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D E C I S I O N
of 5 February 2002

Case Number: T 0486/00 - 3.2.1

Application Number: 95107408.7

Publication Number: 0686577

IPC: B65D 85/52

Language of the proceedings: EN

Title of invention:

Method for transporting floral groupings

Applicant:

SOUTH PAC TRUST INTERNATIONAL, Inc., not individually, but as
Trustee of the Family Trust U/T/A dated 8 December 1995

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step (yes)"

Decisions cited:

-

Headnote/Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T T 0486/00 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 5 February 2002

Appellant: SOUTH PAC TRUST INTERNATIONAL, Inc.
not individually, but as Trustee of the
Family Trust U/T/A dated 8 December 1995
Centrepont
2nd Floor
Cook Islands Rarotonga (CK)

Representative: Ebner von Eschenbach, Jennifer
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D-80335 München (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 1 December 1999
refusing European patent application
No. 95 107 408.7 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. Gumbel
Members: S. Crane
J. Van Moer

Summary of Facts and Submissions

- I. European patent application No. 95 107 408.7 was refused by a decision of the Examining Division posted on 1 December 1999.
- II. The reason given for the decision was that the subject-matter of the independent claims 1 and 25 then on file lacked inventive step with respect to the common general knowledge of the person skilled in the art and the disclosure of document US-A-5 240 109 (D1).
- III. A notice of appeal against this decision was filed on 28 January 2000 and the fee for appeal paid at the same time. The statement of grounds of appeal was filed on 3 April 2000.
- IV. Oral proceedings before the Board were held on 5 February 2002.

At the oral proceedings the appellants (applicants) submitted a new set of documents (claims, description and drawings) on the basis of which they requested the grant of a patent.

The wording of independent claims 1 and 23 according to this request is as follows:

"1. A method for delivering a plant package to a predetermined destination, comprising:

providing a support surface;

providing a plurality of plant packages each comprising a floral container and a floral

grouping disposed within the floral container, the floral container being substantially higher than it is wide and having an exterior bottom end surface for attaching to the support surface;

disposing the plurality of plant packages on the support surface and bondingly connecting only the exterior bottom end surface of the plant packages to the support surface via a connecting bonding material to hold the plant packages in a substantially vertical or upright orientation; and

transporting the support surface with the plurality of plant packages bondingly connected thereto to the predetermined destination, the floral container being a vase."

"23. A plant package assembly (40) prepared for transport to a predetermined destination, comprising:

a support surface (46 or 46a);

a connecting bonding material (24 or 48); and

a plurality of plant packages (26 and 34) which are bondingly connected to the support surface via the connecting bonding material, wherein each plant package comprises:

a vertically oriented floral container (26) having an exterior bottom end surface (30), the floral container being substantially higher than it is wide and being bondingly connected via the connecting bonding material only at the exterior

bottom end surface (30) to the support surface such that the floral container is held in a substantially upright orientation; and

a floral grouping (34) having a stem end and a bloom end, wherein at least a portion of the stem end of the floral grouping is disposed within the floral container, thereby forming the plant package comprising a floral grouping and a floral container, the floral container (26) being a vase (26)."

Dependent claims 1 to 22 relate to preferred embodiments of the method of claim 1 and dependent claims 24 to 34 to preferred embodiments of the assembly of claim 23.

- V. In support of their request the appellants argued in essence that none of the available prior art documents was properly comparable with the concept involved in the claimed invention by virtue of which it had become possible for the first time to deliver floral groupings in vases in a cheap, safe and simple manner.

Reasons for the Decision

1. The appeal complies with the formal requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC. It is therefore admissible.
2. In general terms the claimed invention is concerned with the bulk transport of plant packages, each comprising a container and a "floral grouping", from for example a grower to a trader. (The term "floral

grouping" as defined in the application is broad in ambit and extends *inter alia* to single blooms.)

More specifically, in the independent claims now under consideration, the nature of the container has been more closely defined as being a vase and substantially higher than it is wide. The basis for this restriction is to be found in particular in the penultimate paragraph of page 8 of the description, where it is also indicated that the height of the vase is generally at least three to five times greater than the narrowest diameter. All of the embodiments of figures 1 to 6, 9 and 10 relate to the transport of floral groupings in such vases, the height of which appears to be of the order of four times the widest and ten times the narrowest diameter. The embodiments of figures 7 and 8, which concerned the transport of floral groupings in pots, have been deleted as a consequence of the restriction of the claims. In the light of the above there are no objections under Article 123(2) EPC to the amended set of documents.

According to the claimed invention the plant packages are prepared for transport by bondingly connecting the bottom end surface of the vase to a support surface, so that they are held in a substantially upright orientation. The bond may be obtained through the use of an adhesive material on one or the other of the bottom surface of the vase or the support surface, or of a cohesive material on both said surfaces. The use of magnetic materials is also envisaged in this context.

As the Examining Division correctly pointed out in its decision, there are plant packages, in particular

potted plants, which require for obvious reasons delivery in a substantially upright orientation. According to the Examining Division it had been known to prevent such plant packages from toppling over during transport by providing for example side support means such as cavities in the support surface. Although no documentary evidence for that assertion was available, the only prior art cited in the search report being document D1, which was already mentioned in the application as originally filed and relates to the transport of wrapped floral groupings lying horizontally on a support surface, the Board is satisfied that the type of transport arrangement referred to by the Examining Division belongs to the state of the art. In any case, the appellants, with their statement of grounds of appeal, referred to relevant prior art in this context, viz US-A-2 721 022 (D4). According to this document an assembly of potted plants is firmly located on the support surface of a transport container by means of crossing hold-down strips engaging the top edges of the pots.

As already indicated above, document D1, the prior art particularly relied upon by the Examining Division, is not concerned with the transport of plant packages comprising a vase and a floral grouping but instead with the transport of wrapped floral groupings. To prevent movement of the floral groupings laid horizontally within a transport container its inside bottom surface and preferably also some of its sidewalls may be provided with adhesive strips which contact the wrapping material of the floral groupings. Alternatively or additionally this wrapping material may exhibit adhesive qualities.

In view of the significantly greater need for stability when transporting plant packages comprising relatively high vases and floral groupings in an upright orientation, compared with laid flat wrapped floral groupings, together with the more arduous basic mechanical considerations involved, the Board is satisfied that the person skilled in the art would not have been led in an obvious manner by the teachings of document D1 to the conclusion that he could replace the positive locating means envisaged generally in the state of the art by a simple adhesive or cohesive bond between a support and the bottom surface of the vases.

No different conclusion is reached if account is taken of US-A-3 374 884 (D3), which was introduced into the proceedings by the Examining Division from its own knowledge, and which discloses a supply and display package for confectionery articles where the articles are each disposed on a raised pedestal having an adhesive coating. The conditions associated with the transport of such articles cannot be compared with those relating to plant packages comprising a vase and a floral grouping.

The subject-matter of present independent claims 1 and 23 must therefore be seen as involving an inventive step (Article 56 EPC). The same conclusion had in fact evidently been reached by the Examining Division in the context of claims notionally corresponding to those now under consideration, as can be seen from its communication, posted on 30 January 1998.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent with the following documents:

Claims 1 to 34, description pages 1 to 15 and Figures 1 to 8 all filed at the oral proceedings.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel