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

Case Number: T 0296/02 - 3.2.7

Application Number: 95200312.7

Publication Number: 0669204

IPC: B31D 1/02

Language of the proceedings: EN

Title of invention:

A self-adhesive label for resealable packaging

Patentee:

BARILLA ALIMENTARE S.P.A.

Opponent:

Steinbeis PPL GmbH

Headword:

-

Relevant legal provisions:

EPC Art. 107

EPC R. 65(1)

Keyword:

"Appellant not adversely affected"

Decisions cited:

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Catchword:

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Case Number: T 0296/02 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 21 October 2002

Respondent: Steinbeis PPL GmbH
(Opponent) Rosenheimer Str. 51
D-83098 Brannenburg (DE)

Representative: Liska, Horst, Dr.-Ing.
Weickmann & Weickmann
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D-81635 München (DE)

Appellant: BARILLA ALIMENTARE S.P.A.
(Proprietor of the patent) Via Mantova 166
I-43100 Parma (IT)

Representative: Botti, Mario
Botti & Ferrari S.r.l.
Via Locatelli, 5
I-20124 Milano (IT)

Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 8 January
2002 concerning maintenance of European patent
No. 0 669 204 in amended form.

Composition of the Board:

Chairman: A. Burkhart
Members: H. E. Felgenhauer
J. H. P. Willems

Summary of Facts and Submissions

I. The appellant (patent proprietor) lodged an appeal against the interlocutory decision of the Opposition Division maintaining European patent No. 0 669 204 in amended form with claims 1 to 5 according to the sole request filed during the oral proceedings of 13 November 2001.

In its decision the Opposition Division held that the grounds for opposition according to Article 100(a) EPC (lack of novelty, lack of inventive step) did not prejudice the maintenance of the patent in amended form according to the sole request filed during the oral proceedings on 13 November 2001.

II. The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or with claims 1 to 6 according to the first auxiliary request filed on 8 October 2001 (auxiliary request). The appellant likewise requested as an auxiliary request oral proceedings to be held.

The respondent requested that the appeal be rejected.

III. Within its Communication dated 14 June 2002 the Board expressed its provisional opinion that the appellant appears as not being adversely affected by the decision of the opposition division (Article 107 EPC) and that consequently it appears that the appeal needs to be rejected as inadmissible (Rule 65(1) EPC). Furthermore the appellant has been asked to indicate whether under these circumstances he maintains his request for oral proceedings.

- IV. With its response dated 3 October 2002 the appellant withdrew its auxiliary request for oral proceedings without further comment.

Reasons for the Decision

1. Admissibility of the appeal

According to Article 107 EPC any party adversely affected by a decision may appeal.

During the oral proceedings before the Opposition Division the appellant as patent proprietor filed an amended set of claims 1 to 5, based on claims 1 to 6 according to its first auxiliary request which has been filed with letter dated 8 October 2001. Although this request is referred to in the minutes to the oral proceedings as the only main request (minutes, page 1, paragraph 3) it is clear, and remains undisputed, that this request was the sole remaining request of the patent proprietor (cf. grounds for the decision, page 1, section 3; minutes, page 1, paragraphs 2, 3).

Consequently the appellant is not adversely affected by the decision of the Opposition Division since according to this decision the patent has been maintained in amended form as requested by the patentee in its sole request.

2. The appeal thus needs to be rejected as inadmissible (Rule 65(1) EPC).

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

D. Spigarelli

A. Burkhart