Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Paris Local Division

UPC_CFI_138/2025
UPC_CFI_522/2025
DECISION
of the Court of First Instance of the Unified Patent Court
delivered on 16/04/2026

Headnotes

1. Probative value of the "affidavit": Although the written statements do not carry the probative value of an independent and objective expert, the Court considers them to be valuable technical information.

2. Novelty: The claimed invention is for the skilled person directly and unambiguously derivable from a single prior art disclosure, using common general knowledge. However, the same technical effect is not required in the case of a product invention defined by structural technical features only, which covers a product considered in its own right, independently of any technical result or effect.

3. A single prior art document was cited in the Patent description, and it is expressly mentioned that this document discloses a product according to the preamble of Claim 1. For these reasons, it has been sufficiently demonstrated that this document constitutes a relevant prior art document for the assessment of the novelty of the structural technical features of claim 1 of the patent in question, regardless of the technical effect described in the prior art document.

4. Auxiliary requests (reasonable number): Parties provided a table with the various combinations categorised according to the additional features, and the parties' ensuing discussions focused on this summarised presentation. Therefore, the panel considers that the number of auxiliary requests presented in this case is reasonable, as it is 'manageable' by the Court.

Keywords

Art. 54 EPC – Novelty - Prior art - Probative value – Admissibility - Affidavit's expert - Amendment to the patent - Auxiliary requests - Reasonable number - R. 30.1 RoP

CLAIMANT

1)	Compagnie Générale des Etablissements Michelin 23 place des Carmes Dechaux 63000 - Clermont-Ferrand – FR	Represented by Grégoire DESROUSSEAUX, AUGUST DEBOUZY, and other representatives from that law firm

DEFENDANTS

1)	Goodyear France S.A.S. Liberty Tower, 17, place des Reflets 92400 - Courbevoie – FR	
2)	Goodyear S.A. Gordon Smith Avenue 7750 - Colmarg-Berg – LU	
3)	Goodyear Operations S.A. Gordon Smith Avenue 7750 - Luxembourg – LU	Represented by THIERRY LAUTIER, BIRD & BIRD, and other representatives from that law firm

PATENT AT ISSUE

Patent no.	*Proprietor*
EP2323858	Compagnie Générale des Etablissements Michelin

PANEL

Presiding judge & Judge-rapporteur	Camille Lignières
Legally qualified judge	Carine Gillet
Legally qualified judge	Stefan Johansson
Technically qualified judge	Bernard Ledeboer

LANGUAGE OF PROCEEDINGS: English

DECISION

THE PARTIES

1. The Claimant, Compagnie Générale des Etablissements Michelin (hereinafter "MICHELIN" or the "Claimant"), is the French parent company of the Michelin group, which is a world leader in the manufacture of tires for all types of vehicles. The Claimant is the owner of intellectual property rights, including patents, for the Michelin group.

2. The three Defendants (hereinafter "GOODYEAR" or the "Defendants") are part of the Goodyear group, a worldwide manufacturer of tires which has its headquarters in the United States of America and is one of MICHELIN's direct competitors. The Goodyear group has several subsidiaries in Europe, including Goodyear France SAS (hereinafter "Defendant 1") in France, and Goodyear SA and Goodyear Operations SA (hereinafter "Defendant 2" and "Defendant 3") in Luxembourg.

THE PROCEEDINGS

3. On 21 February 2025, MICHELIN lodged an infringement action before the Paris Local Division, against GOODYEAR, based on its European patent EP 2 323 858 B1 (hereinafter "EP'858").

4. No preliminary objection was raised under R. 19 RoP.

5. On 16 June 2025, GOODYEAR filed a Statement of defence with a Counterclaim for revocation.

6. In its reply to the Statement of defence and its defence to the counterclaim, filed on 14 August 2026, MICHELIN rejected the arguments for revocation of its patent and filed an application to conditionally amend the patent with 14 auxiliary requests.

THE PATENT

Presentation of the patent

7. MICHELIN is the owner of a European patent designated as EP'858 entitled "Variable surface area tire tread" (G017, EP 2 323 858 B1).

8. EP'858 was filed on 11 September 2008 (claiming no priority) by co-applicants Société de Technologie Michelin and Michelin Recherche et Technique S.A. The Patent was then assigned to Compagnie Générale des Etablissements Michelin (i.e., "MICHELIN") as the sole registered owner.

9. EP'858 was granted on 20 March 2013. It was initially maintained in force in Germany, Italy and France. It is currently only maintained in force in France, following MICHELIN's decision to abandon its patent in Germany and Italy.

10. EP'858 has not been subject to any opt-out declaration under R. 5 RoP.

11. The patent in suit has not been subject to any opposition proceedings before the EPO.

12. The patent at issue relates to "tire treads having variable surface area" (G017, [0001]).

13. EP'858 comprises 14 claims, including Claim 1 which is an independent claim and dependent Claims 2 to 14. MICHELIN alleges that the Defendants are infringing Claims 1, 3 and 13.

14. Claim 1 reads as follows:

A multi-stage tire tread (10) having a contact surface (16) and a plurality of wear layers, each said layer being located at a different depth of the tire tread, the tread comprising:

one or more tread elements (12) including a contact surface (16) and having a first wear layer and a second wear layer, wherein the second wear layer is located below the first wear layer;

a submerged longitudinal groove (20) extending in a longitudinal direction within the second wear layer of the tread element, wherein said longitudinal groove becomes exposed after a depth of the first wear layer has been worn;

a longitudinal sipe (22) extending within the first wear layer between the contact surface and the longitudinal groove;

one or more submerged lateral grooves (24) extending from the longitudinal groove in a lateral direction within the second wear layer of the tread element;

one or more lateral sipes (26) extending within the first wear layer between the contact surface and one of the one or more lateral grooves, the tread being characterized in that:

one or more of the one or more lateral grooves extend from a first lateral side of the longitudinal groove, and one or more of the lateral grooves extend from a second lateral side of the longitudinal groove, such that the one or more lateral grooves extending from the first side of the longitudinal groove are longitudinally offset from the one or more lateral grooves extending from the second side of the longitudinal groove to form a longitudinally alternating arrangement of lateral grooves.

15. Claim 3 reads as follows:

The tire tread of any claims 1 to 2, wherein the lateral sipe extends laterally in a longitudinally alternating path and/or radially in an alternating path.

16. Claim 13 reads as follows:

The tire tread in any of claims 1 to 12, wherein the spacing between each of the one or more lateral sipes is 5 and 20 mm.

- the subject-matter of the invention in EP'858

17. Paragraphs [002] to [004] in the specification of the patent provide the background of the invention:

[002]: "[…] *Tire treads provide grip to resist tire slip that may result during tire acceleration, braking, and/or cornering. Tire treads may also include tread elements, such as ribs or lugs, and tread features, such as grooves and sipes, each of which may assist in providing target tire performance when a tire is operating under particular conditions*."

[003]: "*One common problem faced by tire manufacturers is how to extend the life of a tire tread. One solution is to increase the tread thickness; however, increasing tread thickness (i.e., depth) generally increases heat generation and rolling resistance*."

[004]: "*Another common problem faced by tire manufacturers is how to maintain and/or improve tire performance during the life of a tire. (…) Tires commonly used in wet and/or off-road tire conditions generally include treads having surface and volumetric voids. In an attempt to maintain or improve wet and/or off-road performance in worn tread stages, the existing surface voids and volumetric voids may be increased in size to provide additional void for the worn tire tread, or additional surface features added to increase the void. However, these alternations may increase the surface and/or volumetric void in the initial or early stages of the tire beyond that which is desired, and/or the tread becomes less stiff, each of which may negatively affect tire performance*."

18. The wear layers have been illustrated in (marked-up by MICHELIN) in Fig. 1 and 5 of the single exemplary embodiment of EP'858 below.

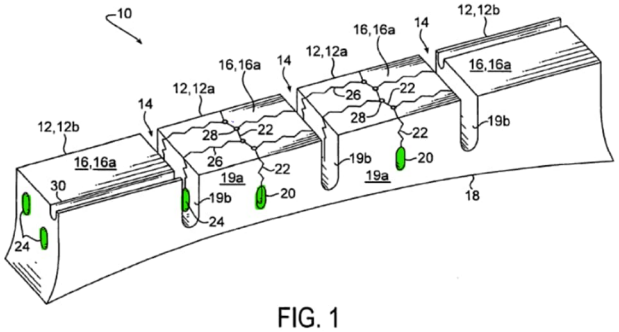


FIG. 1

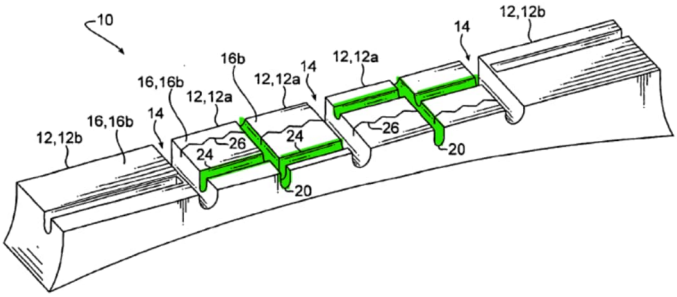


FIG. 5

19. The multi-stage tread includes a first layer (Fig. 1) with longitudinal and lateral sipes (22, 26), and a second layer (Fig. 5) located below the first layer with submerged longitudinal and lateral grooves (20, 24) that become exposed after a depth of the first layer has been worn. The sipes (22, 24) of the first layer extend between the contact surface and the submerged grooves (20, 24) of the second layer.

- the prosecution history

20. During the EPO granting procedure, independent Claim 1 was amended and delimited from JP 2002 063323 (Yokohama Rubber Co, hereafter referred to as 'KUNUGI ') with the features of original Claim 11 that are underlined below:

> *1. A multi-stage tire tread (10) having a contact surface (16) and a plurality of wear layers, each said layer being located at a different depth of the tire tread, the tread comprising:*
>
> *one or more tread elements (12) including a contact surface (16) and having a first wear layer and a second wear layer, wherein the second wear layer is located below the first wear layer;*
>
> *a submerged longitudinal groove (20) extending in a longitudinal direction within the second wear layer of the tread element, wherein said longitudinal groove becomes exposed after a depth of the first wear layer has been worn;*
>
> *a longitudinal sipe (22) extending within the first wear layer between the contact surface and the longitudinal groove;*
>
> *one or more submerged lateral grooves (24) extending from the longitudinal groove in a lateral direction within the second wear layer of the tread element;*
>
> *one or more lateral sipes (26) extending within the first wear layer between the contact surface and one of the one or more lateral grooves, the tread being characterized in that:*
>
> *one or more of the one or more lateral grooves extend from a first lateral side of the longitudinal groove, and one or more of the lateral grooves extend from a second lateral side of the longitudinal groove, such that the one or more lateral grooves extending from the first side of the longitudinal groove are longitudinally offset from the one or more lateral grooves extending from the second side of the longitudinal groove to form a longitudinally alternating arrangement of lateral grooves.*

21. In addition, a reference to KUNUGI disclosing the preamble of Claim 1 was included in the description of EP'858.

[0005]: "*Document JP2001063323 discloses a tire tread according to the preamble of claim 1. Therefore, there is EP'858 relates to a multi-stage tire tread for a tire. A tire tread assists to resist tire slip. The tread includes tread elements to enhance performance, in particular a contact surface with grooves and sipes (i.e. narrow grooves). These grooves and sipes provide grip as well as void that can assist to channel water in wet or off-road conditions. To maintain tire performance in wet and/or off road condition as the tread wears, the tire tread of EP'858 is provided as multi-stage tire tread having a contact surface with a plurality of wear layers at different depths of the tire tread. This allows surface and volumetric void to be increased as the tire tread wears*."

22. The lateral grooves (24) extend from first and second sides of the longitudinal grooves (20) and are longitudinally offset to form a longitudinally alternating arrangement of lateral grooves, as shown in Fig. 3 of EP'858.

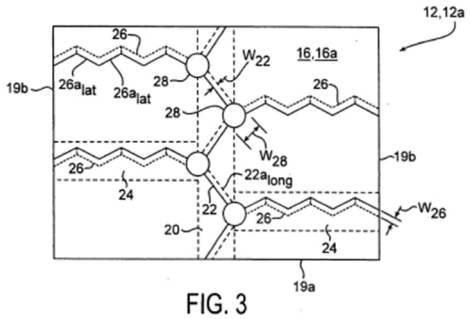


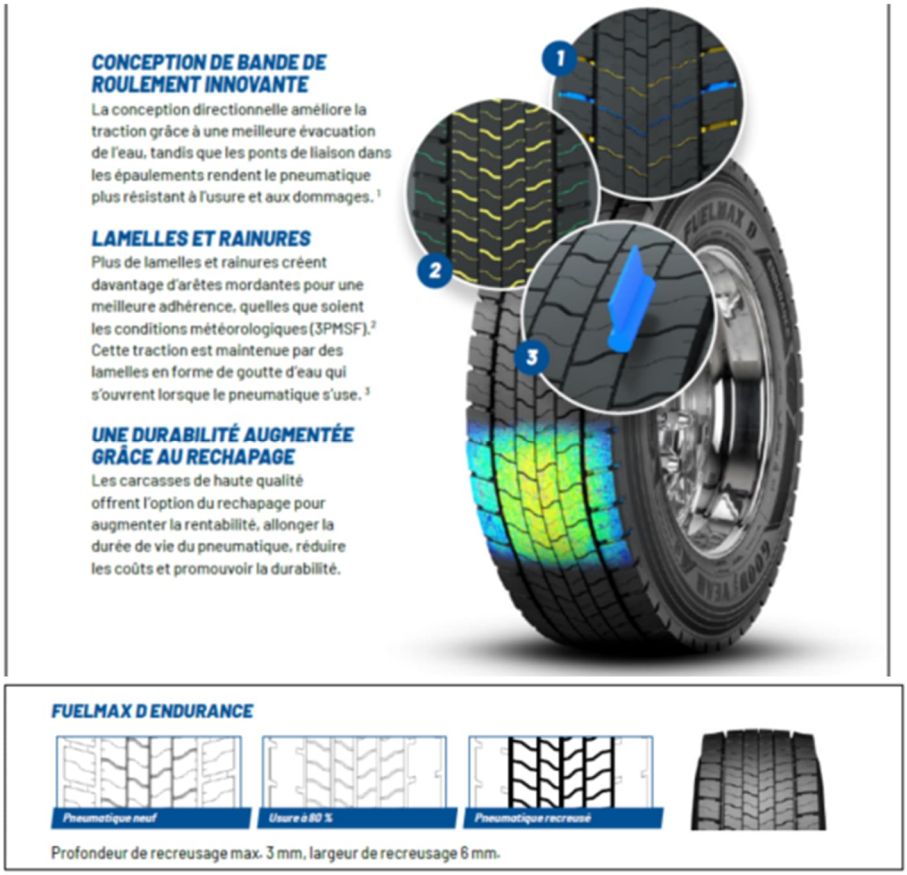
FIG. 3

23. As set out in the description of the figures on col. 6, lines 32-56 of EP'858, by providing an alternating arrangement, the stiffness of the thread element may be maintained, as a fully extending lateral groove or sipe may decrease thread element stiffness.

THE ALLEDGED INFRINGING PRODUCTS

24. According to MICHELIN, the "Fuelmax D Endurance" and the "Fuelmax D GEN-2" tires, which are offered and placed on the market by GOODYEAR in France, fall within the scope of protection of EP'858.

25. The "Fuelmax D Endurance" is shown in the sales brochures as follows (Exhibits AD 4.1 and 4.10 – SoC, §12 and §14):



26. The “Fuelmax D GEN-2” is shown in the sales brochure as follows (Exhibit AD 4.4 – SoC, §18 and §19):

FUELMAX D GEN-2 [MOTEUR]

Le pneu FUELMAX D GEN-2 pour essieu moteur offre un potentiel d'économies de carburant élevé grâce à une résistance au roulement optimisée pour des trajets interrégionaux et longue distance.

Il présente une excellente traction avec des prestations toutes saisons tout au long de la durée de vie du pneu. Il répond aux législations pneus hiver en vigueur.

→ ***Efficacité énergétique associée à un kilométrage et à une traction améliorés et à des émissions de bruits réduites***

Caractéristiques	Comment cela fonctionne	Avantages
① Lamelles nombreuses et profondes	Les lamelles descendent jusqu'à 100% de la profondeur de creux pour une longueur accrue des arêtes mordantes, tout au long de la durée de vie du pneu	Traction sur toutes surfaces de roulage tout au long de la vie du pneu ; excellentes performances de freinage ; marquage 3PMSF
② Larges rainures d'épaulements	Les ouvertures disposées sur les épaulements créent des arêtes mordantes pour des meilleures capacités de traction et une évacuation efficace de l'eau et de la boue.	Grandes capacités de traction tout au long de la vie du pneu
③ Technologie de rainures IntelliMax	La forme « en goutte d'eau » des rainures centrales se referme quand l'empreinte entre en contact avec le sol, les rainures se ressement, ainsi la bande de roulement est plus rigide	Faible résistance au roulement
④ Mesure de la profondeur de creux dans les rainures IntelliMax via les puits de profondeurs spécifiques	La bande de roulement du pneumatique dispose de 16 ouvertures dans les rainures IntelliMax, permettant la mesure de la profondeur de creux restant	Parfaite lisibilité de la profondeur de creux restante sur l'ensemble de la surface de la bande de roulement
⑤ Economie de carburant, très grande résistance à l'abrasion	La formulation chimique de ce mélange évite l'échauffement. Les liaisons de polymères donnent une grande résistance à l'abrasion.	Faible résistance au roulement ; une excellente résistance à l'usure ; potentiel kilométrique élevé.
⑥ Distribution optimisée de la pression sur l'empreinte au sol	Le nouveau profil et la forme optimisée de la carcasse limitent l'usure irrégulière	Usure régulière et potentiel kilométrique élevé

Rechapage et recreusage

Le FUELMAX D GEN-2 est à la fois rechapable et recreusable, il a été développé selon le concept de vies multiples – il permet aux flottes de faire la meilleure utilisation de leur poste pneumatique et il réduit de manière substantielle leur coût par kilomètre.

Recommandations de recreusage

Pneu neuf | Pneu usé à 80% | Pneu recreusé

Profondeur de recreusage max 3 mm, largeur de recreusage 6 mm

27. The GOODYEAR “Fuelmax D Endurance” and” Fuelmax D GEN-2” tires exist in different sizes.

THE PARTIES’ REQUESTS

28. MICHELIN requests the Court to order:

In summary (Reply to the SoD, § 611):

- a declaration of infringement by the Defendants, jointly or severally, of claims 1, 3 and 13 of EP’858 notably by importing into France, offering and placing on the French market the Fuelmax D Endurance and the Fuelmax D Gen-2 tires, as well as by indirectly using the invention (section 4.4.1); thus Michelin does not invoke claim 7 anymore in the declaration of infringement
- a permanent injunction under penalty (section 4.4.2),

- recall and sealing measures under penalty (section 4.4.3); in response to Goodyear's request to exclude OEMs from the recall measures, Michelin specifies by identifying each professional consumer where the recall and sealing measures are sought,
- communication of information, under penalty and if necessary, within the framework of a confidentiality circle to be discussed at the interim conference (section 4.4.5),
- reimbursement of procedural costs and legal costs and that the determination of damages be dealt with in separate proceedings (section 4.4.6).

29. In its Reply to the SoD, MICHELIN requests that all the validity attacks from GOODYEAR be dismissed and proposes conditional amendments of the Patent's claims (with 14 Auxiliary Requests).

30. GOODYEAR requests the Court to:

In summary,

a) IN THE COUNTERCLAIMS FOR REVOCATION:

1. REVOKE patent EP 2 323 858 entirely;
2. ORDER Michelin to bear the legal costs and expenses incurred by the Defendants;

b) IN THE MAIN ACTION FOR PATENT INFRINGEMENT:

- DISMISS all claims put forward by Michelin;
- ORDER Michelin to bear the legal costs and expenses incurred by the Defendants;

In the alternative,

- DISMISS the injunction and the corrective measures for recall requested against the Defendants as being disproportionate, as well as the claim for the communication of the resellers; and LIMIT Michelin's claim for a right of information;
- ORDER Michelin to provide a security bond of 1 million Euros for enforcement of the decision.

c) IN THE APPLICATION TO AMEND THE PATENT, the Unified Patent Court is requested to:

- DISMISS the application for amendments of patent EP 2 323 858 according to any of Auxiliary Requests 1 to 14;
- ORDER Michelin to bear the legal costs and expenses incurred by the Defendants.

GROUNDS FOR THE DECISION

I. **Jurisdiction and competence**

31. EP'858 has not been opted out. It has been validated in France, where it is still in force.

32. The alleged acts of infringement are committed in France. The Paris Local Division of the UPC therefore has jurisdiction and competence to hear this infringement action, pursuant to Art. 33(1) a) UPCA, in combination with Art. 7.2 Bruxelles Regulation I bis ("BR I").

33. In addition, one of the Defendants – Goodyear France – is a French company, consequently the Paris Local Division of the UPC also has jurisdiction and competence under Art. 33(1) b) UPCA, in combination with Art. 4 BR I. Goodyear France has commercial links with the other two Defendants, and the alleged infringement acts relate to the same products (Fuelmax D Endurance and Fuelmax D Gen 2 tires).

II. **The Patent and Claim construction**

<u>The invention according to the Patent</u>

34. Claim 1 of the patent, as maintained by the EPO opposition division, reads as follows (the "feature breakdown" presentation by the Applicant is not contested by the Defendant and has been adopted by the Court)[1]:

Feature 1	A multi-stage tire tread (10) having a contact surface (16) and a plurality of wear layers, each said layer being located at a different depth of the tire tread, the tread comprising:
Feature 2	one or more tread elements (12) including a contact surface (16) and having a first wear layer and a second wear layer, wherein the second wear layer is located below the first wear layer;
Feature 3	a submerged longitudinal groove (20) extending in a longitudinal direction within the second wear layer of the tread element, wherein said longitudinal groove becomes exposed after a depth of the first wear layer has been worn;
Feature 4	a longitudinal sipe (22) extending within the first wear layer between the contact surface and the longitudinal groove;
Feature 5	one or more submerged lateral grooves (24) extending from the longitudinal groove in a lateral direction within the second wear layer of the tread element;
Feature 6	one or more lateral sipes (26) extending within the first wear layer between the contact surface and one of the one or more lateral grooves,
Feature 7	the tread being characterized in that: one or more of the one or more lateral grooves extend from a first lateral side of the longitudinal groove, and one or more of the lateral grooves extend from a second lateral side of the longitudinal groove, such that the one or more lateral grooves extending from the first side of the longitudinal groove are longitudinally o**ff**set from the one or more lateral grooves extending from the second side of the longitudinal groove to form a longitudinally **alternating arrange**ment of lateral grooves.

[1] For the sake of clarity, certain terms have been highlighted by the Court using bold font.

35. EP'858 relates to tire treads and more specifically to those having variable surface area ([0001]).

36. Tire treads provide grip to resist tire slip that may result from tire acceleration, braking and/or cornering ([0002]).

37. To increase the tire performance when a tire is operating under particular conditions, tire treads may include tread elements, such as ribs or lugs, and tread features, such as grooves and sipes ([0002]).

38. One problem faced by tire manufacturers is how to maintain and/or improve tire performance during the life of a tire in wet and/or off-road conditions as the tread wears ([0004]). At the date of filing of EP'858, tires commonly used in wet and/or off-road conditions generally include treads having surface voids and volumetric voids ([0004]). One possibility to maintain or improve wet and/or off-road performance in worn tread stage, as explained in EP'858, would be to increase in size the existing surface voids and volumetric voids ([0004]). However, these alternations may increase the surface and/or volumetric void in the initial or early stages of the tire beyond that which is desired, and/or the tread becomes less stiff, each of which may negatively affect tire performance ([0004]).

39. Thus, the technical problem that the invention addresses is how to maintain or increase the tire performance in wet and/or off-road conditions in worn tread stage.

40. EP'858 expresses a technical problem as follows (G017, [0005]):

"*Therefore, there is a need for a tire tread that provides increased void performance at worn stages, especially in the central or intermediate portions of the tread width, without sacrificing tire performance*."

41. Claim 1 provides a solution to the abovementioned problem by providing submerged 47 grooves and particularly submerged lateral grooves that are arranged alternatively relatively to a longitudinal submerged groove (as described in [0024], Fig. 1 and 3).

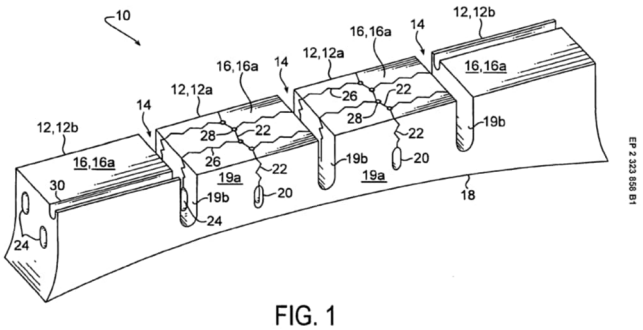


FIG. 1

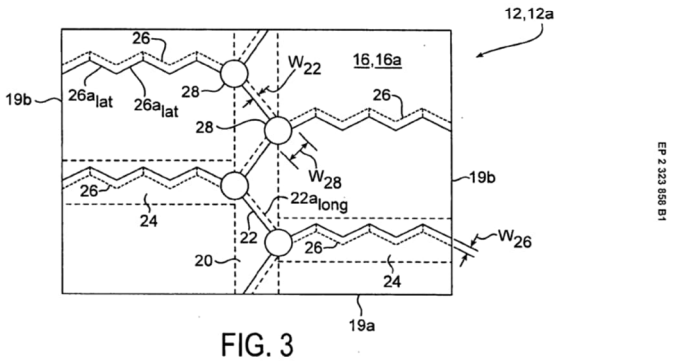


FIG. 3

42. When the tire is worn and the submerged grooves (see grooves 20 and 24) become exposed, they provide additional surface voids and volumetric voids at a point where the volumetric void provided by the other grooves (grooves 14 on Fig. 1 and 5) is low and thus the performance on wet or off-road conditions is weak (20 and 24 highlighted in green on Fig. 5 and [0020], [0023], [0029]).

43. Therefore, at a worn stage the exposed submerged grooves enhance the performance of the tire on wet or off-road conditions.

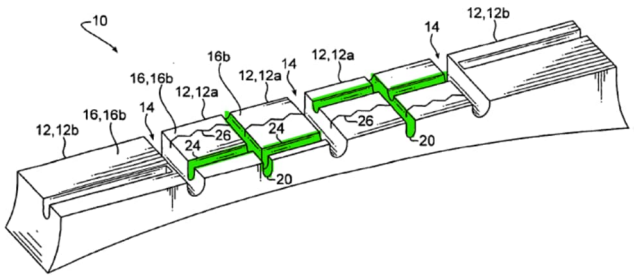


FIG. 5

The skilled person

44. The parties do not dispute the appropriate definition of the person skilled in the art in the present case, and the Court retains the one proposed by GOODYEAR in its SoD (§92), which is similar to the one proposed by MICHELIN in its Reply to SoD (§47):

"*The specialist of tire treads who is aware of the techniques that were implemented in tires on the market before 11 September 2008 and who has knowledge of the content of the reference books published by this date that relate to various aspects of tire treads*."

Claim interpretation

45. The principles applicable to claim construction have been set out by the UPC Court of Appeal in its final order in UPC_CoA_335/2023 (Order of 26 February 2024, as rectified, *NanoString v. 10x Genomics*) and reminded as follows in the recent CoA final decision of 25 November 2025 (UPC_CoA_528/2024, *Amgen v. Sanofi*) in its §39: " *The patent claim is not only the starting point but the decisive basis for determining the protective scope of a European patent under Art. 69 EPC in conjunction with the Protocol on the Interpretation of Art. 69 EPC. The interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim. The patent claim is to be interpreted from the point of view of a person skilled in the art. In applying these principles, the aim is to combine adequate protection for the patent proprietor with sufficient legal certainty for third parties*."

In the case at hand

-In Claim 1, "Tread element"

46. The parties disagree on the interpretation of "tread element" in features 2, 3 and 7 in Claim 1 of the patent.

47. The patent in suit does not provide an explicit definition of the concept of a "tread element".

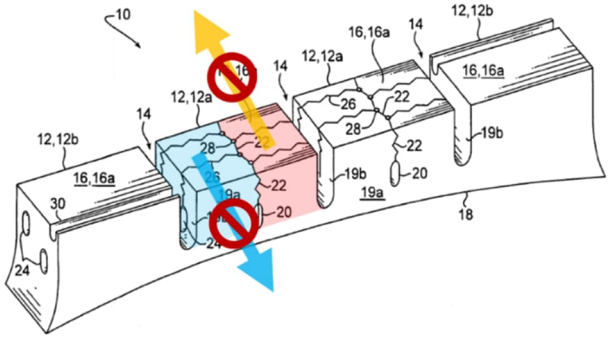
48. GOODYEAR, in its Statement of Defence, proposes a definition by referring to the description of the patent in question [0018], arguing that, in view of the single embodiment proposed in EP'858:

    -All claimed tread features (the sipes and grooves of Claim 1) lie within a single tread element.

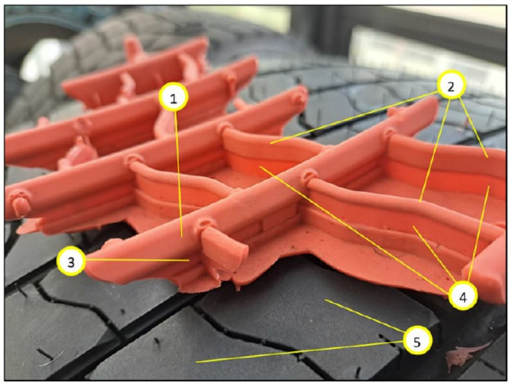
    -The "alternating arrangement" of the lateral grooves according to feature 7 of Claim 1 may comprise only one submerged lateral groove on the left side (of the longitudinal groove) that is offset (even very slightly) from one submerged lateral groove on the right side.

    -All sipes within the tread element, in particular the longitudinal sipe, have an "alternating path" (in the example, a zig-zag shape) and extend in depth from the top surface to the submerged grooves, thereby interlocking both sides of the longitudinal sipe and maintaining a single tread element.

49. To support the proposed definition, GOODYEAR illustrates it with the following figure extracted from the patent (Fig 1. EP'858), to which the Defendant has added arrows and colours, explaining that: "*this interlocking configuration allows the two sub-elements shown above in blue and red to stick together and behave as a single tread element*" (SoD, §79 and §80), as follows:



50. GOODYEAR adds that this interpretation is consistent with the picture annotated by the Claimant for presenting the accused products, in its SoC, §25:



25. This picture shows:
- -tread elements (**reference 5**)
- -embedded longitudinal grooves (**reference 1**)
- -embedded lateral grooves (**reference 2**)
- -longitudinal sipes (**reference 3**) extending between the contact surface and the longitudinal grooves and
- -lateral sipes (**reference 4**) extending between the contact surface and the lateral grooves.

51. However, the Court is of the view, as MICHELIN argues in its Reply to SoD, that this interpretation proposed by the Defendants is not supported by the wording of Claim 1. Indeed, Claim 1 cannot be limited to one specific embodiment. According to Claim 1, tire treads include tread elements. These tread elements are, for example, ribs or lugs (paragraph [0002] of EP'858): tire treads may also include tread elements, such as ribs or lugs, and tread features, such as grooves and sipes, each of which may assist in providing target tire performance when a tire is operating under particular conditions.

52. In particular, paragraph [0019] of EP'858 is clear on what a tread element is, according to Claim 1 of the patent in suit: "*In one embodiment, as shown in FIGS. 1-5, tread elements 12 may comprise one or more intermediate tread elements 12a, each of which are generally located between a pair of shoulder tread elements 12b. Shoulder elements 12b are generally located along the sides of tread 10. Multiple tread elements 12 are separated by longitudinal grooves 14*. [...]"

53. MICHELIN has rightly illustrated what a tread element is according to Claim 1, with their annotations on Fig. 1 above, showing that there can be one or several tread elements: the tread elements are separated by wide open grooves (reference 14 coloured blue on Fig. 1 of EP'858 reproduced above, Reply to SoD, §54):

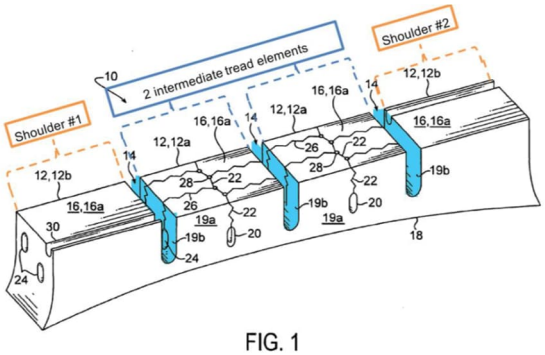


FIG. 1

54. This interpretation of the "tread element" is in line with what is mentioned in independent Claim 1.

-In Claim 13, "the spacing between lateral sipes"

55. The Parties disagree on the measurement method regarding the "spacing between lateral sipes" as mentioned in Claim 13 of the Patent.

56. GOODYEAR refers to [0024] of the Patent (SoD, §519) to argue that the proper measurement method as disclosed in Claim 13 is the spacing measured along the same side of the longitudinal groove.

57. MICHELIN affirms that the distances to be taken into account are between two consecutive lateral sipes or grooves on either side of the tread element (SoC, § 177).

58. The Court notes that EP'858 does not explicitly state how to measure the concerned spacing. As MICHELIN rightly points out (Reply to SoD, §461), [0024] of the Patent specifies how to measure the distance between the longitudinal grooves, but does not indicate how to measure the distance between two lateral sipes, contrary to what GOODYEAR claims: (Reply to the SoD, §495): "*the first sentence (of the [0024]) specifies the way the measurement is performed since it differs from what the person skilled in the art would implement in the context of the invention. Indeed, the invention is about an "offset" between the lateral grooves on the left side of the longitudinal submerged groove and the lateral grooves on the right side of the longitudinal submerged groove. Therefore, the offset is applied on grooves that are not on the same side of the longitudinal submerged grooves. Therefore, if the skilled person had to measure the space between two lateral grooves, he would inevitably choose two consecutive lateral grooves on either side of the longitudinal submerged groove. This is why the specific measurement of the first sentence had to be specified, whereas in the second sentence, no specific measurement needs to be specified to measure two consecutive lateral sipes on either side of the longitudinal submerged groove.*"

59. It is therefore logical to adopt the method that a person skilled in the art would use in the context of this patent, namely, measuring the distance between two consecutive lateral sipes on either side of the longitudinal submerged groove.

III. Probative value of the "expert's affidavit"

60. MICHELIN provides an 'expert's affidavit" from Dr Poulbot in support of its SoC (Exhibit AD 3.2).

61. GOODYEAR argues that Dr Poulbot is not an expert independent from the parties. According to the Defendant, her written statement fails to comply with R. 181(2) RoP and should be dismissed (SoD, §182).

62. In response, GOODYEAR provides an "expert's affidavit" from Mr. van Tuijl, a former GOODYEAR employee, who is currently retired (Exhibit G034).

63. The arguments between the parties regarding the probative value of these "written expert statements" are no longer relevant, since at the hearing MICHELIN's representative admitted that Dr Poulbot, as an employee of MICHELIN, was in fact expressing as a "declarant", and not an expert.

64. The Court is of the opinion that Dr Poulbot's statement is a "witness affidavit" and not an expert's statement. On GOODYEAR's side, Mr Van Tuijl, who stated that he had also spent his entire career working for GOODYEAR, will likewise be regarded by the Court as a witness.

65. Although these two written statements do not carry the probative value of an independent and objective expert, the Court considers them to be valuable technical information provided by persons involved in the development of vehicle tire design at the time of the granting of the patent in suit.

IV. Validity

Number of the validity attacks

66. GOODYEAR contends that the claims of EP'858 either lack novelty or inventive step, or both (SoD p. 28-100).

67. MICHELIN, in its reply to SoD and defence to counterclaim, argues that the number of validity attacks opposed by GOODYEAR is excessive and unmanageable (see section 2.1 of its Rejoinder). The Claimant argues that the Defendants raised 36 nullity attacks.

68. At the interim conference (IC), the judge rapporteur considered asking the Defendants for a ranking list of their validity attacks, in accordance with the Milan CD decision of 23 October 2025 (UPC_CFI_497/2024, *Labrador v. Biomérieux*).

69. On 16 February 2026, GOODYEAR provided a brief with a selection of the main documents relevant to their validity attacks (see the procedural order following the IC pursuant to R.105.5 RoP of 20 February 2026).

70. The panel therefore understands that, according to the Defendants, the prior art documents deemed most relevant for establishing lack of novelty and lack of inventive step are as follows:
    - Kunugi (G035, novelty/starting point for inventive step),
    - Riches 1 (G038, novelty/starting point for inventive step),
    - Riches 2 (G053, starting point for inventive step).

71. It is therefore in this order that the panel will examine the validity attacks raised in the counterclaim according to the ranking made by GOODYEAR.

A- Novelty (Art. 54 EPC) of Claim 1

Legal framework

72. Pursuant to Art. 54 and Art. 138(1)(a) EPC, a European patent may be revoked if it lacks novelty. An invention is considered new if it does not form part of the state of the art. The assessment of novelty within the meaning of Art. 54(1) EPC requires an examination of the entire content of the prior publication. The decisive factor is whether the subject-matter of the patent at issue, with all its features, is directly and unambiguously disclosed in the prior art (CoA, UPC_CoA_182/2024, 25 September 2024, *Mammut v. Ortovox*, §123).

73. When assessing the novelty, the UPC court must take into account the following elements: (CD Paris, UPC_CFI_202/2024, 29 May 2025, *Lindal v. Rocep*):

"*62. It must be borne in mind that, for the purpose of the application of Article 54 (1) 'EPC', an invention is to be considered part of the state of the art when it is found clearly integrally, directly and unambiguously in one single piece of prior art and it is identical in its constitutive elements, in the same form, with the same arrangement and the same features (see Munich LD, decision issued on 31 July 2024, UPC_CFI_233/2023).*

63. This issue is to be addressed from the vantage point of the notional skilled person, taking into account this person's common general knowledge at the publication date of the cited document in the case of prior art cited under Article 54 (2) 'EPC' (see Düsseldorf LD, decision issued on 28 January 2025, UPC_CFI_355/2023)."

74. Thus, the claimed invention is for the skilled person directly and unambiguously derivable from a single prior art disclosure, using common general knowledge. However, the same technical effect is not required in the case of a product invention defined by structural technical features only, which covers a product considered in its own right, independently of any technical result or effect.

Novelty over KUNUGI (G035)

75. KUNUGI is a Japanese patent (JP 2001/063323) entitled "Pneumatic Tyre" and published on 13 March 2001, before the filing date of EP'858. (Exhibit G035; Exhibit AD 3.01bis)

76. The description of KUNUGI provides these elements:

[0001] "*The present invention relates to a pneumatic tyre, and more specifically to a pneumatic tyre with reduced air pumping noise*."

[0006] "*The problem to be solved by the present invention is as follows:*
The object of the present invention is to reduce air pumping noise by preventing the air in the grooves from being compressed when the tyre comes into contact with the ground, which is one of the causes of the increase in air pumping noise described above."

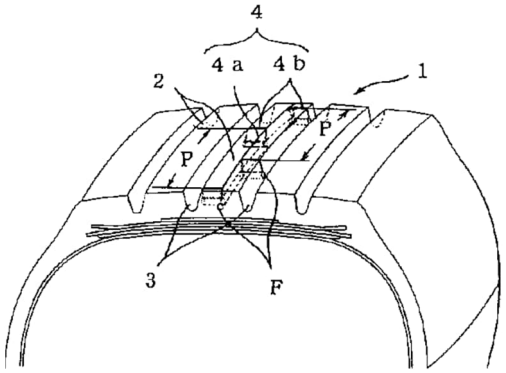
[0011] regarding "Embodiment of the invention" indicates:
"*The present invention will be described below with reference to the drawings*."

[0012] "*Figure 1 is a cross-sectional perspective view illustrating an example of the tread part of a pneumatic tyre according to one embodiment of the present invention. The pneumatic tyre according to an embodiment of the present invention comprises a sipe 4 such as that illustrated in Fig.1 in at least one rib 2 of a plurality of ribs 2 which constitute a tread 1. The sipe 4 consists of a sipe 4a in a circumferential direction of the tyre and a sipe 4b which connects the sipe 4a to a groove. The bottom part of the sipe 4 has the bulge F, and the bulges F of the sipes 4a and 4b are connected at the same height. However, it goes without saying that other portions of the bulges F than the connected portion can be arranged at shallower or deeper heights*."

[0013] "*The sipe 4b which connects to the grooves may be arranged linearly between one groove 3 and the other groove 3 that sandwich the rib 2, or may be arranged independently, at any positions on each side of the sipe 4a in the circumferential direction. In addition, if the grooves in the circumferential direction are bent, the sipes 4a in the circumferential direction are preferably arranged parallel to the bent grooves*."

77. Claim 1 of KUNUGI discloses: "*A pneumatic tyre with a pattern comprising ribs extending in the circumferential direction of the tyre, wherein at least one rib is provided with a sipe in the circumferential direction of the tyre and a further sipe connecting the sipe to a groove, the sipe having a bulge at the bottom portion with a sectional area S of 1mm2 ≤ S ≤ 28mm2*."

78. Fig. 1 of KUNUGI illustrates an embodiment as follows:



-KUNUGI is a relevant prior art document

79. According to the Defendant, this is the most efficient novelty attack in its ranking list. GOODYEAR already opposed the lack of novelty over KUNUGI in its response to the cease-and-desist letter of 27 July 2024 from MICHELIN (Exhibits AD 1.7 and 1.8).

80. In response, MICHELIN contests the relevance of this prior art document in the assessment of the novelty, since KUNUGI aims to resolve the problem of the evacuation of the air, which is a different problem than the "water drainage" dealt with by the patent in suit.

81. MICHELIN relies on the Affidavit from Dr Poulbot (which is not contradicted on this point by the statement from Mr van Tuijl submitted by GOODYEAR), indicating that the technical problem differs between the patent in question and the prior art document KUNUGI, which was intended to solve a problem relating to the "air extraction, not water drainage" (English translation, Exhibit AD 3.02).

82. MICHELIN relies on Dr Poulbot's statement to argue that KUNUGI is not a relevant prior art document for challenging the validity of the patent in question, however this fails to convince the Court, since KUNUGI is the only prior art document cited in the patent to describe the state of the art.

83. According to the Claimant, the Court cannot be bound by an assertion made by the patent applicant or the EPO examiner (even if the assertion finds its way into the description) (Reply to SoD, §102,). The Court notes that even though the reference to this document was added at the request of the EPO examiner during the grant phase, it has not been demonstrated that the latter objected to the such reference being added. Not only is this prior art document cited, but it is also expressly mentioned in the paragraph [0005]:

    [0005] "*Document JP2001063323 discloses a tire tread according to the preamble of claim 1. Therefore, there is a need for a tire tread that provides increased void performance at worn stages, especially in the central or intermediate portions of the tread width, without sacrificing tire performance*."

84. For these reasons, it has been sufficiently demonstrated that KUNUGI constitutes a relevant prior art document for the assessment of the novelty of the structural technical features of claim 1 of the patent in question, regardless of the technical effect described in the prior art document.

85. As stated above, the technical effect of the prior art is not relevant in the case of a product invention.

-Discussion on the lack of novelty over KUNUGI

86. According to GOODYEAR, the configuration of Fig. 1 of KUNUGI contains each and every feature of Claim 1 EP'858 (SoD p. 29-47).

87. In the SoD, the anticipation of Claim 1 by KUNUGI is summarised in the table below (SoD, §143):

(iv) Summary

(143) Anticipation of claim 1 is summarized in the below table:

	Document *Kunugi* (2001) — G035	Claim 1 of EP 858 — G017
1	**Figure 1** shows a tire tread having at least two stages corresponding to two different wear layers located at a different depth of the tread (fig.1). The first wear layer corresponds to the depth of the	*A* ***multi-stage tire tread*** *having a contact surface and a plurality of wear layers, each said layer being located at a*

[2] $28mm^2 \approx (6mm/2)^2 \times \pi$

	narrow portion of the sipes 4a and 4b and the second wear layer corresponds to the depth of the bulges F. Example 3 (Table 1), among others, implements the configuration of Figure 1.	*different depth of the tire tread, the tire tread comprising:*
2	The tread comprises multiple ribs (2) that are only separated from each other by narrow grooves 1 (fig.1, [0012]). A **rib 2** is a tread element having a contact surface, a first wear layer and a second wear layer located below the first one (fig.1).	*one or more* ***tread elements*** *including a contact surface and having a first wear layer and a second wear layer, wherein the second wear layer is located below the first wear layer;*
3	The tread comprises a **circumferential bulge F located below sipe 4a** extending in a longitudinal direction within the second (i.e. deeper) layer of the rib (fig.1, [0012]). *Kunugi* explains that *"the position of the bottom of the sipe's bulge was 1.6mm from the bottom of the groove."* ([0023]), and that "[slip] *sign provided at six or more locations in the circumferential direction of the tyre, raised 1.6 mm above the bottom of the groove"* ([0015]), which means that the bottom of the sipe's bulge lies at the same height as the slip sign, implying that circumferential bulge F necessarily appears at the surface of the tread before the slip sign is reached upon wearing of the tire tread. Hence the longitudinal groove formed by the circumferential bulge F becomes exposed after a depth of the first wear layer has been worn.	*a submerged* ***longitudinal groove*** *extending in a longitudinal direction within the second wear layer of the tread element, wherein said longitudinal groove becomes exposed after a depth of the first wear layer has been worn;*
4	The tread comprises a **longitudinal sipe 4a** extending within the first (i.e. upper) layer of the rib 2 (fig.1, [0012]) between the contact surface and the circumferential bulge F.	*a* ***longitudinal sipe*** *extending within the first wear layer between the contact surface and the longitudinal groove;*
5	According to *Kunugi*, *"The bottom part of the sipe 4 has the bulge F, and the bulges F of the sipes 4a and 4b are connected at the same height."* ([0012]). Hence, the tread comprises **lateral bulges F located at the bottom of the lateral sipes 4b** extending from the circumferential bulge F in a lateral direction within the second (i.e. lower) wear layer (fig.1).	*one or more submerged* ***lateral grooves*** *(24) extending from the longitudinal groove in a lateral direction within the second wear layer of the tread element;*
6	The tread comprises **lateral sipes 4b** extending within the first (i.e. upper) wear layer below the contact surface and above the corresponding lateral bulges F located at the bottom of the sipes 4b (fig.1, [0012]).	*one or more* ***lateral sipes*** *(26) extending within the first wear layer between the contact surface and one of the one or more lateral grooves,*

		the tread being characterized in that:
7	*Kunugi* states that the sipes 4b can be *"arranged independently, at any positions on each side of the sipe 4a in the circumferential direction."* ([0013]) This is implemented in the embodiment of Figure 1 where a longitudinally alternating arrangement of lateral bulges F is provided on one side and the other of the circumferential bulge F (fig.1), the lateral bulges F on the left side being offset from those on the right side. The lateral bulges F therefore form a longitudinally alternating arrangement of submerged lateral grooves.	*one or more of the one or more lateral grooves extend from a first lateral side of the longitudinal groove,* *and one or more of the lateral grooves extend from a second lateral side of the longitudinal groove,* *such that the one or more lateral grooves extending from the first side of the longitudinal groove are* ***longitudinally offset*** *from the one or more lateral grooves extending from the second side of the longitudinal groove to form a longitudinally* ***alternating arrangement*** *of lateral grooves.*

88. According to MICHELIN, KUNUGI cannot destroy the novelty of EP'858 for the following main reasons:

    1) KUNUGI deals with a different technical problem.
    2) KUNUGI's bulges would not have the capacity to drain water.
    3) In KUNUGI, the bulges would never appear at the surface of the tread.
    4) KUNUGI would not disclose an alternating arrangement of lateral grooves.

89. The Court notes that MICHELIN's arguments suggest that features 1 to 6 (i.e. the preamble to Claim 1 of the patent in suit) are not disclosed by KUNUGI, are contradicted by paragraph [0005] of the Patent itself, which expressly states that the entire preamble had already been disclosed by KUNUGI.

90. Moreover, the Court finds that MICHELIN's arguments 1 to 3 are not related to aspects that are mentioned in the claims of the patent in suit. In accordance with the principles of patent interpretation laid down in Art. 69 EPC and UPC case law (UPC_CoA_335/2023, *NanoString v. 10x Genomics*), the wording of the claims is the key element when assessing the novelty, and in Claim 1 of EP 538, the features recite a tread structure, having sipes with submerged grooves. There are no functional or physical elements in the claim relating to air pumping vs water drainage, water drainage capacity, or groove depth.

91. It follows that the only serious argument to be considered concerns the presence of feature 7 of Claim 1 in the KUNUGI document (i.e. MICHELIN's argument 4). For the sake of completeness, the Court will nevertheless examine all the main arguments put forward by MICHELIN in its defence to the Counterclaim for revocation (i.e. MICHELIN's arguments 1 to 4).

1st argument from MICHELIN: KUNUGI deals with a different problem (reducing air-pumping noise)

92. This argument does not stand up to the fact that KUNUGI is the only prior art cited in the patent, which states that it discloses the entire preamble of the main claim of EP'858; it should be borne in mind that the patent specification is its own dictionary.

93. Furthermore, this argument has already been dismissed in the section concerning the relevance of KUNUGI for assessing novelty. In accordance with the principles of patent interpretation laid down in Art. 69 EPC and UPC case law (UPC_CoA_335/2023, *NanoString v. 10x Genomics*), the wording of the claims is the key element when assessing the novelty.

94. In the present case, in Claim 1 of EP 538, the features recite a tread structure, having sipes with submerged grooves. There are no functional or physical elements in the claim (e.g., dimensions) that express water channelling or change in Contact Surface Ratio ("CSR"). Even in its description, EP'858 does not place a requirement on how much the capability of water channelling should be. Thus, the Court shall consider a structure of sipes with submerged channels, with channels having a larger dimension than the sipes. It is not disputed that in KUNUGI the "bulges "(as "the grooves" in EP'858) are larger than the sipes.

95. As another UPC LD has already noted, in such a case, the intended technical effect (see the Munich decision cited below) is irrelevant when assessing the novelty. It is sufficient to verify whether all the features disclosed in the claim of the patent in question are found in their entirety in a single prior art document.

    *"Given the purpose specified in the claim, the only relevant factor for the novelty test is whether a device with the spatial physical characteristics as required by the contested patent for the valve actuating device is already disclosed in the prior art (Article 54(1) EPC). If this is the case, the device is disclosed 'as such', regardless of its intended use. The only exception to this is if the device disclosed as such with all its spatial and physical features is unsuitable for the intended purpose of the contested patent or requires modification in order to be used for this purpose." (*LD Munich, 22 August 2025, UPC_CFI_248/2024, *Brita v. Aquashield*)[2]

[2] For the sake of clarity, certain terms have been highlighted by the Court using bold font.

96. Furthermore, the Defendants have sufficiently demonstrated that, upon reading KUNUGI, a person skilled in the art will understand that the invention described in the cited prior art is capable of draining water, as set out in the response to the second argument in MICHELIN's defence.

2nd argument from MICHELIN: KUNUGI's bulges would not have the capacity to drain water

97. MICHELIN's argument that the 'bulges' in KUNUGI cannot have the same technical effect as the 'grooves' in EP'858 – that is to say, that they are not capable of draining water – is essentially based on Dr Poublot's statement. However, the Court does not find this argument convincing, since, first of all, EP'858 does not indicate the required width of the 'grooves'. Furthermore, KUNUGI states in its general teaching in [0007] that the width of the "bulges" can be up to 28mm2, and it is clear from Mr Tuil's statement that this dimension is sufficient for water drainage. It is confirmed by the general literature known to a skilled person in the concerned field that the choice of the tread pattern has a similar effect on "water drainage" as on "air extraction".

    "*Thus, in order to reduce noise generated by air pumping and pipe resonances, the designer must take all precautions to avoid closed pockets, cavities with narrow outlets and long grooves without ventilated side branches. Fortunately, this requirement is totally in line also with good water drainage properties of the tyre tread. Fig. 10.32 shows two relatively similar tread.*" (Exhibit G016, on tire noise reference book published in 2002, p. 226-227, [last § p.226])

98. The Court notes that no minimum volumetric void is described or even discussed in EP'858. The Patent merely notes that [0017] states that: "*the amount of volumetric void is also considered and analysed, as this void may be desirable for channel water in wet or off-road conditions*".

99. To conclude, the Court has taken due consideration to the declarations of Mrs. Poulbot and Mr. Van Tuijl on behalf of MICHELIN and GOODYEAR respectively and understands from both these declarations that from a technical perspective, the capability of water channelling decreases with decreasing width of the channels. It appears from the professional literature put forward by GOODYEAR that in practice, even a smaller width groove in a tire profile, e.g. one that is provided for reduction of sound, can contribute to water channelling (see 'Mechanics of Pneumatic tires, G015 page 338, Fig. 5.104 and 'Tyre road noise reference book' G16, page 226).

3rd argument from MICHELIN: the bulges would never appear at the surface of the tread

100. According to MICHELIN (SoC, §119), in KUNUGI, the bulges are not configured to be exposed, referring to [0017] of the prior document that indicates that cross-sectional S is chosen such that the bulge remains open, and the sipe above it is closed. They conclude that the bulge is not intended to be exposed to the surface of the tire, and they also refer to Dr Poulbot's statement as follows (Exhibit AD 3.2):

"*Je comprends donc qu'il est préférable, selon KUNUGI, que la surface d'usure n'atteigne jamais le renflement, c'est-à-dire que le renflement reste fermé et qu'il remplit sa fonction d'évacuation d'air à tout le stade d'usure du pneu*."

101. However, GOODYEAR (SoD, § 207–214) rightly points out that this interpretation of KUNUGI is in clear contradiction with what KUNUGI sets out in paragraphs 23 and 15, namely a bulge whose bottom lies at the same level as the slip signs (adverse translation Exhibit AD 3.01bis):

"*The tyre was with the size of 11R22.5 14 P R, and with 4-groove rib pattern. The sipes were formed in a rib positioned at the centre of the width direction of the tread, the sipe's thickness T was 0.7mm, and* ***the position of the bottom of the sipe's bulge was 1.6mm from the bottom of the groove***." ([0023], emphasis added)

(…) slip sign provided in the main groove (sign provided at six or more locations in the circumferential direction of the tyre, raised 1.6 mm above the bottom of the groove)." ([0015])

102. The Defendants conclude that the bulge extends above the slip signs. It is therefore technically impossible to have, among the tire examples exposed in Table 1 of KUNUGI, a tire tread in which the bulge would be designed to stay submerged until the maximum wear of the tire, without being exposed at the surface of the tread. This conclusion is borne out by what is stated in Mr Van Tuijl's affidavit. (G034, point 37):

> c. The last sentence of *Kunugi* paragraph [0012] indicates that the depth of the bulge F may vary along its longitudinal or lateral part, but the junction of longitudinal and lateral bulges is at the same height. For me this doesn't mean that the bulge F goes below the groove 3 lowest point. This is supported by the statement in paragraph [0015] that mentions that "*it is preferable that the height position of the bottom part of bulge F is between the plane of the slip sign provided in the main groove (sign provided at six or more locations in the circumferential direction of the tyre, raised 1.6 mm above the bottom of the groove) and the bottom of the groove.*". The variation of depth for sipes along their path is an often-used feature to optimize the tread stiffness and/or tire performance.
> d. The air pumping effect is greatest when the tire is new, because of the increased volume of air in the grooves and the lowest stiffness due to higher tread depth, which results in groove closing and compression of the air inside the grooves. When the tire wears the tread depth reduces and the stiffness of the tread increases, and as such the groove closing gets less, reducing the air pumping noise.

103. Furthermore, MICHELIN adds arguments concerning tread depth and presents calculation suggestions, considering 21mm as the tread depth for KUNUGI versus 15mm for EP'858 (Exhibit AD 3-5), but the Court notes that first, thread depth is not actually a claim element in the patent in suit and second, as GOODYEAR has pointed out, these measures are merely assumptions that have not been substantiated by the Patent or the prior art document at hand.

104. According to the Court, it is clear that in KUNUGI, the description does mention that the slip mark should be positioned such relative to the bulge (submerged longitudinal groove) that it would become exposed during the last stages of normal use and would provide the structure claimed in Claim 1.

4th argument from MICHELIN: KUNUGI would not disclose an alternating arrangement of lateral grooves

105. This argument put forward by MICHELIN is, in the Court's view, the most serious as it relates to the "characterising part" of the patent, i.e. feature 7 of Claim 1.

106. As MICHELIN clearly indicated in its SoC, (§75), feature 7 discloses a "*submerged lateral grooves and their corresponding lateral sipes from one side of the submerged longitudinal groove are offset from the submerged lateral grooves and their corresponding lateral sipes from the other side of the submerged longitudinal groove to form a longitudinally alternating arrangement of lateral grooves*."

107. This "offset" or "alternating arrangement" is illustrated in Fig. 3 of the Patent as coloured by MICHELIN:

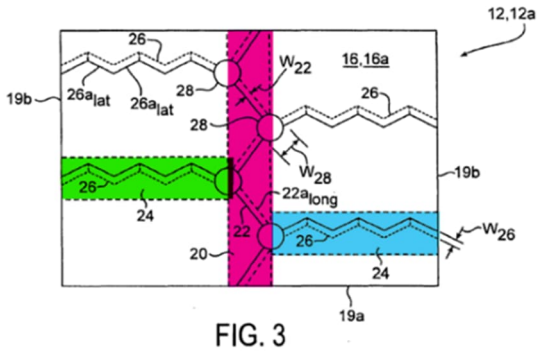


FIG. 3

108. According to MICHELIN (SoC, §106-115), it is difficult to read that Fig.1 of KUNUGI would disclose alternating 4b sipes. Moreover, KUNUGI does not contain any clear teaching – other than that in paragraph [0019], which concerns the number of sipes 4b, in relation to the contact surface of the tire, and in paragraph [0013], which indicates that the position of the sipes 4b can be set arbitrarily:

[0013] The sipe 4b which connects to the grooves may be arranged linearly between one groove 3 and the other groove 3 that sandwich the rib 2, or may be arranged independently, at any positions on each side of the sipe 4a in the circumferential direction. In addition, if the grooves in the circumferential direction are bent, the sipes 4a in the circumferential direction are preferably arranged parallel to the bent grooves.

109. MICHELIN draws upon the statement from Dr Poulbot in points 31 and 33:

"*31. J'en viens maintenant à la position des entailles 4b. Le paragraphe [0013] du document KUNUGI me paraît être le seul paragraphe de la description qui indique comment positionner les entailles 4b (le nombre d'entailles est mentionné au paragraphe [0019]). Il est d'abord suggéré que les entailles 4b entre deux rainures 3 peuvent être alignées, ce qui est contraire à l'enseignement du brevet EP'838 s'agissant de la rigidité. Le seul autre enseignement technique concerne le positionnement des entailles latérales 4b par rapport à l'entaille longitudinale 4a : il est indiqué que la position des entailles 4b de part et d'autre de l'entaille 4a est arbitraire : il me semble clair pour la personne du métier que la circulation d'air n'est pas affectée par la position des entailles 4b de part et d'autre de l'entaille 4a. Il n'y a aucune suggestion ni indication à ce stade sur la rigidité. […]*

33. […] Je ne trouve donc pas dans le document KUNUGI un enseignement correspondant à celui du brevet EP'858, ni sur l'évacuation de l'eau, ni sur l'ouverture et l'exposition de rainures noyées après usure d'une première couche de la bande de roulement, ni sur l'alternance des entailles transversales 4b. "

110. According to GOODYEAR, Fig. 1 of KUNUGI is clear enough and self-sufficient to disclose feature 7 of Claim 1 (SoD, §215-223). Defendants refer to [0013] of KUNUGI's patent (Exhibit AD 3.01bis):

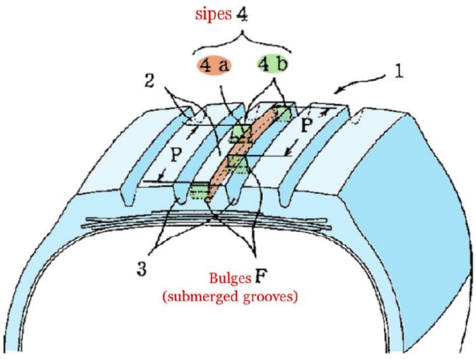
"The sipe 4b which connects to the grooves may be arranged linearly between one groove 3 and the other groove 3 that sandwich the rib 2, or may be arranged independently, at any positions on each side of the sipe 4a in the circumferential direction."

111. This sentence defines two possible configurations:

1) The sipe 4b *"which connects to the grooves may be arranged linearly between one groove 3 and the other groove 3 that sandwich the rib 2"*, meaning that the lateral sipes 4b and corresponding submerged groove F cross the rib 2 from a first side longitudinal groove 3 to the other side longitudinal groove 3. This first configuration is illustrated in Fig. 2 of KUNUGI and is not the one relevant for the anticipation of Claim 1 of EP'858.

2) The sipes 4b *"may be arranged independently, at any positions on each side of the sipe 4a in the circumferential direction"*, meaning that in contrast with the first configuration, the sipes 4b on one side of the longitudinal sipe 4a are not aligned with the sipes 4b on the opposite side (otherwise, the second configuration would be the same as the first configuration). This is all the truer that claim 1 merely requires that two lateral grooves be offset arranged and arranged on one side and the other side.

112. The Defendants contend that the second configuration is illustrated by Fig. 1 of KUNUGI, as it is shown in the Figure coloured and annotated by the Defendants (SoD, §129):



Preferred embodiment of *Kunugi*
G035, G035a, Document *Kunugi*, FIG.1 (annotations and colors added)

113. Defendants explain that in Fig. 1, the longitudinal pitching distance "P" between two sipes 4b indicated on the left side of the longitudinal sipe 4a appears to be equal to the one used on the right side of sipe 4a, which leads to an alternating arrangement of the lateral sipes 4b and of the corresponding lateral bulges F.

114. GOODYEAR adds that this is also Mr van Tuijl's understanding of the disclosure of KUNUGI (G034, points 22, 39).

115. The Court finds that, on Fig. 1 of KUNUGI, sipes 4a and sipes 4b are not in line; they are obviously shifted.

116. Contrary to MICHELIN's argument, this is the amount of spacing, which is arbitrary and not the alternate arrangement. The passage regarding the 'arbitrary' placement of the lateral bulges only means that when the lateral channels are not axially aligned (as shown in Fig. 1), they can start at an arbitrary axial position on the longitudinal groove relative to each other. This is not in contradiction with the drawing but rather in line with it. The drawing thus confirms the fixed offset with the arrows P.

117. This is confirmed in [0012] and [0013] of KUNUGI's description[3]:

[0012] "*Figure 1 is a cross-sectional perspective view illustrating an example of the tread part of a pneumatic tyre according to one embodiment of the present invention. The pneumatic tyre according to an embodiment* ***of the present invention*** *comprises a sipe 4 such as that illustrated in Fig.1 in at least one rib 2 of a plurality of ribs 2 which constitute a tread 1. The sipe 4 consists of a sipe 4a in a circumferential direction of the tyre and a sipe 4b which connecting the sipe 4a to a groove.* ***The bottom*** *part of the sipe 4 has the bulge F, and the bulges F of the sipes 4a and 4b are connected at the same height. However, it goes without saying that other portions of the bulges F than the connected portion can be arranged at shallower or deeper heights.*"

[0013] "*The sipe 4b which connects to the grooves may be arranged linearly between one groove 3 and the other groove 3 that sandwich the rib 2, or may be arranged independently, at any positions on each side of the sipe 4a in the circumferential direction. In addition, if the grooves in the circumferential direction are bent, the sipes 4a in the circumferential direction are preferably arranged parallel to the bent grooves.*"

118. Therefore, it is demonstrated that the "**alternating arrangement** of lateral grooves", as disclosed in feature 7 of Claim 1 in EP'858, can clearly be found in KUNUGI.

5th argument from MICHELIN: the relevant features would not be disclosed in one embodiment

119. MICHELIN argues that all the features of Claim 1 are not disclosed in one embodiment, which is not in line with the UPC caselaw on the assessment of novelty and not in line with the case law of the EPO Board of Appeal (Reply to SoD, §11: It is not permissible to combine separate items of prior art together. It is also not permissible to combine separate items belonging to different embodiments described in one and the same document, unless such combination has specifically been suggested (T 305/87)).

120. On the contrary, the Court notes that only Fig.1 of KUNUGI, which is the main embodiment of KUNUGI's publication and two paragraphs in the description (meaning [0012]and [0013]), are needed to disclose the entire invention taught in Claim 1 of the Patent in suit.

[3] For the sake of clarity, certain terms have been highlighted by the Court using bold font.

121. Fig.1 and the accompanying paragraphs 12 and 13 of KUNUGI disclose a structure of sipes and bulges that reads onto the claim. The lateral dimension of the bulges is larger than the sipes. The bulges, as shown in Fig. 1, undeniably have a capability for water channelling and a change in CSR. This is a single embodiment of a single disclosure, having the elements recited in the claim. Thus, the Court considers the "bulges" as claimed in KUNUGI identical to the "submerged grooves" in EP'858, and the "circumferential bulge" in KUNUGI identical to a "longitudinal groove" in EP'858.

122. The disclosure of KUNUGI, regarding the Fig. 1 embodiment, is clear in itself and is clarified further as the same elements are discussed in more detail in other parts of the description in a consistent way, as has been demonstrated in the above-mentioned § of the present decision.

123. To conclude, the Court considers that Claim 1 of EP'858 is not novel since this Claim is disclosed directly and unambiguously with all its features in KUNUGI and is not novel over KUNUGI.

B- Validity of the dependent claims

124. GOODYEAR argues that all dependent Claims (2 to 14) are invalid as follows:

-Claims 2 and 3 lack inventive step over KUNUGI and other prior art documents and lack novelty over Riches 1 (SoD, sections 3.2.1-3.2.2).
- Claims 4, 5 and 6 lack novelty over KUNUGI, RICHES 1 and TANABE (SoD, section 3.2.3) and lack inventive step over Riches 2 and other prior art documents.
-Claim 7 lacks novelty over KUNUGI and RICHES 1 and lacks inventive step over other prior documents (SoD, section 3.2.4.1 et section 3.2.4.2).
-Claims 8 and 9 lack inventive step over KUNUGI, RICHES 2 and over other prior documents (SoD, section 3.2.5).
- Claim 10 lacks inventive step RICHES 2 and over other prior documents (SoD, section 3.2.6).
- Claim 11 lacks inventive step over KUNUGI, RICHES 1 over other prior documents (SoD, section 3.2.7).
-Claims 12, 13 and 14 lack inventive step over KUNUGI, RICHES 1 and over other prior documents (SoD, section 3.2.8).

125. In response, MICHELIN merely states that these claims are dependent on Claim 1 (Reply to Statement of Defence, section 2.4.5) and that, since Claim 1 is valid, the dependent claims are therefore also valid.

126. The Court notes that MICHELIN provides no substantiated arguments to explain why the dependent claims might be novel and inventive themselves. Since the Court finds the independent Claim 1 not valid, MICHELIN fails to demonstrate that the dependent claims would be valid if Claim 1 were not valid.

V. Auxiliary requests

127. In their defence to the counterclaim, MICHELIN sought an amendment to the patent in suit with 14 auxiliary requests (Reply to SoD of 13 August 2025, section 3). This application is conditional according to R. 30.1 c) RoP.

"Reasonable number "(R.30.1 (c) RoP)

128. In its Reply to the defence to the counterclaim (Statement of 13 October 2025, section 3), GOODYEAR raised the question of a "reasonable number" of the auxiliary requests proposed by MICHELIN.

129. During the Interim conference (IC), the judge-rapporteur asked MICHELIN to reduce the number of the auxiliary requests to a "reasonable" number according to R.30.1 (c) RoP. In their brief filed further to the IC of 16 February 2026, MICHELIN replied to the judge-rapporteur's brief on 16 February 2026 with some propositions, as is mentioned in the order following the IC (R.105.5 RoP). The judge-rapporteur took these propositions into account in the organisation of the oral hearing, and decided to postpone the decision on this question to the decision on the merits.

130. The panel notes that the Claimant presents all the auxiliary requests in a table (Reply to the SoD, §365) as follows:

365. The 14 ARs presented incorporate a combination of some or all five additional features (numbered F1 to F5 – two first columns of the table below) as summarized in the following table[80]:

		AR1	AR2	AR3	AR4	AR5	AR6	AR7	AR8	AR9	AR10	AR11	AR12	AR13	AR14
F1	Water channeling	X	X	X	X	X	X	X	X						
F2	Water channeling (incl. CSR + vol. void)		X	X	X	X	X	X	X						
F3	Height of submerged groove			X		X		X	X	X		X		X	X
F4	Circumferential groove				X	X			X		X	X			X
F5	Claim 13 - distance between lat. grooves						X	X	X				X	X	X

131. In this table the various combinations are categorised according to five additional features, and the parties' ensuing discussions focused on this summarised presentation. Therefore, the panel considers that the number of auxiliary requests presented in this case is reasonable, as it is 'manageable' by the Court.

Admissibility and relevance of the auxiliary requests for overcoming the invalidity of EP'858 as granted (AR1 to AR14)

132. GOODYEAR challenges the admissibility of the auxiliary requests proposed by the Claimant on the grounds of added matter and clarity (Rejoinder of 13 October 2025, section 3.1) as follows:

Features 1 and 2: added matter, (in the event that MICHELIN's incorrect narrow interpretation was adopted) would not be supported by the application as filed (WO 276 description of EP'858)
Feature 3: added matter
Feature 5: added matter and lack of clarity

133. All the additional features have been summarised in table §861 and comments §862 of the Rejoinder, as follows:

		AR1	AR2	AR3	AR4	AR5	AR6	AR7	AR8	AR9	AR10	AR11	AR12	AR13	AR14
F1	Water channeling	X	X	X	X	X	X	X	X						
F2	Water channeling (incl. CSR + vol. void)		X	X	X	X	X	X	X						
F3	Height of submerged groove			X		X		X	X	X		X		X	X
F4	Circumferential groove				X	X			X		X	X			X
F5	Claim 13 - distance between lat. grooves						X	X	X				X	X	X

§862 Hence, the auxiliary requests in red AR3, AR5, AR7, AR8, AR9, AR11, AR13 and AR14 are invalid regardless of the adopted interpretation. Auxiliary requests in yellow AR1, AR2, AR4, AR6 and AR12 are invalid if Michelin's narrow interpretation of F1/F2 and F5 is adopted.

134. In the claim interpretation, the Court adopted the interpretation supported by MICHELIN (§51-54 of the present decision). Therefore, the inadmissibility issue is raised by GOODYEAR for all the auxiliary requests, except AR10.

- F1: *"said submerged longitudinal groove and said one or more submerged lateral grooves are configured to channel water when exposed"*

135. This additional feature fails to improve the lack of novelty over KUNUGI of EP'858 since it has no technical effect. GOODYEAR rightly argues that it is irrelevant that the submerged grooves of KUNGI are not primarily designed or intended for water channelling when exposed, as long as they are suitable for water channelling when exposed (Rejoinder of 13 October 2025, §741).

- F2: *"said submerged longitudinal groove and said one or more submerged lateral grooves provide additional surface void and additional volumetric void when exposed"*

136. The Court notes that F2 fails to improve the lack of novelty over KUNUGI of EP'858 since it has no technical effect. In this additional feature, no value for a minimum surface void or volumetric void is specified. The skilled person knows that water drainage capacity is increased with larger grooves (§99 of the present decision referring to Exhibit G015). F2 is not limiting Claim 1 and has no impact on the novelty matter (GOODYEAR's Rejoinder, section 3.1.2).

-F3: *"a height H20 of the submerged longitudinal groove (20) is between 100% of and 200% of said depth Do20"*

137. As GOODYEAR states, this additional feature is not admissible on added matter since it lacks support in the application as filed, meaning WO 276 (Exhibit G018) (Rejoinder of 13 October 2025, section 3.1.3.1). In the initial application, it is mentioned in [0020]:

"Longitudinal groove 20 also includes a height H20. Height H20 may extend any desired distance. In particular embodiments, height H20 may be equal to or greater than 20% of Do20. In other embodiments, height H20 is equal to or greater than 2 mm. Height H20 may also extend a maximum distance equal to 400% of distance Do20, and in particular embodiments, equal to 200% of Do20, and in still other embodiments, 100% of Do20."

138. MICHELIN failed to demonstrate that WO 276 teaches the height range of H20 as claimed in F3.

139. Therefore, F3 is not admissible on the grounds of added matter.

-F4: *"said submerged longitudinal groove extends along the full length of the tread element to form a circumferential groove"*

140. This feature is present in KUNUGI, which discloses the ribs having circumferentially-extending sipe 4a ending with "bulge" as mentioned above in the presentation of this prior art document in the present decision.

141. Therefore, F4 does not change the lack of novelty of Claim 2 of EP'858.

- F5: *"the spacing between each of the one or more lateral sipes is between 5 and 20mm"*

142. According to GOODYEAR, F5 lacks support in the application as filed (Rejoinder, section 3.1.5.1). MICHELIN argues (Defence to counterclaim, section 3.6.1) that this additional feature is supported by Claim 13.

143. GOODYEAR argues, in line with its reasoning on the validity of Claim 13, that this additional feature does not describe any technical effect attached to (SoD, §445 and §446: "*these additional features cannot involve any inventive step over the teachings that already anticipate claim 1 or render its subject-matter obvious. Therefore, claim (..)13 (..) lacks inventive step over, at least, document Kunugi (G035))*".

144. The Court considers that the selection of this specific spacing distance is merely arbitrary. Nothing in the description of the patent in suit explains this selection; it is only mentioned in one of the embodiments in [0024] amongst other embodiments with different distance spacing without further information.

See §213 and §214 of GOODYEAR Rejoinder:

« Increasing the density of lateral sipes (i.e., reducing the spacing between neighbouring lateral sipes) does not have any effect on the density of lateral grooves and on the water channelling capacity. This is another artificial story made up by Michelin.
Consequently, none of the Auxiliary Requests can draw any inventive step or synergistic effect from the incorporation of feature F5. "

145. According to MICHELIN's reasoning (Michelin Reply to the SoD, 13 August 2025, §408), this distance is not arbitrary but should be selected because the person skilled in the art would also easily understand that the question of the spacing of each lateral sipe is directly related to the objective of the invention, which is to enhance tire performance on wet roads. Indeed, having the distance provided by feature 5 between each lateral sipe ensures a good density of lateral grooves, which enables better water evacuation while maintaining the stiffness of the tread. However, in this case, the Court notes that the spacing distance would have been obtained as a result of a simple routine test that would not require any 'inventive step' on the part of a person skilled in the art, given the KUNUGI document. Indeed, this prior art document, which is the only document cited in EP'858, and for the reasons set out in §84 of the present decision, constitutes a realistic starting point for the step inventive assessment. Particularly, the Court notes that the KUNUGI document was accepted as a starting point in examination because it has many technical features in common with the Patent in suit. It has not been substantiated in the patent specification nor elsewhere why or how this particular spacing range would be 'better', consequently it may be considered arbitrary and thus not inventive– even if starting from KUNUGI, the spacing would be directed to noise rather than water drainage.

146. The features of F5 therefore cannot provide inventive step over KUNUGI.

147. For these reasons, none of the additional features combined in the AR 1 to 14 proposed by the Claimant to amend its patent is valid. MICHELIN is therefore dismissed in the application for amendments of patent EP 2 323 858 according to any of Auxiliary Requests 1 to 14.

Conclusion

148. In light of the above, the European patent EP'858 is not valid, neither as granted, nor as amended by Auxiliary requests 1 to 14, and it must be entirely revoked in accordance with Art. 138(1) EPC and Art. 65(2) UPCA.

149. Consequently, the infringement action brought by MICHELIN has no legal basis, and all related requests must be dismissed.

150. With regard to costs, both parties have requested separate proceedings.

151. Pursuant to R. 118. 5 RoP, the Court decides in principle that MICHELIN, as the unsuccessful party, is required to bear legal costs in accordance with Art. 69 UPCA.

For these reasons, the Court orders that:

1. The European patent EP'858 is entirely revoked with effect in the territories of the Contracting Member States for which the European patent had effect at the date of the counterclaim for revocation, meaning in the territory of France,

2. The Registry shall send a copy of this decision to the European Patent Office and to the national patent office of any Contracting Member States concerned, in accordance with Art. 65(5) UPCA, once the deadline for appeal has passed,

3. All of MICHELIN's infringement claims based on the patent in suit are dismissed,

4. All related claims are dismissed,

5. MICHELIN is required to bear the legal costs of the proceedings in the action UPC_CFI_138/2025 and UPC_CFI_522/2025.

Issued in Paris, on 16 April 2026.

Camille Lignières, Presiding judge & Judge-rapporteur

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Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

INFORMATION ON APPEAL

An appeal against the present decision may be filed by any party which has been unsuccessful, in whole or in part, with its requests, within two months of notification of the decision at the Court of Appeal (Article 73 (1) UPCA, R. 220.1 (a) RoP, R.224.1 (a) RoP).

INFORMATION ON ENFORCEMENT

A certified copy of the enforceable decision will be issued by the Assistant Registrar at the request of the enforcing party (Article 82 UPCA, Article 37(2) UPCA, R. 118.8 RoP, R. 158.2 RoP, R. 354 RoP and R. 355.4 RoP).

ORDER DETAILS

Date: 16/04/2026
UPC number: UPC_ CFI_138/2025
Action type: Infringement Action
Counterclaim for revocation: UPC_CFI_522/2025