliary request 5, which does not constrain the location of the two sensors embedded in the carcass to be between the drive and guide lugs. The claim thus appears *prima facie* not allowable.

6.5 These considerations provide additional reasons against admittance, beyond the absence of exceptional circumstances.

7. Alleged violation of the right to be heard

7.1 The board is not persuaded by the patent proprietor's allegation of a violation of their right to be heard.

7.2 The patent proprietor submitted that their right to be heard was infringed because:

- (a) for the first time during the oral proceedings, the opposition division referred to a new objection to justify the rejection of the main request,
- (b) the patent proprietor was taken by surprise by this new objection,
- (c) the opposition division refused to provide further details regarding its reasons for rejecting the main request, thereby depriving the patent proprietor of a proper opportunity to prepare a defence for its auxiliary requests,
- (d) the opposition division developed its reasoning only progressively in response to the patent proprietor's arguments, without allowing sufficient time to react to each counterargument,
- (e) the opposition division failed to consider the teaching provided to the skilled person as a whole and focused solely on paragraph [0075] of the description and figure 2.

7.3 None of these points persuade the board that the patent proprietor's right to be heard was violated.

As regards points (a) and (b), it is within the discretion of an opposition division to raise new objections during oral proceedings, provided that the parties are given an adequate opportunity to respond. There is nothing in the minutes to support the claim – raised for the first time on appeal – that the patent proprietor was so surprised as to be unable to present its case. According to the minutes, the patent proprietor did not inform the opposition division of any difficulty in responding, nor did it request additional time or a postponement.

With respect to points (c) and (d), an opposition division is not required to inform the parties of the

detailed reasons for its decision during the oral proceedings. Its obligation is to hear the parties, not to guide them in preparing their case or to disclose in advance the full reasoning for its decision in order to allow further reaction. A party represented by a professional representative cannot claim a right to be led through the opposition proceedings.

Point (e) relates to an alleged error in substantive assessment and therefore cannot serve as a basis for claiming a violation of the right to be heard.

7.4 Accordingly, the board concludes that the patent proprietor's right to be heard was not infringed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated