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D E C I S I O N
of 21 February 2002

Case Number: T 0300/01 - 3.2.1

Application Number: 95942780.8

Publication Number: 0797530

IPC: B65D 77/06, B65D 19/10

Language of the proceedings: EN

Title of invention:
Baseplate for a pallet container

Patentee:
Koninklijke Emballage Industrie Van Leer N.V.

Opponent:
PROTECHNA S.A.

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0300/01 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 21 February 2002

Appellant:
(Opponent)

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Representative:

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Respondent:
(Proprietor of the patent)

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Representative:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted 26 February 2001
rejecting the opposition filed against European
patent No. 0 797 530 pursuant to Article 102(2)
EPC.**

Composition of the Board:

Chairman: F. Gumbel
Members: M. Ceyte
J. Van Moer

Summary of Facts and Submissions

- I. The respondent is the proprietor of European patent No. 0 797 530 (application No. 95 942 780.8).

Claim 1 reads as follows:

"1. Baseplate (4) for a pallet container (1), which pallet container comprises a foot section (2) with, said baseplate positioned thereon, and a container section (3) supported by said baseplate, said baseplate being shaped to correspond with the underside of the container section and being provided with at least one downwardly-sloping section running towards a recess (5) which is provided in the base of the base section, said recess being arranged to accommodate a valve of the container, characterised in that the bearing surface (12) of the baseplate is constructed such that it slopes downwardly from the centre to the outer periphery, and has gutter means (8) around the periphery."

- II. The patent was opposed by the appellant on the ground of lack of inventive step.

The following state of the art was *inter alia* cited in the opposition proceedings:

D1: EP-A-509 228,

D3: US-A-5 346 094.

The Opposition Division rejected the opposition in a decision posted on 26 February 2001.

III. On 10 March 2001 the appellant lodged an appeal against this decision, with the appeal fee being paid at the same time.

In the statement of grounds of appeal filed on 8 June 2001 the following documents were cited for the first time:

D4: DE-U-1 875 261,

D5: US-A-5 161 690,

D6: US design patent 143 128.

IV. The appellant requested that the decision under appeal be set aside and that the patent be revoked.

It made essentially the following submissions:

As it is apparent from the newly cited documents D4 to D6 the arrangement of a container bottom which is domed upwardly as well as of gutter means around the periphery of the bottom, was common general knowledge.

Confronted with the problem underlying the patent in suit, i.e. selecting a shape for the base plate which prevents its sagging without increasing the material needed for its construction, the skilled person would have considered document D4 which teaches the provision of a profiled structure for the container bottom in order to substantially reduce its bending under loading (cf page 2, second paragraph of this citation). The skilled person would also have recognised that in such case the wall thickness of the container bottom and thus the material consumption could be reduced. Thus it

would have been obvious for him to provide the known base plate according to document D1 with a dome directed upwardly towards the centre of the base plate.

Therefore the claimed base plate was not inventive over the combination of documents D1 and D4.

- V. The respondent (patent proprietor) rejected in detail the arguments brought forward by the appellant and submitted that the claimed subject-matter was inventive over the opposed prior art documents.

It requested that the appeal be dismissed and that the patent be maintained as granted.

- VI. In a communication posted on 8 October 2001 the Board expressed its preliminary view that the late-filed documents D4 to D6 did not apparently add anything relevant to the documents D1 and D3 filed on time and that the claimed base plate appeared to be inventive over the combination of these two documents.

The appellant did not respond to this communication.

Reasons for the Decision

1. The appeal is admissible.
2. *Novelty*

The Board is satisfied that the subject-matter of claim 1 is novel over the opposed prior art documents.

Since this was never disputed during the opposition or

appeal proceedings, there is no need for further detailed substantiation of this matter.

3. *Inventive step*

3.1 Claim 1 is based in its pre-characterising portion on the disclosure of prior art document D1. It is not disputed that this citation represents the nearest prior art.

D1 discloses a pallet container having a base plate which is downwardly domed, so that the lowest point of the base plate is located in the centre. Fluid from the container flows from the periphery towards the centre and from there moves, via a longitudinal channel which opens into the recess, towards the valve.

According to the European patent a base plate of this kind suffers from the problem that because of its downwardly domed bottom there will be a tendency for said base plate to sag downwards. This implies an increase of the material needed for the construction of the base plate.

Therefore the technical problem to be solved by the present invention is to provide a base plate of the type stated in the pre-characterising portion of the claim, which overcomes this disadvantage i.e. which avoids its sagging without increasing material consumption while maintaining an efficient drainage of the fluid.

3.2 This problem is in essence solved by the following features stated in the characterising part of claim 1:

- (i) the bearing surface of the base plate is constructed such that it slopes downwardly from the centre to the outer periphery i.e. the bearing surface is domed upwardly towards the inside of the base plate, and
- (ii) the bearing surface has gutter means around the periphery.

3.3 As to the issue whether the claimed teaching can be derived in an obvious manner from the opposed prior art documents, the following is to be observed:

3.3.1 Document D3 discloses a drum bottom for facilitating the emptying of drum containers. The drum bottom of integral one-piece construction has a central section and a profiled rim section extending circumferentially about the periphery of the central section. The central section is domed upwardly towards the inside of the drum container and is also provided with gutter means referred to as "drainage channel" extending about the periphery of the central section.

The gutter means are tapered in a downwardly direction towards a depression provided on the periphery of the central section of the drum bottom. The depression accommodates a pump mechanism for removal of the collected contents from the drum bottom.

Thus it is true that the central portion of the drum bottom comprises the features (i) and (ii) of the characterising part of the claim. However it cannot be accepted that a skilled person when considering document D3 would have realized that the upwardly domed central section of the drum bottom would have a

significantly lower tendency to sag when applied to a base plate according to the pre-characterising part of claim 1, with a downwardly domed base plate as known from document D1.

Furthermore, the rim section of this one-piece drum bottom comprises a raised ridge and an outermost trough which circumscribe the entire central section of the drum bottom.

It is stated that the outer most trough is flat for stabilizing the drum container in an upright position. The skilled person would also look at this profiled rim section and realize that this rim section together with the side wall of the drum container would have an effect upon the strength of the drum bottom and its tendency to sag.

Finally, as rightly stated in the appealed decision it was not obvious for the skilled person confronted with the problem underlying the patent in suit in the field of base plates for pallet containers,

- (a) to consider document D3 which relates to a bottom for drum containers,
- (b) to select only the central section of the one-piece drum bottom disclosed therein, while excluding its rim section, and
- (c) to apply this central section of the one-piece drum bottom to the known base plate for a pallet container according to document D1.

Without an *ex post facto* analysis a skilled person

would not have been led by the content of document D3 to consider only the central part of the disclosed one-piece drum bottom.

- 3.3.2 For the following reasons which were already given in the Board's communication of 8 October 2001, the late-filed documents D4 to D6 are less relevant to the ground of lack of inventive step than documents D1 and D3 filed in time and thus cannot prejudice the maintenance of the patent as granted:

D4 belongs to the far remote technical field of heating oil containers which are not designed to be transported. The heating oil container according to this citation is provided with a profiled bottom having a roof like shape, whose structure is significantly different from that of an upwardly domed bottom. It is stated that this profiled structure limits bending of the bottom under loading. Document D4 fails in any case to disclose the essential feature (i) of the claimed invention. Therefore, the skilled person applying the teaching given there to the known base plate according to document D1 would not arrive at the claimed invention.

D5 discloses a parallelepipedic transport container for moisture emitting goods, particularly fish comprising a double walled bottom having an upper wall and a lower wall. This double walled bottom cannot solve the problem underlying the European patent, i.e. that of avoiding sagging without increasing the material needed for the construction of the base plate for pallet containers.

D6 is a US design patent merely showing a vessel of

integral one-piece construction for separating cream. Such vessel is by no means comparable to the claimed low transportable base plate or pallet which is designed for supporting a container section, whose bottom part fits into the base plate.

3.3.3 Accordingly in the Board's judgement, the subject-matter of claim 1 as granted involves an inventive step (Article 56 EPC) so that the patent is to be maintained on the basis of this main claim.

4. Dependent claims 2 to 7 concern particular embodiments of the invention claimed in claim 1 and are likewise allowable.

Thus the opposition ground raised does not prejudice the maintenance of the European patent as granted.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel