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D E C I S I O N
of 17 December 2004

Case Number: T 0296/04 - 3.2.7

Application Number: 02013299.9

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Language of the proceedings: EN

Title of invention:

Mould for forming tamper evident closure caps

Applicant:

Closures and Packaging Services Limited

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 76(1), 111(1), 123(2)

Keyword:

Extension of subject-matter beyond content of parent application (no); remittal to first instance for further prosecution

Decisions cited:

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Catchword:

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Case Number: T 0296/04 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 17 December 2004

Appellant: Closures and Packaging Services Limited
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 17 September 2003
refusing European application No. 02013299.9
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 applicant lodged an appeal against the decision of the Examining Division to refuse the European patent application No. 02 013 299.9 (present application).
- II. The present application was filed as a divisional application of the European patent application No. 98 201 802.0 (published as EP-A-0 870 693), hereinafter parent application AP1, which in turn had been filed as a divisional application of the European patent application No. 93 915 531.3 (published as WO-A-94/02371), hereinafter grandparent application AP2.
- III. The Examining Division held that essential features comprised in AP2 and in AP1 had been omitted from claim 1 of the present application thereby contravening Article 76(1) EPC.
- IV. The appellant requested that the decision under appeal be set aside and that it be acknowledged that the claims 1 to 10 as originally filed meet the requirements of Article 76(1) EPC, and that the case be remitted to the first instance for further examination (main request). As auxiliary requests 1 and 2 it was requested to acknowledge that either the claims 1 to 10 according to appendix I or appendix II, both as filed on 14 January 2004, meet the requirements of Article 76(1) EPC and to remit the case to the first instance for further examination. In case the Board should consider taking a decision other than according to the aforementioned requests, oral proceedings were requested.

V. Independent claim 1 as originally filed according to the main request reads as follows:

"1. A mould for use in the injection moulding of a closure (10) from a synthetic plastics material, the closure (10) being suitable for a container having an externally screw-threaded neck and comprising a top (15) and a depending skirt (16) which has on its internal surface a screw-thread complimentary to the screw-thread on the container, a free edge of the depending skirt (16) being joined by a plurality of frangible bridges (13) to a tamper-evident band (11), the band (11) comprising a generally cylindrical body portion and a continuous or segmented rib (18) extending inwardly of the body portion and adapted to provide a lip to engage under a retaining flange extending outwardly from the neck of the container below the screw-thread thereon, the rib having an upper side facing generally towards the top of the closure and an under side facing generally away from the top, **characterised in that** the mould defines the upper side of the rib (18) as comprising a first surface contiguous with the body portion of the band, which surface slopes inwardly and downwardly from the top portion (15), and a second surface which is positioned radially inwardly from the first surface, the second surface having a slope angle more nearly normal to the longitudinal axis of the closure than the first surface is to that longitudinal axis."

VI. The appellant argued essentially as follows:

The grandparent application AP2 as well as the parent application AP1 define at least three separate

inventions that are directly and unambiguously derivable as such. The first invention is defined as the so-called "broadest aspect" at page 2, line 27 to page 3, line 9, the second one as the so-called "first preferred aspect" at page 3, lines 10 to 31 and the third one as the so-called "another aspect" at page 5, line 18 to page 6, line 8 (see AP2). The first invention (directed to a closure) refers to a "segmented rib" while the second (also directed to a closure) and third invention (directed to a mould) refer to "a continuous or segmented rib". The description comprises statements that the said features of the first invention actually only represent preferred features of the second and third inventions. The second and third inventions must not include all the features of the first invention and page 3 contains a complete and self-contained definition of the second invention repeating most of the features of the said first invention, which would be unnecessary if the Examining Division were correct (see AP2). Similarly, pages 5/6 contain a complete and self-contained definition of the third invention and to achieve the new technical effect as described at page 5 it is not necessary to include the features "projections or localised areas of thickening" (see AP2). This feature is subsequently described as an optional feature. The Examining Division has not addressed the fact that the same features are on the one hand said to be essential while on the other hand are clearly presented as being optional. The drawings described a specific embodiment which cannot be used to restrict the wording of the disclosure. The part of the description related to the mould makes no mention of the projections or other localised areas of thickening (see AP2, page 18,

lines 15 to 33 and figure 12). The criteria of the Guidelines C-VI, 9.4 are thus clearly met as well as those of C-VI, 9.6 since the claims of the present divisional application are directed to a mould and not to closures as in AP2 and AP1. The decision of the Opposition Division concerning AP2 is irrelevant for the present divisional application. Therefore, claim 1 of the main request meets the requirements of Article 76(1) EPC.

Reasons for the Decision

1. *Admissibility of claim 1 of the main request (Articles 76(1) and 123(2) EPC)*
 - 1.1 In order to comply with the requirements of Article 76(1) EPC, subject-matter contained in the present application must be disclosed in both the parent application and the grandparent application as filed (compare Case Law of the Boards of Appeal of the European Patent Office, 4th edition, section III.A.2; see e.g. T 555/00, unpublished, points 1.1 to 1.6 of the reasons).
 - 1.1.1 The application documents (i.e. the description, the claims and the drawings) of the grandparent application AP2 as filed and of the first divisional application AP1 as filed are identical. Therefore it is sufficient to compare the disclosures of AP2 and of the present application in their form as filed.
 - 1.1.2 The description pages 1 to 19 and the figures 1 to 12 of the present application as filed are identical with

those of AP2 as filed. Thus, compared with grandparent application AP2 only the claims as filed of the present application, i.e. the claims 1 to 10 which are directed to a mould, have been amended.

1.2 Content of AP2 and of the present application

In the following reference is only made to document AP2 when passages of the description or figures are quoted.

1.2.1 The grandparent application AP2 relates to closures which are formed with a tamper evident band for containers having an externally screw threaded neck (see AP2, page 1, lines 1 to 5).

1.2.2 The technical problem underlying AP2 is derivable as the provision of an alternative form of closure having a tamper evident band and/or to provide a closure which prevents a person from tampering with the closure by using a thin device, such as a knife or blade (see AP2, page 1, line 1 to page 2, line 1; and page 2, lines 23 to 25; and page 3, line 32 to page 4, line 6).

1.2.3 In the description of AP2 as filed it is stated after the title "disclosure of the invention" that "**the present invention in its broadest aspect consists** in a closure for a container having an externally screw threaded neck, the closure comprising a top portion and a depending skirt which has on its internal surface a complementary screw thread, a free edge of the depending skirt being joined by a plurality of frangible bridges to a tamper evident band, the band comprising a generally cylindrical body portion and a segmented rib extending inwardly of the body portion

and adapted to provide a lip to engage under a retaining flange extending outwardly from the neck of the container below the screw thread thereon, the rib having an upper side facing generally towards the top of the closure and an under side facing generally away from the top, the body portion being provided with projections or other localised areas of thickening to enhance the longitudinal stiffness of the body portion while still permitting it to expand radially as it is forced over the retaining flange on the container." (see AP2, page 2, line 27 to page 3, line 9).

Directly thereafter follows the statement "**in a first preferred aspect the present invention consists** in a closure for a container having an externally screw threaded neck, the closure comprising a top portion and a depending skirt which has on its internal surface a complementary screw thread, a free edge of the depending skirt being joined by a plurality of frangible bridges to a tamper evident band, the band comprising a generally cylindrical body portion and a **continuous or** segmented rib extending inwardly of the body portion and adapted to provide a lip to engage under a retaining flange extending outwardly from the neck of the container below the screw thread thereon, the rib having an upper side facing generally towards the top of the closure and an under side facing generally away from the top, **the closure being characterized in that the upper side of the rib comprises a first surface contiguous with the body portion of the band, which surface slopes inwardly and downwardly from the top, and a second surface which is positioned radially inwardly from the first surface, the second surface having a slope angle more nearly**

normal to the longitudinal axis of the closure than the first surface is to that longitudinal axis" (see AP2, page 3, lines 10 to 31).

A description of the shape of the upper side of the rib according to the prior art and the disadvantages thereof is followed by the statement that "**the present invention has resolved this problems by providing the upper side of the rib with a compound surface having a more steeply angled radially outer surface which assists moulding of the rib and, preferably, a substantially planar radially inner surface which increases the difficulty of removing the closure intact from the container**" (see AP2, page 4, lines 6 to 12).

Thereafter preferred embodiments of the **first preferred aspect** are described which are followed by a description of problems "In carrying out the present invention it has been found that during the injection moulding of closures ..." (see AP2, page 5, lines 2 to 17). Subsequently it is stated "therefore **in another aspect the present invention consists** in a closure for a container having an externally screw threaded neck, the closure comprising a top and a depending skirt which has on its external surface a complementary screw thread, a free edge of the depending skirt being joined by a plurality of frangible bridges to a tamper evident band, the band comprising a generally cylindrical body portion and a **continuous or** segmented rib extending inwardly of the body portion and adapted to provide a lip to engage under a retaining flange extending outwardly from the neck of the container below the screw thread thereon, the rib having an upper side facing generally towards the top of the closure and an

under side facing generally away from the top, **the closure being characterized in that the closure is formed by injection moulding from a synthetic plastics material in a mould which defines the upper side of the rib comprises a first surface contiguous with the body portion of the band, which surface slopes inwardly and downwardly from the top, and a second surface which is positioned radially inwardly from the first surface, the second surface having a slope angle more nearly normal to the longitudinal axis of the closure than the first surface is to that longitudinal axis.**" (see AP2, page 5, line 18 to page 6, line 6).

The subsequent statement at page 6 reveals that "the mould surface **preferably** has the other characteristics previously described as being preferred for the upper side of the rib itself" (see page 6, lines 6 to 8).

Thereafter it is stated that "**in another embodiment of the invention** the radially inner surface of the band is provided with an array of radially spaced apart inwardly extending projections positioned between the rib and a free edge of the band" (see page 6, lines 9 to 12) and that in a particularly preferred arrangement, the rib is segmented and alternate ones of the projections are spaced below the gaps between adjacent segments and are not connected to the rib" (see page 6, lines 24 to 27).

Furthermore, the description discloses that "the rib formed to engage with the retaining flange on the container **may be continuous or** segmented about the band" and "**the rib segments, when present, ...**" (see page 7, lines 3 to 8).

In the description of AP2 it is further stated that "the tamper evident band is further **preferably** provided with areas of localised thickening ..." (see page 7, lines 27 to 28).

Finally, it is stated that "**in another embodiment the present invention consists** in an injection moulded article including a cylindrical wall having a thread formed on its radially inner surface, the thread being comprised of a plurality of segments arranged in spaced apart array along the helical locus of the thread, at least some of the thread segments terminating at at least one end in a substantially planar surface inclined to the axis of the thread and facing the direction in which a mould core used in the moulding of the article was withdrawn" (see page 9, line 31 to page 10, line 5).

1.2.4 All figures of the application AP2 are stated to describe "a **preferred** embodiment" and figures 1 to 11 are directed to "**one embodiment of the closure according to this invention**" while figure 12 reveals "**a part of a mould used for the injection moulding of closures according to the present invention with the area defining the rib being shown as an enlarged seal**" (see pages 11 to 12).

Thus, the fact that all the drawings (except figures 2 and 12) reveal the feature of "projections or other localised areas of thickening (26)" cannot be construed as implying that said feature represents an essential feature.

1.2.5 The statement of the "**first preferred aspect**" at page 3 (see page 3, lines 10 to 31) as well as the "**another aspect**" statement at pages 5/6 (see page 5, line 18 to page 6, line 6) - the former defines a closure and the latter defines **a mould** for making the closure which comprises a tamper evident band (11) comprising "**a continuous or segmented rib**"; both statements being in the two-part form containing the wording "characterized in that" - are also inconsistent with the said "broadest aspect" statement, which is in the one-part form, wherein the tamper evident band is defined as comprising "a segmented rib". The two-part form of these two statements implies complete and self-contained definitions of alternatives and/or further inventions. It would be unnecessary if there were only one invention comprised in AP2 because then it would be sufficient to mention the additional features of the preferred embodiments.

This view is supported by the following statements, all at page 7, concerning a "**continuous rib**" or "**a segmented rib, when present**" (which implies that the segmented rib is only optional) and concerning the - optional - "**areas of localised thickening**" which are all inconsistent with the "broadest aspect" statement at pages 2/3 and with the identical claim 1 of AP2 which besides "a segmented rib" requires that "the body portion being provided with projections or other localised areas of thickening to enhance the longitudinal stiffness of the body portion while still permitting it to expand radially as it is forced over the retaining flange on a container" (see AP2, claim 1; page 2, line 27 to page 3, line 9; and page 7, lines 3 to 15 and lines 27 to 32).

1.2.6 Independent claim 21 of AP2, which is also in the one-part form and which defines an injection moulded article (see claim 21), has its exact counterpart in the description in a passage referring to "**in another embodiment**" at pages 9/10 while independent claim 20, also being in the one-part-form, is directed to "**a container** having a threaded neck and a retaining flange below the threaded portion of the neck, to which container is connected a closure according to any one of claims 1 to 26" (by the way it is remarked that AP2 comprised only 21 claims) has no exact counterpart in the description at all.

The subject-matter of claim 21 comprises totally different features to those in claim 1 and thus differs substantially from the subject-matter of claim 1. Thus, independent claim 21 is inconsistent with claim 1 and represents additional conclusive evidence that the grandparent application AP2 does not comprise only one invention which would have been defined by said "broadest aspect" statement. On the contrary, it is absolutely clear from claim 21 that AP2 comprises more than at least 2 inventions, each one requiring different essential features.

1.3 From the foregoing it is evident that said "broadest aspect" statement at pages 2/3 is inconsistent with many passages of the description and with claim 21 of AP2.

1.4 From the specification of AP2 it is nevertheless clear that the elements

- (i) "rib (18)",
- (ii) "inwardly extending projections (25,28)", and
- (iii) "projections or other localized areas of thickening (26)"

represent three separate kinds of elements which serve different purposes, namely: the rib (18) is for engaging under a retaining flange (see AP2, page 13, lines 3 to 12); the inwardly extending projections (25,28) serve to prevent a person from tampering with the closure (see, page 15, lines 3 to 8); and **the projections or other localized areas of thickening (26) in combination with said inwardly extending projections (25,28) serve to enhance the vertical stiffness of the band (11)** (see page 15, lines 12 to 16; and page 7, line 33 to page 8, line 10). Consequently, feature (iii) when taken alone does not appear to contribute to the solution of the technical problem defined in paragraph 1.2.2 above.

- 1.5 Furthermore, figure 12 shows the mould used for the injection moulding of closures "according to the present invention". The essential part of this mould (44), namely the shape of the rib (18) has in its upper part two surfaces (47,48) which correspond to said surfaces (23,24) according to said "first preferred aspect" at page 3 and according to said "another aspect" at pages 5/6. The statement that the feature of the "areas of localised thickening" "**further reduces** the possibility of the closure being tampered with ..." does **not** imply that this feature has to be considered to represent an essential feature, specifically since the paragraph before states that these areas of localised thickening only represent a preferred feature

(see page 7, line 27 to page 8, line 10). Thus, this statement supports the appellant's arguments that already the features of the characterising portion according to said "first preferred aspect" reduce the possibility of the closure being tampered with and thereby solve the technical problem underlying the application.

1.6 From the aforementioned passages of the description (see paragraph 1.2.3 above) it is evident that claim 1 definitely does not define the one and only solution to the said technical problem. To the contrary, taking account of the statement at pages 3/4 concerning disadvantages of the shape of the ribs according to the closures of the prior art it has to be concluded that the closure according to said "**first preferred aspect**" represents another solution to the technical problem defined in paragraph 1.2.2 above.

1.7 The conclusion of paragraph 1.6 above applies *mutatis mutandis* to the said "**another aspect**" at page 5 where the mould for making the closure of the said "first preferred aspect" is defined. The features comprised in the "characterising portion" of the said "**first preferred aspect**" and the said "**another aspect**" correspond to the solution described at page 4 of AP2 but use a slightly different terminology for the two surfaces of the upper side of the rib.

1.8 Thus, the Board considers that the features of the "projections and other localised areas of thickening" comprised in the "broadest aspect" statement and in claim 1 of AP2 cannot be considered to be essential features, at least not for the alternative solutions

presented in the description. Consequently, these features must not be comprised in independent claims directed to such alternative solutions. Furthermore, it is has to be considered that the aforementioned features are presented in the description as being optional.

1.9 The Board concurs with the appellant that the decision issued by the Opposition Division on the patent resulting from the grandparent application AP2, which was based on the subject-matter of claim 1 as filed, is not relevant with respect to an alternative solution comprised in the grandparent application AP2 but not having been claimed yet.

1.10 The Board therefore holds that the mould according to said "**another aspect**" at page 5, line 18 to page 6, line 6 of the grandparent application AP2 provides a basis for claim 1 according to the main request of the present application. Each individual feature according to this aspect of AP2 is comprised in claim 1 so that the subject-matter thereof has not been extended compared with the disclosure of AP2 as filed. Furthermore, no feature has been added to claim 1 of the present application that was not originally disclosed in AP2.

The Board therefore concludes that claim 1 of the main request meets the requirements of Articles 76(1) and 123(2) EPC.

1.11 The claims of the patents resulting from the examination procedure of grandparent application AP2 and parent application AP1 are directed to "**a closure**

for a container" (see EP-B1-0 0 650 444 and EP-B1-0 870 693, respectively) while the claims 1 to 10 of the present application according to the main request are directed to "**a mould** for use in the injection moulding of a closure".

A mould *per se* is definitely quite different from a closure *per se* for a container. The claims 1 to 10 of the present application thus claim a different subject-matter than the granted claims of the patents resulting from the applications AP1 and AP2. Hence the Board considers that the claims 1 to 10 of the present application according to the main request are not objectionable in this respect (see the Guidelines, C-VI, 9.6).

2. *Remittal to the first instance*

As evident from the file the Examining Division has not examined the patentability of the subject-matter of claim 1 yet.

Under these circumstances the Board considers it appropriate to exercise its discretion under Article 111(1) EPC to remit the case to the first instance for further prosecution, i.e. to examine whether the application meets all 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:

G. Nachtigall

A. Burkhardt