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D E C I S I O N
of 23 November 2005

Case Number: T 0590/04 - 3.2.05

Application Number: 99201968.7

Publication Number: 0967169

IPC: B65H 54/80

Language of the proceedings: EN

Title of invention:

Automatic device for collecting and packing in a container of strip produced by a carding unit

Patentee:

MARZOLI S.p.A.

Opponent:

Maschinenfabrik Rieter AG

Headword:

-

Relevant legal provisions:

EPC Art. 123(2), 84

Keyword:

"Amendments - added subject-matter (no) "

"Clarity (yes) "

Decisions cited:

-

Catchword:

-



Case Number: T 0590/04 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 23 November 2005

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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 8 March 2004
revoking European patent No. 0967169 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: W. Moser
Members: P. E. Michel
W. Widmeier

Summary of Facts and Submissions

- I. The appellant (patentee) lodged an appeal against the decision of the Opposition Division revoking European Patent no. 0 967 169.

The Opposition Division held that the subject-matter of the independent claims of a sole request did not meet the requirements of Articles 84 and 123(2) EPC.

- II. Oral proceedings were held before the Board of Appeal on 23 November 2005.

- III. The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of claims 1 to 5 presented during oral proceedings.

The respondent (opponent) requested that the appeal be dismissed.

- IV. Claims 1 and 5 of the sole request of the appellant read as follows:

"1. Automatic device for packing in a container, of the strip provided by a carding unit (1) to a collection unit (3), which comprises a distributor (5), which is eccentric relative to the container (4), and is driven by motion of revolution according a vertical axis thereof in order to distribute the strip (7) in the container (4), according to coils, the centre of which is translated according to circles which are coaxial relative to the container (4), the said container being provided with a mobile base (9), which

is thrust upwards by a spring (10), wherein the collection unit (3) is provided with a device to rotate the container (4) for collection of the strip, consisting of a rotary platform (6), on which there is positioned and centred the container (4) which is being filled, **characterized in that** a device for centring the collection container (4) consists of two pairs of levers, of which one pair of levers (52a,b) is provided with centring rollers (50a,b), which are disposed on the intake side of the container, and are adapted to pivot about a vertical axis through first hinges (53a,b), and prevent the container (4) from reversing beyond the position which is centred relative to the platform (6), and the other pair of levers (62a,b) is provided with centring rollers (60a,b), which are disposed on the output side of the container, and are adapted to pivot about a vertical axis through second hinges (63a,b) and are also provided with control means (64a,b), for movement of retraction and extension of this rotation, respectively in order to permit transit of the full container which is being unloaded, and to close the centring rollers (60a,b) on the output side, such that they are supported on the empty, replacement container (4'), and thus make the latter reverse to the centred position, in order to make the axis of the container correspond to the centre of rotation of the platform (6), which is determined by contact with the centring rollers (50a,b), a unit for movement of the containers comprises an arm (26) which thrusts the container (4') which is waiting, which in turn thrusts the full container, the containers being mounted on pivoting wheels (24) and are moving on a service platform (20) which constitutes the path of the

containers and is provided with said rotary platform (6)."

"5. Method for replacement of the full container (4), by an empty container (4'), by means of the device according to one or more of the preceding claims, **characterized in that** the replacement and centring of the container are carried out by thrusting the empty container (4') against the full container (4) with the arm (26), and continuing its path forwards thrusting the empty container (4') beyond the filling position, and giving rise to return of the one pair of levers (52a,b) rearwards, into the position of interception of the container, such that the levers are supported on their stop (57a,b), and thus make the container (4') reverse into the filling position, by means of the other pair of levers (62a,b), such as to support the centring rollers (60a,b) on the container (4'), and make the latter reverse, until it comes into contact with the centring rollers (50a,b), in a centred position, such as to make the axis of the container (4') correspond to the centre of rotation of the platform (6), the full container (4) being in the advanced position and well spaced from the subsequent empty container (4') so as to allow the strip (7) which extends between the two containers (4, 4') to be cut in the area (70) delimiting the radius of action of cutters."

V. The appellant has argued substantially as follows in the written and oral procedure:

The amendments to the claims do not contain subject-matter which extends beyond the content of the

application as filed, so that they comply with the requirements of Article 123(2) EPC.

The claims are clear and supported by the description and thus comply with the requirements of Article 84 EPC.

In particular, the term "well spaced", as used in claim 5 refers to the spacing between the full container in the advanced position and the empty container which is reversed into the filling position.

VI. The respondent has argued substantially as follows in the written and oral procedure:

The following features of claim 1 were not disclosed in the application as filed:

"a distributor ... driven by motion of revolution according a vertical axis". In particular, it is nowhere disclosed that the axis is vertical.

"one pair of levers (52a,b) ... are adapted to pivot about a vertical axis through first hinges (53a,b)" and "the other pair of levers (62a,b) ... are adapted to pivot about a vertical axis through second hinges (63a,b)". In particular, the application as filed merely refers to rotation in directions indicated by arrows, so that there is no disclosure of the orientation of the axes. In addition, the arrows imply the presence of stops, so there is no disclosure of pivoting without stops.

"the containers being mounted on pivoting wheels (24) and are moving on a service platform (20) which

constitutes the path of the containers and is provided with said rotary platform (6)". In particular, the function of the wheels is not disclosed.

The amendments accordingly do not comply with the requirements of Article 123(2) EPC.

The following terms used in claim 1 are not clear:

"Automatic device for packing in a container, of the strip provided by a carding unit (1) to a collection unit (3)". In particular, the claim does not make it clear whether or not the containers form part of the claimed device.

"the collection unit (3) is provided with a device to rotate the container (4)".

"one pair of levers (52a,b) is provided with centring rollers (50a,b)... adapted to pivot about a vertical axis through first hinges (53a,b) ... and the other pair of levers (62a,b) is provided with centring rollers (60a,b)... adapted to pivot about a vertical axis through second hinges (63a,b)". The claim fails to specify the presence of stops which are essential to the functioning of the device.

"a unit for movement of the containers comprises an arm (26) which thrusts the container (4') which is waiting, which in turn thrusts the full container". The claim should specify the other essential components of the unit for movement of the containers, including the mechanism which moves the arm.

"the containers being mounted on pivoting wheels (24) and are moving on a service platform (20) which constitutes the path of the containers and is provided with said rotary platform (6)".

The claim should also specify the presence of cutters, which are essential to the operation of the device.

The feature of claim 5 according to which "the full container (4) being in the advanced position and well spaced from the subsequent empty container (4') so as to allow the strip (7) which extends between the two containers (4, 4') to be cut in the area (70) delimiting the radius of action of cutters" is also not clear and not supported by the description. In particular, it is necessary for the strip to be taut in order to enable it to be cut.

The two part form of claims 1 and 5 is incorrect and misleading.

The requirements of Article 84 EPC are accordingly not satisfied.

Reasons for the Decision

1. Amendments

It is disputed between the parties whether or not the following features of claim 1 were disclosed in the application as filed:

- 1.1 "a distributor ... driven by motion of revolution according a vertical axis".

In the application as filed, claim 1 referred to "a distributor ... driven by motion of revolution according to the arrow (B)". The arrow (B) is shown in Figure 1 and mentioned in paragraph [0006] of the published version of the application as filed, where it is disclosed that the "distributor 5 consists of a horizontal plate, which is driven with rotary motion around its own centre, according to the arrow B". It is thus disclosed in the application as filed that the motion of revolution is "according a vertical axis".

- 1.2 "one pair of levers (52a,b) ... are adapted to pivot about a vertical axis through first hinges (53a,b)".

In the application as filed, claim 1 referred to the levers (52a,b) being "subjected to angular rotation according to the arrow (D)". The arrow (D) is shown in Figure 3 and mentioned in paragraph [0029] of the published version of the application as filed, where it is disclosed that "the levers 52a,b can be thrust forwards and towards the exterior, according to the arrow D". It is clear from Figure 3 that the motion of the levers is about the axis of the first hinges (53a,b), which is vertical. The arrow (D) does not, however, imply that stops are present. The term "pivot" is considered to be more apt than the term "rotate" to describe the motion of the levers about their respective hinges.

- 1.3 "the other pair of levers (62a,b) ... are adapted to pivot about a vertical axis through second hinges (63a,b)".

In the application as filed, claim 1 referred to the levers (62a,b) being "subjected to angular rotation according to the arrow (E)". The arrow (E) is shown in Figure 3 and mentioned in paragraph [0031] of the application as filed. As in the case of the one pair of levers (see paragraph 1.2), it is clear from Figure 3 that the motion of the levers is about the axis of the second hinges (63a,b), which is vertical. Whilst the arrow (E) is seen as indicating that pivoting takes place about a vertical axis, it does not imply that stops are present.

- 1.4 "the containers being mounted on pivoting wheels (24) and are moving on a service platform (20) which constitutes the path of the containers and is provided with said rotary platform (6)".

Referring to the published version of the application as filed, it is disclosed at column 3, lines 25 and 26 that the "containers are mounted on pivoting wheels 24, in order to facilitate their movement". At column 4, lines 15 and 16, it is disclosed that in "the platform 20, which constitutes the path of the containers 4, there is provided a circular cavity, in the filling position of the container. In this cavity there is positioned the rotary platform 6".

It is apparent from Figure 1 of the drawings of the application as filed that the containers move along the

service path platform 20, supported on their pivoting wheels 24.

- 1.5 The subject-matter of claim 1 is thus disclosed in the application as filed and therefore complies with the requirements of Article 123(2) EPC.

2. *Clarity*

It is disputed between the parties whether or not the following terms used in claim 1 are clear:

- 2.1 "Automatic device for packing in a container, of the strip provided by a carding unit (1) to a collection unit (3)".

The claimed device is fed with a strip from a carding unit which the device packs into a container. The containers thus do not form part of the claimed device. The references in the claim to the containers are, however, regarded as references to the intended use of the device which does not render the claim unclear.

- 2.2 "the collection unit (3) is provided with a device to rotate the container (4)".

According to claim 1 itself, the device to rotate the container consists of the rotary platform (6). This is consistent with the description and cannot be seen as introducing any lack of clarity into the claim.

- 2.3 "one pair of levers (52a,b) is provided with centring rollers (50a,b)... adapted to pivot about a vertical axis through first hinges (53a,b) ... and the other pair of

levers (62a,b) is provided with centring rollers (60a,b) ... adapted to pivot about a vertical axis through second hinges (63a,b)".

It is not essential to the functioning of the levers that stops should be provided. As illustrated by Figure 3, it is merely necessary that the levers should be able to be pivoted between a position in which they engage a container and a position in which they do not obstruct the path of movement of a container.

- 2.4 "a unit for movement of the containers comprises an arm (26) which thrusts the container (4') which is waiting, which in turn thrusts the full container".

No lack of clarity is seen to result from the fact that the claim specifies the presence of the arm (26) without mentioning other components of the unit for movement of the containers including the mechanism which moves the arm. Whilst the preferred embodiment of the invention uses a double-effect pneumatic cylinder, other mechanisms could also be used.

- 2.5 "the containers being mounted on pivoting wheels (24) and are moving on a service platform (20) which constitutes the path of the containers and is provided with said rotary platform (6)".

The claim merely specifies that the containers are mounted on the wheels. It is clear to the skilled reader of the claim, read in conjunction with Figure 1 of the drawings, that the containers move on the wheels. It is not necessary, in order to comply with the

requirements of Article 84 EPC, to specify any further functions of the wheels.

2.6 Whilst the claim does not specify the presence of cutters, the claim is nevertheless seen as defining a useful device, the operation of which results in a full container and a following empty container being spaced apart so as to allow the strip extending between the containers to be cut.

2.7 It is further disputed whether or not the following feature of claim 5 is clear and supported by the description: "the full container (4) being in the advanced position and well spaced from the subsequent empty container (4') so as to allow the strip (7) which extends between the two containers (4, 4') to be cut in the area (70) delimiting the radius of action of cutters."

This feature refers to step VI of the change of containers as described in paragraphs [0045] and [0046] of the patent in suit. The description from paragraph [0041] to paragraph [0046] as well as claim 5 itself are concerned with the method for replacement of a full container by an empty container, in which the empty container is pushed beyond the filling position and then reversed into the filling position so as to leave a gap between the full and empty containers. The distance between the containers is determined by the distance which the empty container is pushed beyond the filling position. Whilst it is accepted that it is preferable for the portion of the strip which extends across the gap to be taut and thereby facilitate cutting, this is not seen as being an essential feature,

insofar as it is also possible to cut a slack length of strip.

The Board is also satisfied that the remaining features of claims 1 and 5 are clear and supported by the description. The Board does not find it useful at this juncture, at which the issues of novelty and inventive step have not been entered into, to consider the question of whether or not the correct two-part form of claim has been used in claims 1 and 5. The claims thus comply with the requirements of Article 84 EPC.

3. The Opposition Division has not yet had the opportunity of considering the issues of novelty and inventive step. It is accordingly considered appropriate, in accordance with Article 111(1) EPC, to remit the case to the Opposition Division for consideration of these issues.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division for further prosecution.

The Registrar:

The Chairman:

M. Dainese

W. Moser