

**Internal distribution code:**

- (A)  Publication in OJ  
(B)  To Chairmen and Members  
(C)  To Chairmen  
(D)  No distribution

**Datasheet for the decision  
of 11 September 2008**

**Case Number:** T 1220/06 - 3.2.07

**Application Number:** 01914124.1

**Publication Number:** 1268312

**IPC:** B65D 90/04

**Language of the proceedings:** EN

**Title of invention:**

A flexible tank for liquids and method of making such a tank

**Patentee:**

K-Tank Supply Limited

**Opponent:**

Büscherhoff Spezialverpackungen GmbH & Co. KG

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 123(3)

**Keyword:**

"Scope of protection extended - yes"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 1220/06 - 3.2.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.07  
of 11 September 2008

**Appellant:** K-Tank Supply Limited  
(Patent Proprietor) Room 1517  
Star House  
3 Salisbury Road  
Kowloon  
Hongkong (CN)

**Representative:** Reeve, Anna Elizabeth  
Kilburn & Strode  
20 Red Lion Street  
London WC1R 4PJ (GB)

**Respondent:** Büscherhoff Spezialverpackungen GmbH & Co. KG  
(Opponent) Gewerbering 8  
D-49439 Steinfeld (DE)

**Representative:** Klinghardt, Jürgen  
Eisenführ, Speiser & Partner  
Patentanwälte Rechtsanwälte  
Postfach 10 60 78  
D-28060 Bremen (DE)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 2 June 2006  
revoking European patent No. 1268312 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** H. Meinders  
**Members:** P. O'Reilly  
E. Dufrasne

## Summary of Facts and Submissions

- I. Opposition was filed against European patent No. 1 268 312 as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step).

The opposition division decided to revoke the patent. It held that the subject-matter of independent claims 1 and 19 of the patent as granted (only request) was novel, but that it did not involve an inventive step.

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

- III. The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of claims 1 to 18 according to the main request or, alternatively, on the basis of claims 1 to 15 according to the first auxiliary request, both requests filed during the oral proceedings before the Board on 11 September 2008.

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

- IV. The independent claims of the patent as granted read as follows:

"1. A flexible tank for liquids, having a capacity in the range 16,000 litres to 24,000 litres, the tank comprising a one piece body portion of flexible material that is formed using a blown film process to create a seamless tube of substantially uniform lateral dimension closed at each end by a single lateral seam."

"19. A method of forming a flexible tank for bulk liquids, having a capacity in the range 16,000 litres to 24,000 litres, the method comprising forming a one piece body portion of flexible material of substantially uniform lateral dimension using a blown film process to create a tube closed at each end by a single lateral seam."

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

"1. A flexible tank ~~for liquids~~, having a capacity in the range 16,000 litres to 24,000 litres, the tank comprising a one piece body portion of flexible material that is formed using a blown film process to create a **longitudinally seamless tube, and which tank is closed at each end by a single lateral seam and is of substantially uniform lateral dimension, as measured when flat** ~~of substantially uniform lateral dimension closed at each end by a single lateral seam.~~"

The sole independent claim of the first auxiliary request reads as follows (amendments when compared to claim 1 of the main request are depicted in bold or struck through):

"1. A flexible tank, having a capacity in the range 16,000 litres to 24,000 litres, the tank comprising a one piece body portion of flexible material that is formed **by co-extruding two or more layers of material** using a blown film process to create a longitudinally

seamless tube, and which tank is closed at each end by a single lateral seam and is of substantially uniform lateral dimension, as measured when flat."

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

It is clear to the skilled person that if on the one hand the tank comprises a seamless tube and on the other hand the tank is closed at each end by a single lateral seam and has uniform lateral dimensions, then these features of the tank must apply to the seamless tube since the tank comprises this. This is thus the same as in the independent claims of the patent as granted wherein these features related to the seamless tube. Therefore there is no contravention of Article 123(2) or (3) EPC.

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

The patent as amended does not comply with Article 123 (2) or (3) EPC. The claim now specifies that it is the tank which is closed at each end by a single lateral seam and has uniform lateral dimensions, whereas in the independent claims of the patent as granted these features related to the seamless tube.

## Reasons for the Decision

### 1. *Article 123(3)*

1.1 Product claim 1 of the patent as granted contained the feature: "using a blown film process to create a seamless tube of substantially uniform lateral dimension closed at each end by a single lateral seam."

Method claim 19 of the patent as granted contained the feature: "flexible material of substantially uniform lateral dimension using a blown film process to create a tube closed at each end by a single lateral seam."

According to each of the above cited features of the independent claims of the patent as granted it is a requirement that the seamless tube formed by the blown film process is of uniform lateral dimension and is closed at each end by a single lateral seam. The lateral seam and the uniform lateral dimension are thus both features relating to the seamless tube.

In accordance with claim 1 of each of the present main and first auxiliary requests the tank comprises a body portion formed using a blown film process to create a longitudinally seamless tube **and** the tank is closed at each end by a single lateral seam and is of substantially uniform lateral dimension, as measured when flat.

1.2 In the view of the Board the wording of claim 1 of both requests allows the possibility that the seamless tube is **not** closed at each end by a single lateral seam and is **not** of substantially uniform lateral dimension,

contrary to the requirements of the independent claims as granted. The claims as amended allow that it is the tank as a whole which has these features and not necessarily the seamless tube. This is clear from the wording of the claims that "the tank comprising ..., **and** which tank is..." (emphasis added by the Board). Such wording clearly indicates that separate features of the tank are being defined, i.e. a feature relating to the seamless tube and features relating to the ends and shape of the tank. Since separate features are being specified there is no reason why the features relating to the ends and shape of the tank should specifically apply to the seamless tube and only define further the seamless tube.

On the contrary these features further define the tank as a whole and not necessarily the seamless tube.

- 1.3 The appellant argued that the skilled person would understand that the features relating to the closed ends and shape of the tank would apply to the seamless tube since this is comprised of in the tank.

The Board cannot agree with this argument. The wording of the independent claims as amended is that the tank is "comprising ... a longitudinally seamless tube" which clearly allows that there are possible further elements constituting the tank. Indeed, the description of the patent makes it clear that there may be an outer liner in addition to an inner liner, see column 3, lines 40 to 42 and figure 3. Given the explicit references in the description to inner and outer liners there is no reason for the skilled person to understand that the features specified in the independent claims as amended relating

to the ends and shape of the tank should be read as only applying to the seamless tube.

- 1.4 The Board concludes therefore that at least in view of the above mentioned amendments the independent claims of each of the main and the first auxiliary requests have been amended in such a way as to extend the protection that they confer compared to the protection conferred by the claims of the patent as granted. These claims as amended do not therefore comply with Article 123(3) EPC.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders