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D E C I S I O N
of 18 July 2005

Case Number: T 1174/03 - 3.2.7

Application Number: 00977806.9

Publication Number: 1240088

IPC: B65D 85/10

Language of the proceedings: EN

Title of invention:

A rigid pack with a hinged lid

Applicant:

G.D. S.p.A.

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step (yes) "

Decisions cited:

-

Catchword:

-



Case Number: T 1174/03 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 18 July 2005

Appellant:

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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 17 June 2003
refusing European application No. 00977806.9
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. Holtz
Members: P. O'Reilly
H. Hahn

Summary of Facts and Submissions

- I. European application No. 00977806.9 was refused by the Examining Division for lack of inventive step.
- II. The appellant (applicant) filed an appeal against the above decision.
- III. The appellant requested as main request that the decision under appeal be set aside and a patent be granted on the basis of claims 1 - 25, description pages 1 - 18 and drawings figures 1 - 24, all filed during the oral proceedings on 18 July 2005. Alternatively, the appellant requested that a patent be granted on the basis of the auxiliary request filed with letter of 1 July 2005.
- IV. The relevant claims of the main request read as follows:
- "1. A rigid packet containing cigarettes comprising a container (10); said packet extending as a prismatic solid along a predominating longitudinal axis (A); characterized in that it comprises also a lid (12) hinged to one open end (11) of the container and rotatable between a position in which the container (10) is open and a position in which the container is closed; and in that it shows a substantially triangular cross section defined by three substantially rectangular side faces (5, 6, 7), disposed contiguously and extending parallel to the predominating longitudinal axis (A)."
- "25. A cigarette pack consisting in a rigid carton comprising a container (10), also a lid (12) hinged to one open end (11) of the container and rotatable between

a position in which the container (10) is open and a position in which the container is closed; said pack extending as a prismatic solid along a predominating longitudinal axis B; characterized in that it shows a substantially triangular cross section, accomodating a plurality of packets according to one or more of the claims from 1 to 24."

V. The documents relevant for the present decision are the following:

D1: US-A-5 487 468

D2: US-A-3 157 343

D3: US-A-4 607 784

D4: FR-A-2 663 296

D5: US-A-5 129 513

VI. The Examining Division refused the patent for essentially the following reasons:

(i) Since the description of the application describes embodiments in which the apices of the triangular cross section have blunted corners formed by faces the wording of claim 1 must be considered to include a packet comprising six side faces. Such a six-faced packet is known from D1. The subject-matter of claim 1 is therefore distinguished over the disclosure of D1 by the lid hinged to one end of the container. Such lid arrangements are well-known and even D1 refers to a flip-top packet in the section concerning the prior art. It was hence obvious to the skilled person to provide the packet known from D1 with a hinged lid. Therefore

the subject-matter of claim 1 lacks an inventive step.

- (ii) Formally independent claim 25 comprises the features of a cigarette carton which reflect the features of the cigarette packet of claim 1 and hence is objectively dependent on claim 1. The only extra features of the claim are known from D1. Therefore the subject-matter of claim 25 lacks an inventive step.

VII. The appellant argued in written and oral submissions essentially as follows:

- (i) D1 represents the nearest prior art document. Claim 1 is distinguished from the disclosure of D1 by the characterizing features of claim 1. The first characterizing feature is that there is a lid hinged to one end of the container. It is agreed that this feature is well known. The second characterizing feature of claim 1 is that the container has a substantially triangular cross section. This feature solves the objective problem of providing an alternative solution to the problem of preventing movement of cigarettes when one cigarette is removed from the packet. Movement of cigarettes causes loss of tobacco which is undesirable. In D1 the embodiment of figures 1 and 2 has a hexagonal form which such that when one cigarette is removed the remaining cigarettes do not move. The problem of preventing movement of cigarettes is already solved in D1 so that the objective problem to be solved by the invention must be the problem of providing an alternative

solution to this problem. However, the skilled person considering D1 would have no reason to seek an alternative solution. Although D1 discloses a cigarette packet from which a cigarette may be removed without movement of the remaining cigarettes this fact is not mentioned at all in D1. The skilled person would therefore have no reason to seek an alternative solution to the problem.

The solution proposed by the invention also has advantages over the known solution since the embodiment of figures 1 and 2 of D1 is not in the form of a regular hexagon. For this reason multiple packets cannot be stacked without losing space. This is not the case with a triangular shape. Also a hexagonal shape requires a large number of folding steps in its manufacture which slows down the manufacturing rate. A triangular shape requires fewer folding steps.

- (ii) Claim 25 includes all the features of claim 1 and therefore also involves an inventive step.

Reasons for the Decision

1. *Interpretation of claim 1*

The Examining Division considered the meaning of claim 1 of the application in suit when interpreted by claim 5, which mentioned a blunted corner edge, and the drawings which show that corner edges may be blunted or rounded. The Examining Division considered that this meant that the wording of claim 1 includes a packet

comprising six side faces, i.e. hexagonal. The Board cannot agree with this interpretation of the claim by the Examining Division. It is quite clear that the mere fact that a corner edge is blunted does not mean that such blunting automatically forms an extra side face. In this respect it may be noted that all corner edges of triangles may be considered to be blunt depending upon the magnification under which they are considered. In the view of the Board the term "blunt" must be reasonably interpreted in the context of the claim. In a claim specifically directed to a triangular shape, i.e. a shape with three side faces, it is a misinterpretation of the claim to consider that a bluntness of a corner edge produces a further side face.

In the description of the application in suit there are shown blunt corner edges whereby the corner edges are shown to be flat, e.g. figure 2. However, the flat part is clearly of a much inferior size to that of the side faces of the triangle. The Board would note however that it is possible to flatten a corner edge of a triangle to such a large extent that it becomes of a comparable size to that of the sides forming the triangle. This is not the case however for the cigarette packets shown in the drawings of the application in suit. The packets are shown to have corner edges which are blunted or rounded only to such an extent that the triangular form is retained. The Board thus concludes that the triangular cross section specified in claim 1 cannot be interpreted as comprising a hexagonal cross section.

2. *Inventive step*

- 2.1 The closest prior art is represented by D1 which discloses a packet containing cigarettes, comprising the features of the preamble of claim 1.
- 2.2 The subject-matter of claim 1 is distinguished over D1 in that the packet further comprises a lid hinged to an open end of the container and in that the packet has a triangular cross section.
- 2.3 With respect to the first distinguishing feature the Board notes that a lid hinged to an end of a cigarette packet is a standard feature of a cigarette packet, see for example D5, as was also acknowledged by the appellant.
- 2.4 With respect to the second distinguishing feature the objective problem to be solved by the feature is to provide a cigarette packet in which no movement of cigarettes occurs even when the packet is not full and which in addition is easy to stack.

In this respect the Board disagrees with the finding of the Examining Division regarding the disclosure in D1 of this feature. As already explained above regarding the interpretation of claim 1 the Board does not consider that the claim may be interpreted to include a hexagonal cross section within its scope. Therefore the feature of claim 1 of the substantially triangular cross section is not disclosed in D1.

- 2.5 D1 is directed to a cigarette packet which is described at one point as a polygon (cf. column 3, line 41 to

column 4, line 2) but elsewhere as hexagonal (cf. column 1, lines 28 to 31, column 2, lines 18 to 20 and column 4, line 23). D1 discloses a number of different hexagonal shapes for cigarette packets as well as a number of different shapes for cartons intended to hold such packets. Of these shapes all except one include at least adjacent rows of cigarettes wherein the cigarettes in these adjacent rows are arranged in a non-staggered manner in which the removal of any cigarette from one row would allow an adjacent cigarette to move. In the case of one embodiment, as shown in figures 1A, 1B, 2A and 2B, all the rows of cigarettes are arranged in a mutually staggered manner. As a result of this staggered arrangement and the hexagonal shape of the packet even if one cigarette were removed the adjacent cigarettes would not move since the geometric arrangement of the cigarettes does not allow this. This effect of the prevention of movement of cigarettes is not mentioned in D1. Also, the stated purpose of the hexagonal shape is to provide a distinctive external appearance. Thus one embodiment of D1 solves the problem of prevention of toppling but gives the skilled person no indication that it actually solves the problem and hence no incitement to the skilled person to seek an alternative arrangement.

In fact D1 leads away from the claimed solution to the problem since D1 is specifically directed to a packet which has more than the standard number of four side faces for a cigarette packet so as to improve appearance. The teaching of D1 thus leads away from providing fewer side faces than the standard number.

Moreover, D1 does not address the possibility that the packet is not meant to contain the maximum number of cigarettes that it is possible to contain. Even if more cigarettes would fit into the packet, its triangular shape allows this possibility without allowing movement of the cigarettes in the packet. This possibility is advantageous when it is desirable to sell a packet with a reduced number of cigarettes without changing the dimensions of the packet. This can be desirable in some situations.

- 2.6 D2 describes a container for coat hangers having a triangular cross section. The triangular shape is chosen to accommodate the triangular shape of coat hangers and to allow the container to be placed in the corner of a room. D2 thus gives no technical teaching with regard to the problems encountered with cigarette packets.
- 2.7 D3 discloses a combined seat and beverage container having a triangular cross section. The shape is chosen for its stability to support a seated person when placed with one of its ends on the floor and to support beverage cans when cut-outs are provided adjacent one of its apices to form a handle. Such a device gives no indication towards solving the technical problem.
- 2.8 D4 discloses a container for wine bottles which has a triangular cross section. The shape is chosen for its rigidity as compared to a rectangular shape so that several bottles may be carried when cut-outs are provided adjacent one of its apices to form a handle. There is no indication in the document that this shape would solve the objective technical problem. There is

also no reason to believe that rigidity is a problem with cigarette packets whereby it should be noted that several wine bottles due to their heavy weight, which is particularly stressed in D4 and may be several kilograms, produce quite different rigidity problems when compared to cigarettes in a packet which weigh in the region of grams. The Board therefore considers that the skilled person would also have no reason to apply the teaching of D4 to a cigarette packet according to D1 in order to increase the rigidity since there is no reason to believe that rigidity is a problem which requires to be solved for cigarette packets.

2.9 Therefore the subject-matter of claim 1 is not obvious to the skilled person.

2.10 With respect to claim 25 this claim includes the cigarette packets according to the preceding claims as a feature of the claim. Since these cigarette packets are not considered to be obvious to the skilled person a pack accommodating such packets also cannot be obvious to the skilled person.

2.11 Therefore, the subject-matter of each of claims 1 and 25 of the main request involves an inventive step in the sense of Article 56 EPC.

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 the patent with the following documents:
claims: claims 1 - 25,
description: pages 1 - 18,
drawings: figures 1 - 24,
all filed in the oral proceedings on 18 July 2005.

The Registrar:

The Chairman:

G. Nachtigall

C. Holtz