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D E C I S I O N
of 29 October 2003

Case Number: T 1214/02 - 3.2.7

Application Number: 99964622.7

Publication Number: 1144264

IPC: B65D 47/06

Language of the proceedings: EN

Title of invention:
Manufactured pour spout fitment and container

Applicant:
UNILEVER PLC, et al

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 111(1)

Keyword:
"Claims substantially amended on appeal - remittal to first instance"

Decisions cited:
T 0063/86, T 0047/90

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1214/02 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 29 October 2003

Appellant: UNILEVER PLC
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Representative: Elliott, Peter William
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 5 July 2002 refusing European application No. 99964622.7 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: A. Burkhart
Members: H. E. Hahn
E. Lachacinski

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal against the decision of the Examining Division to refuse the European patent application No. 99 964 622.7.

II. The Examining Division held that the subject-matter of the independent product claims 1 and 7 lacked an inventive step with respect to the disclosures of documents:

D1: US-A-5 603 787

D2: US-A-5 498 149

III. In a communication the Board concurred with the Examining Division that the subject-matter of claims 1 and 7 underlying the appealed decision lacked an inventive step with respect to an obvious combination of the documents D1 and D2 based on the objective technical problem of the provision of an alternative process for making the fitments of document D1. In order to prove the general knowledge of the skilled person familiar with the production and the design of plastic containers for liquids the Board cited document D3 (Kirk-Othmer, Encyclopedia of Chemical Technology, 4th Edition, Vol. 9, 1994, Paragraph "Engineering Plastics", pages 525 to 561).

IV. With letter of 13 August 2003 the appellant submitted amended claims 1 to 9 as main request and amended claims 1 to 9 as auxiliary request and requested that the decision under appeal be set aside and that a patent be granted on the basis of either of these

requests. Oral proceedings were requested for the case that the Board of Appeal intended to dismiss the appeal.

The independent claims 1 and 6 of the main request under consideration read as follows:

"1. A fitment for a bottle containing a detergent liquid comprising a circumscribing wall, a floor extending inwardly from a bottom of said wall, and a pour spout ascending from an inward portion of said floor, characterised in that the fitment is thermoformed, transparent and incorporates an anti-drip lip on the spout in the direction of pour."

"6. A bottle for containing a detergent liquid comprising a bottle body, a finish extending upwardly from said body, and a fitment received within said body, said fitment comprises a circumscribing wall, a floor extending inwardly from a bottom of said wall, and a pour spout ascending from an inward portion of said floor said spout being at least partially within said finish, characterised in that the fitment is thermoformed, transparent and incorporates an anti-drip lip on the spout in the direction of pour."

The independent claims 1 and 6 of the auxiliary request comprise the additional feature "which is widened to incorporate a U-shaped notch to control pour onto stains" after the wording "in the direction of pour".

Reasons for the Decision

Remittal to the first instance

1. Substantial amendments have been made in the fresh sets of claims by incorporating features from the description into the independent claims 1 and 6. The amendments made, in particular the transparency and the anti-drip lip, have the effect that the reasons given for refusing the present application no longer apply since that particular amendment is substantial in the sense that in particular the assessment of inventive step has to be carried out on a new basis. Thus, the claims 1 and 6 of the main request give rise to fresh issues not yet addressed in examination proceedings constituting a "fresh case" (see e.g. decisions T 63/86, OJ EPO 1988, 224; T 47/90, OJ EPO, 1991, 486).

Under these circumstances the Board considers it appropriate to exercise its discretion under Article 111(1) EPC to remit the case to the Examining Division for further prosecution, i.e. to examine whether the amended claims meet the requirements of the EPC.

Thus, the appellant has the opportunity to have its case considered without loss of an instance.

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 for further prosecution.

The Registrar: The Chairman:

D. Spigarelli A. Burkhart