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Datasheet for the decision of 3 July 2008

Case Number: T 1486/06 - 3.2.07

Application Number: 00953103.9

Publication Number: 1119497

IPC: B65D 75/56

Language of the proceedings: EN

Title of invention:
Packaging unit

Patentee:
SAINT-GOBAIN ISOVER

Opponent:
ROCKWOOL INTERNATIONAL A/S

Headword:
-

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-

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Case Number: T 1486/06 **-** 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 3 July 2008

Appellant: (Opponent)
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Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 19 July 2006 concerning maintenance of European patent No. 1119497 in amended form.

Composition of the Board:

Chairman: H.-P. Felgenhauer
Members: K. Poalas
I. Beckedorf

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division maintaining European patent No. 1 119 497 in amended form.

II. An opposition had been filed against the patent in its entirety based on Article 100(a) EPC (lack of novelty and lack of inventive step).

The Opposition Division held that the grounds for opposition according to Article 100(a) EPC did not prejudice the maintenance of the patent as amended.

III. Oral proceedings before the Board of Appeal were held on 3 July 2008.

(a) The appellant requested that the decision under appeal be set aside and that the European patent No. 1 119 497 be revoked.

(b) The respondent (patent proprietor) requested that by setting aside the decision under appeal the patent be maintained in amended form on the basis of the set of claims, the description and the figure filed during the oral proceedings.

IV. Claim 1 reads as follows:

"A packaging unit (1) comprising a mineral-wool product and a wrapping (3) made of sheeting material, paper or the like, in the form of a roll, with a carrying aid which is a strip arranged on the outside of the

packaging unit (1) and beneath which the user can grip, wherein the strip (4) is connected to the outside of the wrapping (3) by adhesive bonding or sealing, and wherein the connection being interrupted in at least one carrying region (41), arranged specifically at a particularly suitable point, which butts tightly against the outside of the wrapping (3), but beneath which the user can grip because of the elasticity properties of the mineral wool, characterized in that
the strip (4) encircles the entire packaging unit (1) so that it runs all the way around transversely to a main axis thereof, with the ends of the strip (4) being connected to one another in an overlapping manner."

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

D3: EP 0 287 177 A,
D8: US 3 964 235 A,
D9: US 3 557 516 A,
D10: US 4 700 528 A.

VI. The appellant argued orally and in writing essentially as follows:

Claim 1 - Inventive step (Article 56 EPC)

(a) *D3*

The packaging unit according to claim 1 differs from the packaging unit known from **D3** in that the strip 4 encircles the entire packaging unit 1 so that it runs all the way around transversely to a

main axis thereof, and in that said strip 4 is connected to the outside of the wrapping 3 by adhesive bonding or sealing.

The invention concerns the problem of providing a more convenient carrying means for packaged mineral-wool products in the form of a roll.

Even though claim 1 of D3 indicates that the carrying strip is passed axially over the wrapping around the rolled up product, there is a reference to a prior art in which the carrying strip is tied transversely around the product, see column 1, lines 39 to 44.

Thus, there is a clear disclosure in D3 of an embodiment, which may be a less preferred embodiment but is nevertheless disclosed, which has all of the features of the maintained claims except that the strip is not connected to the outside of the wrapping by adhesive bonding or sealing.

According to [0004] of the patent in suit the disadvantage of this lack of an adhesive bond or seal is that the packaging unit can slide out of the carrying strip.

However, it would be nothing more than common sense for the skilled person to conclude that attaching the carrying strip of D3 by some means to the outside of the package would be beneficial in order to solve the problem.

Thus, the subject-matter of claim 1 does not involve an inventive step over D3 alone.

(b) *D3 in combination with D8, D9 or D10*

D8 concerns packaging for materials provided in the form of a roll, such as building insulation, see the abstract and column 1, lines 8 to 10. D8 describes a system in which tapes are provided transversely all the way round the rolled-up product, in order to aid in packaging. Thus, these tapes do not serve precisely the same function as the transverse carrying strip in D3, but they are nevertheless described as being applied automatically to the product during roll up in a convenient manner, see for instance column 1, lines 25 to 28. In lines 26 to 30 of column 2 it is indicated that it is easy to apply the tapes simply by adding an extra revolution to the rolled-up product. Accordingly, the person skilled in the art would be motivated by the disclosure of D8 to provide the packaging unit according to D3 with a transversely carrying strip.

D9 discloses a packaging unit with a carrying handle, see the abstract and column 1, lines 24 to 32. It is clear from column 6, lines 22 to 49 of D9 that the carrying handle (ribbon 23) is conveniently applied on-line while forming the packaging unit. Thus, the skilled person, on reading D3, would recognise the processing advantages of having a transversely tied carrying strip, as referred to in column 1, lines 34 to 46 and would be motivated by D9 to apply a strip

encircling the entire packaging unit known from D3.

Dl0 provides a handle for a packaging unit which is applied transversely, see column 1, lines 29 to 37, figures 3 and 8. In lines 6 to 10 of column 2 is stated that the carrying tape may be bonded by pressure sensitive adhesive, by heat sealing or by ultrasonic welding. Accordingly, the skilled reader of D3 would consider it obvious, in view of D10, to apply a transverse carrying strip to the packaging unit of D3, considering that the production process would thus be simplified, and that the strip can be fixed to the packaging unit by means of adhesive or sealing.

Thus, the subject-matter of claim 1 lacks inventive step over D3 in the light of D8, D9 or D10.

VII. The respondent argued orally and in writing essentially as follows:

Claim 1 - Inventive step (Article 56 EPC)

(a) *D3*

The carrying strip 12 in **D3** is neither connected to the outside of the wrapping 10 by adhesive bonding or sealing nor runs all the way around the packaging unit transversely to the main axis of said packaging unit.

In column 1, lines 39 to 44 of D3 a reference to the problem of a transversely tied carrying strip

is made, stating that the fitting of such a strip relative to the centre of gravity of the packaging unit has to take place very carefully, since after fitting displacement of the transverse carrying strip along the wrapping is virtually impossible.

The person skilled in the art is advised by the teaching of D3 not to use a transversely tied carrying strip adhered to the wrapping. On the opposite D3 teaches explicitly the use of an axially tied carrying strip not adhered to the wrapping, since the slight impressions made at the edges of the mineral-wool roll guarantee a secure transportation of the packaging and obviously no need for an additional adhesion exists, see column 1, lines 29 to 33. Furthermore, since the mineral-wool roll is already compressed by the locking strap 8, a transversely tied carrying strip adhered to the wrapping just above the locking strap 8 would not allow the user to grip under such a gripping strip using thereby the elasticity properties of the mineral wool.

Therefore, D3 itself cannot lead the person skilled in the art to the subject-matter of claim 1 of the patent in suit.

(b) None of **D8**, **D9** or **D10** discloses a carrying strip connected to the outside of the wrapping by adhesive bonding or sealing, said connection being interrupted in at least one carrying region, which butts tightly against the outside of the wrapping, but beneath which the user can grip because of the elasticity properties of the mineral wool.

A combination of the teaching of D3 with one of the teachings of D8, D9 or D10 cannot therefore lead the person skilled in the art to the subject-matter of claim 1.

For these reasons, the subject-matter of claim 1 of the patent in suit involves an inventive step.

Reasons for the Decision

1. *Claim 1 - Inventive step (Article 56 EPC)*

1.1 **D3**, representing the closest prior art, describes a packaging unit, comprising a rolled up mineral-wool product and a wrapping applied around said rolled up product, whereby a carrying strip is passed axially over the wrapping around said rolled up product, see claim 1.

The packaging unit according to claim 1 differs from said packaging unit known from D3 in that it comprises a carrying strip which runs all the way around transversely to the main axis of the packaging unit and is connected to the outside of the wrapping by adhesive bonding or sealing, whereby the connection between the strip and the wrapping is interrupted in at least one carrying region, arranged specifically at a particularly suitable point, which butts tightly against the outside of the wrapping, but beneath which the user can grip because of the elasticity properties of the mineral wool.

These distinguishing features over D3 allow solving the problem of providing a more convenient carrying means for a packaging unit comprising a mineral-wool product in the form of a roll.

1.2 The first question at stake is whether the skilled person starting from the packaging known from D3 would, in an attempt to solve the problem indicated above, be led by the teaching of D3 alone to the packaging unit according to claim 1 without exercising an inventive activity.

In column 1, lines 29 to 33 of D3 it is stated that "when gripped the axially tied carrying strap will form slight impression in the end peripheral edges, so that release of the rolled up product from the carrying strap would be practically impossible during carrying of the packaging".

In the same column, lines 33 to 44 of D3 the advantages of an axially tied carrying strip over a transversely tied carrying strip are presented.

The person skilled in the art derives from the above-mentioned passages of D3 the teaching of using an axially tied carrying strip, which, due to forming of slide impressions in the end peripheral edges, allows a secure transportation of the packaging.

To solve the problem indicated above, namely to provide a more convenient carrying means for a packaging unit comprising a mineral-wool product in the form of a roll, the person skilled in the art would not use a transversely tied carrying strip, as claimed in claim 1

of the patent in suit, since such a measure would obviously go against said teaching of D3.

Furthermore, even accepting that the skilled person, acting against said teaching of D3, would apply a transversely tied carrying strip to the packaging unit known from D3, he would not be able to find any information in D3 for adhering such a carrying strip to the wrapping, whereby the connection between the strip and the wrapping is interrupted in at least one carrying region, which butts tightly against the outside of the wrapping, but beneath which the user can grip because of the elasticity properties of the mineral wool. On the opposite, there exist two reasons for not adhering a transversely tied carrying strip to the wrapping: Firstly, because according to the teaching of column 1, lines 29 to 33 of D3, the slight impressions made at the edges of the mineral-wool roll guarantee a secure transportation of the packaging and obviously no need for an additional adhesion exists. Secondly, such a transversely tied carrying strip would have to lie over the locking strap 8 (see figures 1B, 1C, 1D, 2 and 3). Adhering a transversely tied carrying strip over the locking strap 8 would not allow the user to grip under such a gripping strip adhered just above the locking strap 8 using thereby the elasticity properties of the mineral wool, since the mineral wool is already compressed by the locking strap 8.

For the above-mentioned reasons, the person skilled in the art does not derive from D3 any hint towards a transversely tied carrying strip adhered to the wrapping, whereby the connection between the strip and the wrapping is interrupted in at least one carrying

region, which butts tightly against the outside of the wrapping, but beneath which the user can grip because of the elasticity properties of the mineral wool.

1.3 The second question at stake is whether the skilled person starting from the packaging unit known from D3 would be led by the teaching of D8, D9 or D10 to the packaging unit according to claim 1 without exercising an inventive activity.

D8 targets the provision of an apparatus for packaging a mineral-wool roll by the use of tapes without a wrapping, see column 2, lines 50 to 52. For this purpose D8 discloses a device for packaging a mineral-wool roll, whereby instead of an outer wrapping two tapes 280, 282 are adhered directly to the outer surface of the mineral-wool roll, see column 9, lines 3 to 28. The tapes 280, 282 in D8 are not foreseen as carrying aid but only for preventing the glass mineral-wool roll from unrolling. In addition, the tapes are adhered along their whole periphery directly to the mineral wool, so that a gripping beneath the tapes in practically impossible.
Thus, in an attempt to solve the above mentioned problem, namely to provide a more convenient carrying means for a packaging unit comprising a mineral-wool product in the form of a roll, the skilled person cannot gain from D8 any information concerning a carrying strip adhered to the wrapping of a mineral-wool roll and therefore a combination of the teachings of documents D3 and D8 would not lead the person skilled in the art to the subject-matter of claim 1.

D9 is directed to a packaging unit comprised of

articles having a wrapping shrunk in position therearound and having comparatively unshrinkable ribbon means fastened to the wrapping at spaced intervals and bulging outwardly from the exterior surface of the wrapping of the completed package due to the shrunk of the wrapping at locations between the spaced intervals to define a carrying handle for the package, see abstract; column 1, line 57 to column 2, line 2; column 2, lines 29 to 63. Accordingly, D9 is directed to a carrying handle which is bulging outwardly of the packaging unit due to the different shrinking properties of said ribbon means and said wrapping. Such a connection between the carrying handle and the wrapping is structurally and functionally different than the one claimed in claim 1 of the patent in suit, whereby the carrying strip has at least one carrying region which butts tightly against the outside of the wrapping, but beneath which the user can grip because of the elasticity properties of the mineral wool. Therefore, starting from the packaging unit of D3, considering D9 would not lead the person skilled in the art to the subject-matter of claim 1.

D10 relates to packaging unit for various articles such as groups of beverage bottles, cans, or boxes with heat shrinkable plastic film. A length of tape 3 is bonded to a heat shrinkable film 2, and the film 2 is weakened along the edges of a central portion of the length of tape 3. The film 2 is then wrapped around an article or articles, has its two opposite ends sealed together, and is heat shrunk around the article or articles causing access openings 6, 7 in the sheet in the weakened areas along the central portion of the tape that can then be used as a handle for the resultant

package 1, see abstract. The positioning of the access opening in D10 depends on the form of the packaged products, which have to build corresponding spaces allowing the formation of the access openings, see for example the space between the bottle necks in Figure 1. By the packaging units according to D10 the structural form of the packaged goods and the way of grouping those together define the form of the gripping handle. A hint for using the material properties of these products, such as the elasticity of mineral-wool, for grasping beneath the carrying handle does not exist in D10. In addition, the carrying handle does not encircle the entire packaging unit. As a result, starting from the teaching of D3 and considering D10 in an attempt solve the above indicated problem the person skilled in the art would not be lead to the subject-matter of claim 1.

1.4 For the above mentioned reasons, the subject-matter of claim 1 involves an inventive step and thus fulfils the requirements 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 in the following version:

   - description: pages 2, 2a, 2b, 3, 7, 8, 4, 5, 10, 11, 12 filed during the oral proceedings,
   - claims: 1 to 8 filed during the oral proceedings,
   - figure: 1 filed during the oral proceedings.

The Registrar: The Chairman:

G. Nachtigall H.-P. Felgenhauer