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**Datasheet for the decision  
of 20 June 2007**

**Case Number:** T 0352/05 - 3.2.05

**Application Number:** 99905185.7

**Publication Number:** 1152679

**IPC:** A47J 36/08

**Language of the proceedings:** EN

**Title of invention:**

Pot having a lid

**Patentee:**

Società Italiana Pentole S.p.A.

**Opponent:**

Meyer Marketing

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56, 123(2)

**Keyword:**

"Inventive step (main request, third and fourth auxiliary requests, no)"

"Extension beyond the application as filed (first and second auxiliary requests, yes)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0352/05 - 3.2.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.05  
of 20 June 2007

**Appellant:**  
(Patent Proprietor)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted 23 December 2004  
revoking European patent No. 1152679 pursuant  
to Article 102(1) EPC.**

**Composition of the Board:**

**Chairman:** W. Zellhuber  
**Members:** P. Michel  
M. J. Vogel

## Summary of Facts and Submissions

I. The appellant (patentee) lodged an appeal against the decision of the Opposition Division revoking European Patent no. 1 152 679.

The Opposition Division held that the subject-matter of claim 1 of a sole request lacked an inventive step.

II. Oral proceedings were held before the Board of Appeal on 20 June 2007.

III. The appellant requested that the decision under appeal be set aside and, as a main request, that the patent in suit be maintained as granted; or, as an auxiliary measure, that the patent be maintained on the basis of the following documents:

(i) first auxiliary request: claim 1 submitted as auxiliary request I on 3 May 2005 and claims 2 to 8 as granted; or

(ii) second auxiliary request: claim 1 submitted as auxiliary request II on 3 May 2005 and claims 2 to 8 as granted; or

(iii) third auxiliary request: claims 1 to 6 filed as auxiliary request III on 3 May 2005; or

(iv) fourth auxiliary request: claims 1 to 5 filed as auxiliary request IV on 3 May 2005.

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

IV. The following documents are referred to in the present decision:

D2: GB-A-231,024

D4: US-A-3,065,855

D6: US-A-1,328,558

D11: GB-A-237,056

V. Claim 1 of the main request reads as follows:

"1. A pot having a lid for cooking and draining food, comprising a lid (2) having:  
an outer convex top (20) with a central knob (21), which is dome-shaped and perforated by a plurality of through apertures (25,26) in one sector thereof, extending within one half of said top (20);  
an edge (22) and a leaning swell (23) for leaning onto an upper brim (10) of the pot (1), which extends with a cylindrical band (24) for the reciprocal sliding coupling of the lid (2) with a mouth (11) of the pot (1), said cylindrical band (24) having an outer diameter smaller than the inner diameter of the mouth (11) so as to accomplish a substantially airtight coupling when one is inserted into the other;  
and provided with releasable engagement means for the fast locking of said lid (2) on said pot (1) at said cylindrical band (24) of the lid (2) and in said mouth (11)."

Claim 1 of auxiliary request I differs from claim 1 of the main request in that it is specified that the cylindrical band of the lid is "continuous and non-perforated".

Claim 1 of auxiliary request II differs from claim 1 of auxiliary request I in that it is specified that the lid is convex "in its entirety, except the portion where the knob is attached" and that the apertures are "distributed onto the inner concavity of the lid".

Claim 1 of auxiliary request III differs from claim 1 of the main request in that the following feature is added: "wherein said releasable engagement means are of the bayonet type, said pot (1) having on said mouth (11), at least two inner projections (12,13) and said lid (2) having at least one corresponding pair of opposed grooved recesses (27,28), formed in said cylindrical band (24), intended for engaging and holding, respectively, said diametral projections (12,13)".

Claim 1 of auxiliary request IV differs from claim 1 of auxiliary request III in that the following feature is added: " wherein the knob (21) is secured to the top (20) in a fixed manner at at least two points, by dowel (31) inserted into an excentrically arranged hole of the top, and a fastening screw passing through the top and screwed into a handle of the knob (21)".

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

The closest prior art is represented by document D2. The subject-matter of claim 1 is distinguished over the disclosure of this document by the features of the provision of a knob as opposed to a handle, the cover being dome-shaped, and the substantially airtight coupling between the pot and the lid.

These features give rise to a synergistic effect of improving the seal between the pot and the lid, the dome shape increasing rigidity of the lid.

The subject-matter of claim 1 of the main request thus involves an inventive step.

The passage at page 2, lines 18 to 20 of the application as filed indicates that liquid should not flow out between the lid and the pot, so that the band should be free of perforations. Page 4, lines 19 and 20 further refers to an airtight coupling. The description of the application as filed taken as a whole, in conjunction with the drawings, in particular Figures 1 and 3, thus provides a disclosure of the cylindrical band of the lid being "continuous and non-perforated".

This feature of claim 1 of the first and second auxiliary requests is thus disclosed in the application as filed.

The use of a "grooved recess", that is, a recess which is closed off at the rear, contributes to preventing water from entering the slot and thus compromising the airtight seal. Whilst the effect may be small, it is nevertheless existent.

The subject-matter of claim 1 of the third auxiliary request thus involves an inventive step.

The knob has two functions: turning the lid with respect to the pot and holding the lid during draining. It is therefore necessary to apply torque to the knob

in use. A knob secured solely by a central screw will thus tend to become loose. The prior art does not offer a solution to this problem. Document D11 belongs to a remote technical field.

The subject-matter of claim 1 of the fourth auxiliary request thus involves an inventive step.

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

The closest prior art is represented by document D2. The subject-matter of claim 1 is distinguished from the disclosure of this document solely by the substitution of a knob for the handle of the lid. Knobs and handles are, however, interchangeable and mechanically equivalent.

The subject-matter of claim 1 of the main request thus lacks an inventive step.

It is nowhere disclosed in the application as filed that the cylindrical band of the lid is "continuous and non-perforated". The passage at page 2, lines 18 to 20 of the application as filed does not constitute a disclosure that a feature is excluded in the invention. Whilst page 5, line 3 of the application as filed refers to a "grooved recess", there is no indication of the purpose of this feature.

A skilled reader of the application as filed would regard the drawings as illustrative of what is described, but would not appreciate what is not shown in the drawings.

The first and second auxiliary requests thus do not comply with the requirements of Article 123(2) EPC.

As disclosed at page 3, lines 38 to 41 of document D2, the bayonet device can be arranged with the pins on the saucepan and the slots on the lid. Thus, claim 1 is distinguished from the disclosure of document D2 solely by the use of recesses as opposed to slots. This feature does not, however, solve any technical problem. In particular, it does not assist in improving the airtight seal between the pot and lid.

The subject-matter of claim 1 of the third auxiliary request thus does not involve an inventive step.

Document D11 offers a solution to the problem of a knob secured by a central screw becoming loosened in use, that is, the provision of an offset dowel.

The subject-matter of claim 1 of the fourth auxiliary request thus does not involve an inventive step.

## **Reasons for the Decision**

### *Main Request*

#### 1. Inventive Step

The disclosure of document D2 represents the closest prior art.



There is no basis for a definition of the term "dome-shaped" which would include within its scope the form of the lid as illustrated in Figures 1 and 3 of the drawings of the patent in suit, whilst excluding the form of the lid illustrated in Figure 1 of document D2.

As shown in the drawings of the patent in suit, the lid includes a flat area corresponding to the location of the base plate of the knob. The lid is thus not dome shaped over its entire area. As defined at paragraph [0035] of the patent in suit, the term is intended to mean "provided with a evident outer convexity", and the term is to be construed in this sense.

As shown in Figure 1 of document D2, although there is a region around the periphery of the lid which is concave, the lid is generally convex. It is noted that this form of lid has the effect of increasing the rigidity of the lid as compared with a flat lid of the same material. The lid of document D2 is thus "dome shaped" as required by claim 1.

The term "a substantially airtight coupling" is construed as requiring that the fit between the lid and the pot corresponds to that found in saucepans in general. That is, such that, in use, steam can only escape with difficulty between the lid and the mouth of the pot. As is well known, it is generally necessary to tip the lid with respect to the pot to allow the escape of steam when boiling food such as pasta, as mentioned in paragraph [0028] of the patent in suit. The cooking utensil disclosed in document D2 thus achieves a "substantially airtight coupling" between the lid and the pot.

The subject-matter of claim 1 of the patent in suit is accordingly distinguished over the disclosure of document D2 solely by the substitution of a knob for the handle of the lid. This substitution does not solve a technical problem. A user is able to apply a torque to, or grip, the handle of document D2 in a similar way to the knob specified in claim 1.

This substitution is a matter of design choice and does not involve an inventive step in view of the disclosure of document D6, which discloses a lid provided with a knob as illustrated most clearly in Figure 2.

It is argued on behalf of the appellant that the person skilled in the art would be discouraged from using a knob as opposed to a handle in view of the fact that it is necessary to apply a torque to the lid in order to engage or disengage the releasable engagement means. However, the fact that a feature is associated with certain disadvantages does not imply that the adoption of that feature without remedying those disadvantages involves an inventive step. In addition, claim 1 does not exclude the provision of other manually engageable handles or knobs which would facilitate rotating the lid, such as the handle 41 shown in document D4.

The subject-matter of claim 1 thus does not involve an inventive step.

*First and second auxiliary requests*

2. Amendments

The feature of claim 1 according to which the cylindrical band of the lid is "continuous and non-perforated" is not *expressis verbis* disclosed in the application as filed. It is merely stated at page 4, lines 19 and 20, that the band and the mouth of the pot accomplish a substantially airtight coupling. Such a coupling does not, however, necessarily imply that the band is continuous and non-perforated.

The passage in the application as filed at page 2, lines 18 to 20, refers to the structure of a known lid and does not provide a disclosure of any features of the device according to the invention.

It is argued on behalf of the appellant that this feature is disclosed in the drawings. However, the Board is of the opinion that, whilst Figures 1 and 3 each show an embodiment of a lid having a cylindrical band in which no perforations can be seen, the skilled reader of the application as filed would not come to the conclusion that the drawings provide a teaching of the negative feature of an absence of perforations in the cylindrical band.

The requirements of Article 123(2) EPC are thus not satisfied.

*Third Auxiliary Request*

3. Inventive step

Document D2 discloses a pot and lid in which the lid is secured to the pot by means of bayonet fittings. As disclosed at page 3, lines 38 to 41, the pins of the fitting may be arranged on the pot and the slots on the lid.

The subject-matter of claim 1 is thus additionally distinguished over the disclosure of document D2 by the use of grooved recesses as opposed to slots in the cylindrical band of the lid.

It is argued on behalf of the appellant that this feature improves the air tightness of the seal between the pot and the lid. However, also in the case of a recess, it is possible for steam or water to enter the recess through the vertical portion thereof and travel along the horizontal portion. Thus, air tightness is only ensured by the portion of the band above the recess, so that a significant improvement in the air tightness of the seal does not result.

Accordingly, the use of a grooved recess as opposed to a slot is a mere matter of design choice, which does not result in a significant technical effect and thus does not require an inventive step.

The subject-matter of claim 1 thus does not involve an inventive step.

*Fourth Auxiliary Request*

4. Inventive step

Document D2 discloses a pot and lid in which the lid is provided with a handle. As discussed in section 1 above, it does not involve an inventive step to substitute a knob, such as that known from document D6, for the handle.

Such a knob, being secured to the lid by means of a central screw, as can be seen in Figure 3 of document D6, suffers from the disadvantage that, during use, the screw may become loose.

The problem to be solved is thus to prevent such loosening of the screw.

The solution to this problem is known from document D11, that is, to provide an eccentrically arranged dowel in addition to the screw. Whilst this document refers (see claim 1) to fixing a knob to "a door, window, drawer or other article", and thus not specifically to cooking utensils, the Board is nevertheless of the opinion that it does not involve an inventive step to apply the teaching of this document to a lid of a pot in which the problem addressed in document D11 (page 1, lines 63 to 67) occurs.

The subject-matter of claim 1 thus does not involve an inventive step.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

D. Meyfarth

W. Zellhuber