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**Datasheet for the decision
of 14 August 2007**

Case Number: T 0268/06 - 3.2.07

Application Number: 97914763.4

Publication Number: 0883551

IPC: B65D 6/18

Language of the proceedings: EN

Title of invention:

Collapsible container with integrally supported dunnage

Patentee:

BRADFORD COMPANY

Opponent:

ConTeyor Multibag Systems N.V.

Headword:

-

Relevant legal provisions:

EPC Art. 54, 56, 100(c), 123(2)

Keyword:

"Added subject-matter - no"

"Novelty - yes"

"Inventive step - yes"

Decisions cited:

-

Catchword:

-



Case Number: T 0268/06 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 14 August 2007

Appellant: ConTeyor Multibag Systems N.V.
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Respondent: BRADFORD COMPANY
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 12 January 2006
rejecting the opposition filed against European
patent No. 0883551 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: H. Meinders
Members: P. O'Reilly
P. Mühlens

Summary of Facts and Submissions

I. Opposition was filed against European patent No. 0 883 551 as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step). During the oral proceedings before the opposition division the ground of Article 100(c) EPC (added subject-matter) was admitted into the proceedings.

The decision of the opposition division was to reject the opposition.

II. The appellant (opponent) filed an appeal against that decision.

III. The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondent (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained in amended form in accordance with the main request filed during the oral proceedings before the Board on 14 August 2007.

IV. The independent claim of the main request reads as follows (amendments when compared to claim 1 of the patent as granted are depicted in bold; deletions are struck through):

"1. A reusable and returnable container for holding product therein during shipment and subsequently being returned generally empty of product for reuse, the container (10~~7~~-160) comprising a body (12, 14~~7~~-162) configured for being manipulated into an erected

position for containing product placed therein during shipment and further configured for subsequently being manipulated into a collapsed position for reducing the size of the container (10,~~160~~) for return, and a **plurality of adjacent** dunnage structures (40,~~178~~) coupled to the body (12, 14,~~162~~) **for engaging a plurality of products during shipment, wherein each dunnage structure is a pouch (40) for holding a product,** characterised in that the body (12, 14,~~162~~) ~~includes~~ **has a bottom (12) and at least two opposing** side walls (14,~~170, 172~~) **hingedly attached to the bottom for moving between and erected state and a collapsed state** and the dunnage ~~structure~~ pouches (40,~~178~~) spans between upper edges of the said opposing side walls (14,~~170~~), in that the dunnage ~~structure~~ pouches (40,~~178~~) ~~is~~ **are** operable for moving into an engagement position with ~~an~~ **their** upper edges spanning across the body between the upper edges of the said opposing side walls (14,~~170~~) when the container body (12, 14,~~162~~) is erected to thereby engage product placed in the container (10,~~160~~) for shipment, and in that the said opposing side walls (14,~~170~~) are movable inwardly towards each other by hinging towards the bottom so that their upper edges come together causing the dunnage ~~structure~~ pouches (40,~~178~~) to collapse including at the upper edges thereof and moving it into a relaxed position beneath the said opposing sidewalls when the container body (12, 14,~~162~~) is collapsed so that the container (10,~~160~~) and dunnage ~~structure~~ pouches may be returned together for reuse, whereby the container (10,~~160~~) provides reusable dunnage (40) which is usable with the container when it is shipped and subsequently remains with the container when it is returned for being reused when the container is again shipped."

V. The documents cited in the present decision are the following:

D4: DE-A-4 024 607

D5: DE-A-4 138 507

VI. The arguments of the appellant may be summarised as follows:

- (i) The features that the dunnage structure spans between the upper edges of the side walls and that the dunnage structure in an engagement position has an upper edge spanning across the body between the upper edges of the side walls were not disclosed in the application as originally filed. The upper edges are the upper extremities of the side walls and the dunnage structures are not spanned between these since they are clearly attached below these, as shown in the figures.
- (ii) The subject-matter of claim 1 lacks novelty over D4, in particular in respect of the embodiment of figure 3 when the container depicted therein is in an orientation lying with its back wall horizontal. This position would occur during erecting and mounting the container. The container shows one solid and two flexible shelves in addition to the top and bottom shelves. However, according to the description of the document the solid shelves can be replaced by flexible shelves when they are not required for structural purposes. When the central solid shelf of figure 3 is replaced by a flexible

shelf adjacent dunnage pouches are formed therebetween.

(iii) The subject-matter of claim 1 lacks an inventive step. The nearest prior art document is D5. The container according to claim 1 differs from the one disclosed in D5 in the manner in which the dunnage pouches are spanned and the way that the walls collapse. There is, however, no prejudice for the skilled person against making the necessary changes.

VII. The arguments of the respondent may be summarised as follows:

(i) Claim 1 as amended complies with Article 123(2) EPC. All the embodiments of figures 1A to 1D have suspension points which whilst not at the upper extremity of the side walls are nevertheless at a position which the skilled person would understand to be the upper edges. This is also explicitly stated for figure 1A on page 31, lines 4 to 6 of the application as originally filed. Although in the embodiments which include a support rail the pouches do not span the whole width between the sidewalls the term "span" should not be seen as requiring that the whole width be covered by the pouches.

(ii) The subject-matter of claim 1 is novel over D4. The container according to the embodiment of figure 3 of this document is only suitable for transport in one orientation. If the container is reoriented as proposed by the appellant the hinged

solid shelves which keep the side walls apart would collapse as they would no longer be held in place by gravity as they are when in their intended orientation. The prior art container does not have a reduced size when collapsed since the upper hinged shelf will increase the length dimension of the container when it is collapsed since it is hinged outwardly to pivot.

(iii) The subject-matter of claim 1 involves an inventive step. The nearest prior art document is D5. The container of claim 1 is distinguished from the container disclosed in this document at least by the features that the opposing side walls are moveable inwardly so that their upper edges come together causing the dunnage pouches to collapse including the upper edges thereof. In this way the simple hinging movement of the sidewalls brings the container and the dunnage into a state ready for transport. In the prior art container a separate dunnage removal device is provided and the dunnage is transported separately from the container.

Reasons for the Decision

1. *Article 100(c) and Article 123(2) EPC*

1.1 The amendments made during the appeal proceedings are the following:

(a) there being a plurality of the dunnage structures;

(b) the dunnage structures are each a pouch; and

(c) the body has a bottom and at least two opposed sides hingedly attached thereto.

Features (a) and (b) are disclosed with respect to the embodiments of figures 1 to 3 (which are the only embodiments remaining in the patent) on page 25, lines 14 to 17 of the application as originally filed.

Feature (c) is disclosed in claims 14 and 25 of the application as originally filed which were claims dependent upon independent claims which covered the subject-matter of the embodiments still remaining in the patent. Also, this feature is disclosed in the particular description of these embodiments on page 23, lines 13 to 18 of the application as originally filed.

Therefore the amendments made during the appeal proceedings comply with Article 123(2) EPC. These amendments also overcome some of the objections raised in the oral proceedings before the opposition division for the ground of opposition under Article 100(c) EPC.

- 1.2 After the amendment of the patent during the appeal proceedings as mentioned above there remains the argument of the appellant under Article 100(c) EPC made against claim 1 of the patent as granted and maintained against claim 1 of the main request, which is that the features that the dunnage structure (or pouches) spans between the upper edges of the side walls and that the dunnage structure (or pouches) in an engagement position has an upper edge spanning across the body between the

upper edges of the side walls are not disclosed in the application as originally filed.

In the view of the Board these features as set out in claim 1 of the main request are disclosed in the application as originally filed.

In the embodiments in which a support structure with a rail is provided, i.e. the embodiments according to figures 1A and 1C, there is explicit support for the dunnage spanning between the top edges of the side walls on page 31, lines 4 to 9 and claim 11 of the application as originally filed.

In the embodiments of figures 1B and 1D it is indicated on page 28, lines 18 to 21 and page 29, lines 10 to 13 of the application as originally filed that these embodiments eliminate the support structure by being directly fixed to the side walls. The implication of these parts of the description is that it is the manner of attachment that is different to the other embodiments rather than the position of attachment. This point of view is supported by figures 1B and 1D which show the attachment at the upper edge of the side walls. In this respect the Board considers that the expression "upper edges" must be interpreted to include the area closely adjacent to the extremity of the edge. This point of view is consistent with the statement on page 31, lines 4 to 9 of the application as originally filed with respect to the support rails which indicates that these are "positioned at the top edges" whereas in figure 1 they are not at the extremity of the top edge but only adjacent it in the same manner as the attachment shown in figures 1B and 1D.

The appellant also argued that the pouches in all the embodiments do not cover the whole width between the sidewalls since, for instance, in the case of the embodiments of figures 1A and 1C the pouches are attached to rails or cables which in turn are attached to the side walls. In the view of the Board the term "spans" does not require that the pouches extend the whole distance between the side walls so that all the embodiments do show such a spanning.

The Board concludes therefore that this amendment to claim 1 made during the grant proceedings complies with Article 123(2) EPC.

1.3 In the view of the Board therefore the patent as amended complies with Article 123(2) EPC.

2. *Novelty*

2.1 The appellant alleged lack of novelty of the subject-matter of claim 1 over D4. In particular the appellant alleged that the container according to the embodiment of figure 3 discloses all the features of claim 1 when the container is considered in an orientation in which it is lying on its back side as it would when it is being erected or collapsed.

2.2 According to the particular description of this embodiment, in addition to the solid shelves, flexible shelves can be provided so long as they are a sufficient distance from the solid shelves (see column 7, lines 62 to 67). In figure 3 itself there are solid top and bottom shelves and a single solid shelf near the centre.

No flexible shelves are depicted. This teaching means that there may be an indeterminate number of flexible shelves, i.e. one or more, in addition to the solid shelf.

In the general description it is indicated that solid shelves which do not contribute to the stability of the container can be replaced by flexible shelves (see column 3, lines 30 to 45). When this general teaching is applied to the embodiment of figure 3 the conclusion is that there may be a flexible shelf replacing the solid centre shelf or more than one such shelf.

These disclosures cannot however be considered to anticipate a plurality of dunnage pouches as specified in claim 1, since it is still not disclosed that there are enough flexible walls, i.e. three or more, to form a plurality of pouches even if the spaces formed between a pair of flexible walls were each considered to constitute a pouch. In any case a space formed by two flexible shelves and three solid wall elements, i.e. the two side walls and the back wall, cannot be said to form a dunnage pouch since a dunnage pouch is intended to protect the contents from the solid walls and hence cannot be formed by these walls.

2.3 The Board concludes therefore that at least the feature of claim 1 that there is a plurality of dunnage pouches is not disclosed in D4.

2.4 Therefore, the subject-matter of claim 1 is novel in the sense of Article 54 EPC.

3. *Inventive step*

3.1 Both the parties considered that the closest prior art for discussing inventive step is represented by D5. The Board agrees with the parties in this respect.

3.2 The essential features which distinguish the container of claim 1 from the one disclosed in this document are that the dunnage pouches extend between the opposing walls (though in D5 there is only an open frame which might not fall under the scope of the claimed term "wall") which are hinged to the bottom, that the upper edges of the said opposing walls come together when they are hinged towards each other to collapse the container, and that the upper edges of the dunnage pouches also collapse in this movement.

In D5 the sides between which the pouches extend are not the sides which are hinged. The hinged sides are the two other sides. Moreover, the hinges are not at the bottom of the sides but in their middle.

3.3 The appellant argued that there was no prejudice against the skilled person altering the known container in this manner.

The Board would first note that it is not a sufficient reasoning for the lack of an inventive step that there is no prejudice against an alteration, rather it must be shown that the skilled person would make such an alteration. However, the Board also does not agree with the appellant that there is no prejudice against the alteration.

In D5 the dunnage pouches are suspended from bars which have rollers at their extremities which move in rails in opposing frame sides so as to allow for variation in the absolute and relative sizes of the pouches. Such roller bars are normally rigid in order to function properly. For this reason the hinging of these opposed frame sides will be such that the pouches do not span between the hinged frames. If the pouches would extend between the hinged frame sides then these frames could not be moved such that their upper edges come together since such a movement would be prevented by the rigid roller bars. There is thus a strong prejudice for the skilled person against changing the opposed frame sides between which the pouches of D5 extend from the non-hinged sides to the hinged sides since the whole arrangement then ceases to function in the desired manner.

- 3.4 The Board therefore concludes that the skilled person would not modify the container disclosed in D5 in a manner such that it would have all the features of claim 1.

Therefore, the subject-matter of claim 1 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 department of first instance with the order to maintain the patent on the basis of the following documents:

description: pages 2 - 8,

claims: 1 - 9,

drawings: figures 1, 1A to 1D, 2, 3,

all filed in the oral proceedings.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders