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Datasheet for the decision of 27 June 2007

Case Number: T 0787/05 - 3.2.05

Application Number: 96109212.9

Publication Number: 0748673

IPC: B29B 13/02

Language of the proceedings: EN

Title of invention:
Method for packaging thermoplastic compositions using a thermally conductive rigid mold

Patentee:
H.B. FULLER LICENSING & FINANCING, INC.

Opponent:
SAVARE' INDUSTRIA CHIMICA S.r.l.

Headword:
-

Relevant legal provisions:
EPC Art. 83, 54, 108, 14(4)
EPC R. 6(2), 78(2)

Keyword:
"Admissibility of appeal (yes)"
"Sufficiency of disclosure (yes)"
"Novelty (yes)"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0787/05 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 27 June 2007

Appellant: (Opponent)
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Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 27 April 2005 rejecting the opposition filed against European patent No. 0748673 pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: W. Zellhuber
Members: W. Widmeier
C. Rennie-Smith

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division rejecting the opposition against European patent No. 0 748 673.

The Opposition Division held that the grounds of opposition under Article 100(a) EPC (lack of novelty, Article 54 EPC) and Article 100(b) EPC did not prejudice the maintenance of the patent as granted.

II. The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety because of lack of sufficient disclosure (Article 83 EPC) and lack of novelty (Article 54 EPC) with respect to document

E1: EP-A-0 718 199.

III. The respondent (patent proprietor) requested that the appeal be dismissed and that the patent be maintained as granted. He also considers the grounds of appeal late filed and the appeal thus not admissible.

IV. Claim 1 of the patent in suit reads as follows:

"1. A method for packaging thermoplastic compositions comprising the steps of:

a. lining a rigid mold (5) with a first thermoplastic film (1) such that the interface between the mold (5) and the film (1) is substantially free of voids, wherein said film becomes molten at or below the usage temperature

of said thermoplastic composition, and said mold (5) is in contact with ambient air;
b. dispensing a molten thermoplastic composition into the lined mold;
c. allowing the surface of the thermoplastic mass to sufficiently cool such that it will not melt a second film disposed on the surface thereof;
d. disposing a second thermoplastic film (1) on the surface of the mold to form a packaged thermoplastic composition;
e. allowing the molten thermoplastic composition to cool such that the packaged thermoplastic composition is removable from the mold (5),

and performing said steps in a continuous process, characterised in that the rigid mold (5) is thermally conductive and the molten thermoplastic composition is dispensed into the lined mold such that the distance from the center of the resulting thermoplastic mass to the nearest surface is less than about 2.5 cm (1 inch) and ambient air is blown in a direction substantially perpendicular to the mold such that the molten thermoplastic composition is cooled in the presence of ambient air."

V. The appellant's arguments can be summarized as follows:

The feature of claim 1 "lining a rigid mold (5) with a first thermoplastic film (1) such that the interface between the mold (5) and the film (1) is substantially free of voids" is not disclosed in the patent in suit in a sufficiently clear and complete manner for it to be carried out by a skilled person in the field. The reference to a preferred vacuum forming of the film in

paragraph [0023] of the patent in suit is not sufficient because this method is not applicable to films which are not capable of retaining any shape after the forming operation. Furthermore, claim 1 distinguishes between "lining" and "disposing". With respect to feature a) of claim 1 the verb "lining" is used to describe the operation of applying a pre-formed film from a roll to the inner surface of the mould. The verb "disposing" is used in paragraph [0020] of the patent suit and in claim 5 to indicate an operation where a film is in-line formed directly on the mould so that in feature d) of claim 1 this verb is supposed to have the same meaning. It follows that in step a) of claim 1 a pre-formed film from a roll is applied and that in step d) of claim 1 the film may also be of the type formed in-line. However, lining the mould with a pre-formed film by the technique of vacuum forming is not described in the patent in suit so that a person skilled in the art is not taught how to achieve a void-free lining. For this reason, step a) of claim 1 is not disclosed sufficiently clear and complete for it to be carried out.

In the decision under appeal it was concluded that the subject-matter of claim 1 differs from document E1 by the features that the distance from the centre of the resulting thermoplastic mass to the nearest surface is less than about 2.5 cm and that ambient air is blown in a direction substantially perpendicular to the mould. The distance from the centre of the thermoplastic mass to the nearest surface of the mould specified in claim 1 corresponds to a standard size of thermoplastic blocks. This distance is therefore an inherent feature of document E1.

The mould used in the method of claim 1 is a three-dimensional object with six sides so that the direction of the air flow is not a limiting feature because any direction is perpendicular to one of these sides. Consequently, by disclosing forced ventilation using the ambient air, document E1 discloses also the feature of claim 1 that the direction of the air flow of the ambient air blown on the mould is perpendicular to the mould.

It follows that document E1 discloses all features of the subject-matter of claim 1 which lacks novelty for this reason.

VI. The respondent's arguments can be summarized as follows:

The decision under appeal was issued on 27 April 2005 so that the grounds of appeal should have been filed at the latest on 27 August 2005. However, they were filed only on 7 September 2005. In the absence of any evidence that the decision under appeal was received so late by the appellant that 7 September 2005 was still within the time limit an objection of inadmissibility of the appeal has to be raised.

Paragraphs [0020] to [0023] of the patent in suit describe various apparatuses for performing the method of claim 1. These methods include inline deposition of a film as well as providing pre-formed film from a roll. Vacuum forming is one preferable way of operation. Paragraphs [0037] and [0038] describe that, while the film can be vacuum formed into the mould, the lining may also be applied to the mould as a thermoplastic

composition by means of hot melt adhesive application equipment. The distinction between the terms "lining" and "disposing" and the consequences the appellant concludes therefrom are not supported by the description of the patent in suit. The invention is therefore disclosed sufficiently clear and complete for it to be carried out by a person skilled in the art.

The two features of claim 1 which, according to the decision under appeal, provide novelty with respect to document E1 are not disclosed in this document. Document E1 does not give any specific values for the dimensions of the mould and it does not disclose that ambient air is blown in a direction perpendicular to the mould such that the molten thermoplastic composition is cooled. The subject-matter of claim 1 is therefore novel with respect to this document.

Reasons for the Decision

1. *Admissibility of the appeal*

The decision under appeal was posted on 27 April 2005. The receiving date, considering the 10 days delivery period (Rule 78(2) EPC), is thus 7 May 2005. The appeal was lodged and the appeal fee was paid on 22 June 2005, thus within the two months time limit, and the statement of grounds was filed in Italian language on 7 September 2005, thus within the four months time limit (Article 108 EPC). The English translation of the statement of grounds was filed on 7 October 2005, thus within the one month time limit (Article 14(4) EPC and Rule 6(2) EPC). All actions have therefore taken place

in time so that the appeal is to be considered admissible.

2. *Article 83 EPC*

Paragraph [0023] of the patent in suit describes how the mould is lined with the film and indicates that the film is preferably vacuum formed to the mould. Thus, at least one way of a void-free lining of the mould is disclosed because it is clear for a person skilled in the art that by applying a vacuum the film adheres perfectly and without voids to the mould. It is to be considered common general knowledge of a person skilled in the art that certain materials for the film are not suitable for a vacuum forming process. It is therefore not necessary to mention this in the patent in suit. The Board cannot accept the appellant's argument that the use of different verbs in steps a) and d) of claim 1 gives rise to a conflict and thus to an insufficiency of disclosure. The verb "lining" is perfectly adequate when designating a process where a first film is applied to five sides of a three-dimensional mould so that this mould can be filled with a liquid mass and five sides of the liquid mass are covered by the first film, and the verb "disposing" is perfectly adequate when designating a process where a second film is applied onto the thermoplastic mass which was filled into the mould so that the upper (sixth) side of the mass is covered by the second film. These processes are described in paragraphs [0023], [0024] and [0028] of the patent in suit. A restriction of claim 1, by the use of these two verbs, to a non-disclosed process for lining the mould with the first film cannot be concluded from the wording of claim 1.

The Board is therefore satisfied that the method of claim 1 is disclosed in the patent in suit in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art so that the requirement of Article 83 EPC is met.

3. *Article 54 EPC*

Document E1 constitutes prior art in accordance with Article 54(3) EPC. It is to be noted that only European patent applications as filed are to be considered prior art within the meaning of Article 54(3) EPC. The appellant, however, cited from the patent specification (EP-B-0 718 199) which is based on but different from document E1. This decision cites the corresponding passages of document E1.

When considering a document which constitutes prior art in accordance with Article 54(3) EPC there should not be any room for speculation, and only that content of the document which is directly or implicitly and, in any case however, unambiguously, disclosed, should be taken into account.

Document E1 does not disclose the size of the mould or the size of the packaged thermoplastic composition. Although it may well be that the distance of less than about 2.5 cm from the centre of the thermoplastic mass to the nearest surface specified in claim 1 of the patent in suit corresponds to a standard size, it is only speculation that document E1 discloses the same size. The reference in column 5, line 18, to "small-size portions" is not unambiguous. Also the diagram

submitted by the appellant for demonstrating the relation between weight and thickness of blocks of thermoplastic mass is not able to show in document E1 a specific dimension for the mould or the thermoplastic compositions formed therein because document E1 does not mention the weight of the blocks and "small-size" does not imply a specific size. In the absence of any hint in document E1, from which the distance specified in claim 1 can unambiguously be concluded, the dimensions of the mould or the packaged thermoplastic composition and thus this distance cannot be considered an inherent feature of document E1.

The same applies to the direction of the airflow. Document E1 does not disclose the direction of the cooling airflow, so that there is no unambiguous disclosure in document E1 that the airflow is perpendicular to the mould. The hint at forced ventilation using ambient air in column 13, lines 2 to 4, of document E1 cannot be construed as disclosing a perpendicular direction of the airflow. It is irrelevant in that respect to which side of the mould the direction of the airflow specified in claim 1 is perpendicular. In the absence of any indication of the direction of the airflow in document E1, it is speculation to conclude that the direction of the airflow is substantially perpendicular to one of the sides of the mould.

The Board is therefore satisfied that the subject-matter of claim 1 is novel with respect to document E1 and thus fulfils the requirements of Article 54 EPC.

4. Neither of the parties has requested oral proceedings and each party has had an opportunity to respond to the evidence and arguments brought forward by the other so that in accordance with Articles 113 and 116 EPC and Article 10a(3) of the Rules of Procedure of the Boards of Appeal, the Board has decided the present case.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Meyfarth W. Zellhuber