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**Datasheet for the decision
of 15 October 2008**

Case Number: T 0045/07 - 3.2.07

Application Number: 00610078.8

Publication Number: 1077181

IPC: B65D 23/00

Language of the proceedings: EN

Title of invention:

Pouring spout for mounting on a container

Patentee:

Eva Denmark A/S

Opponent:

PATENT DESIGN A/S

Headword:

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Relevant legal provisions:

EPC Art. 54, 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Novelty (main request: no)"

"Amendments (first, second and third auxiliary requests: added
subject-matter: yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0045/07 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 15 October 2008

Appellant: Eva Denmark A/S
(Patent Proprietor) Malov Teknikerby 18-20
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Respondent: PATENT DESIGN A/S
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 17 November 2006
revoking European patent No. 1077181 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
I. Beckedorf

Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal against the decision of the Opposition Division revoking the European patent No. 1 077 181.
- II. Opposition was filed by the opponent against the patent as a whole based on Article 100(a) EPC on the grounds of lack of novelty (Article 54 EPC) and lack of inventive step (Article 56 EPC) and on Article 100(c) EPC on the ground that the subject-matter of the opposed patent extends beyond the content of the application as filed (Article 123(2) EPC).
- III. The Opposition Division found that the subject-matter of claim 1 as granted is not novel over D4 (US 2 722 346 A).
- IV. The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or according to one of the three auxiliary requests filed with the grounds of appeal.
- V. The respondent (opponent) did not respond to the grounds of appeal.
- VI. In its communication according to Rule 100(2) EPC dated 3 April 2008 the Board communicated to the parties the reasons why in its view the arguments presented in the statement of grounds of appeal did not convince the Board that the impugned decision was incorrect and why *inter alia* the amendments to claim 1 according to the first, second and third auxiliary requests did not meet the requirements of Article 123(2) EPC. With the same

communication the Board set a time limit of four months for reply.

VII. Neither the appellant nor the respondent reacted to the Board's communication.

VIII. The independent claims 1 of the requests read as follows (amendments when compared to claim 1 as granted are depicted in bold or struck through):
The erroneous "sprout" in all the auxiliary requests has been considered to mean: "spout".

Main request (claim 1 as granted)

"Pouring spout for mounting on a container such as a bottle, preferably a wine bottle, by insertion in the bottleneck (13), said pouring spout forming a channel between its outer side (10) and the inner side of the bottleneck (13) in order to collect possible drops, when the bottle is raised upright after pouring, which pouring spout has a cylindrical lower part (10) and an outwardly curved upper part (7) extending above the top of the bottleneck, when in mounted position, characterised in that said upper part (7) is configured with three or more ribs (12), which, when the pouring spout (14) is mounted, extend between the outside of the upper part (7) of the pouring spout (14) and the inner edge (15) of the bottleneck (13), and with sealing means between the bottom of the lower part and the inner wall of the bottleneck (13), and the sealing means in the lower part (10) comprises an annular flange or lip (11), which lies up against the inner wall of the bottleneck (13)".

First auxiliary request

"Pouring spout for mounting on a container, such as a ~~bottle, preferably a~~ wine bottle, for insertieng in the bottleneck, said pouring spout forming a channel between its outer side and the inner side of the bottleneck in order to collect possible drops when the bottle is raised upright after pouring, ~~which~~ **said** pouring spout ~~has~~ **comprises** a cylindrical lower part and a outwardly curved upper part extending above the top of the bottleneck when in the mounted position, and with sealing means between the bottom of the lower part and the inner wall of the bottleneck **and where the upper part has means to secure the pouring spout in a central position in the bottleneck**, characterized in that ~~said upper part (7) is configured with three or more ribs (12), which, when the pouring spout (14) is mounted, extend between the outside of the upper part (7) of the pouring spout (14) and the inner edge (15) of the bottleneck (13), the sealing means in the lower part comprises~~ an annular flange or lip (11) which lies up against the inner wall of the bottleneck".

IX. Second and third auxiliary request

"Pouring spout for mounting on a container such as a ~~bottle, preferably a~~ wine bottle, for insertieng in the bottleneck, said pouring spout forming a channel between its outer side and the inner side of the bottle neck in order to collect possible drops when the bottle is raised upright after pouring, ~~which~~ **said** pouring spout ~~has~~ **comprises** a cylindrical lower part and a outwardly curved upper part extending above the top of the bottleneck when in the mounted position, and with

sealing means between the bottom of the lower part and the inner wall of the bottleneck characterised in that ~~said~~ the upper part (7) is configured with three or more ribs (12), which, when the pouring spout is mounted, extend between the outside of the upper part of the pouring spout (7) and the inner edge (15) of the bottleneck **and thereby form the channel between the bottleneck and the pouring spout and secure the central position of the pouring spout in the bottleneck**, and that the sealing means in the lower part comprise an annular flange or lip (11), which lies up against the inner wall of the bottle neck (13)".

- X. The arguments of the appellant are summarised and dealt with in the reasons for the decision.

Reasons for the decision

1. *Main request - Novelty, Article 54 EPC*

The appellant presented in its statement of grounds for the appeal the following arguments against the finding of the Opposition Division that the subject-matter of claim 1 as granted is not novel over D4:

- (a) D4 does not describe a spout adapted for inserting in a bottleneck, but it refers only to a spout that is permanently attached in a container for syrup. Consequently, D4 does not describe a spout that can be used in a bottleneck within a range of internal diameters;

(b) D4 has no means to place the spout in a central position at the upper part. It would be absurd since such means would be in clear contradiction to the function of the device where the spout must be tilted before pouring. Any attempt to keep the spout in a central position would make the functioning impossible, and there is of course no description whatsoever of such means in D4. The springs (31 - 33) have nothing to do with such a function. If more than two springs are applied, they must of course be arranged in a way that allows tilting of the spout;

(c) no technician would ever name the leaf springs of D4 "ribs" in the normal meaning of this term. The only purpose of these springs is to push the spout out of the container after removing the cap. Neither the shape nor the function of the springs would lead a skilled person in the art to the invention's "ribs";

(d) there is no description in D4 of the shape of the sealing ring that can justify an interpretation as "lip-sealing" or a sealing comprising an annular flange that lies up against the inner wall of the bottleneck as claimed;

(e) the purpose of the configuration according to the invention is to make it fit within a range of different diameters of the bottleneck and to keep it in a fixed position therein and to prevent the spout from dropping out during pouring. This is achieved by the flange which deforms at the place where it lays up against the inner wall of the bottleneck as it is clearly described in column 4, lines 9 to 19 and illustrated in the drawing, figure 5 of the published application. There

is no description whatsoever in D4 of such a shape or function.

The counterarguments presented in the Board's communication dated 3 April 2008 are the following:

(a') the wording of claim 1 does not require that the pouring spout has to be non-permanently attached in a bottleneck. In any case, D4 is directed to such removable pouring spouts for bottles in general, see title; column 1, line 16; column 2, lines 1 and 2;

(b') the feature "means to place the spout in a central position at the upper part" is not present in claim 1 as granted and therefore cannot help in distinguishing the spout of claim 1 over D4. In any case, the spout according to figure 1 does not require such central positioning;

(c') according to the Merriam-Webster Online Dictionary a part may be defined as "rib" if it is "something resembling a rib in shape or function as **a** (1): a traverse member of the frame of a ship that runs from keel to deck, or (2): a light fore-and-aft member in an airplane's wing; **b**: one of the stiff strips supporting an umbrella's fabric; **c**: one of the arches in Romanesque and Gothic vaulting meeting and crossing one another and dividing the whole vaulted space into triangles", (a copy of it was attached to the Board's communication).

As illustrated in figures 5 and 6 of D4 and as described in column 2, lines 63 to 69 of the same document the leaf springs 30 and 31 resemble a rib in

shape and are secured to the outer surface of the pouring spout 18. Therefore, the Opposition Division correctly found that said leaf springs 30 and 31 can be seen as "ribs" attached to the outer surface of the pouring spout;

(d') figure 6 of D4 shows that the sealing ring 24 is built as a flange on the lower part of pouring spout 18 which "lies up" against the inner wall of the bottleneck, see also figures 1, 3, 4 and 5 of D4.

(e') reference to specific passages of the description or to a specific drawing describing or showing features which, in their specific form, are not present in claim 1 as granted is not a valid argument for supporting novelty of the subject-matter of claim 1.

The above mentioned counterarguments (a') to (e') remained uncontested by the appellant and the Board sees no reason to depart from its earlier opinion.

The Board therefore considers that the subject-matter of claim 1 is not novel over D4.

2. *First, second and third auxiliary requests - Amendments, Article 123(2) EPC*

The added feature in claim 1 of the first auxiliary request:

"where the upper part has means to secure the pouring spout in a central position in the bottleneck", in this generalized form, has no basis in the originally filed application, nor does the embodiment of figure 1, with the spout mounted in the neck of the

container 1 (which is not a "bottleneck") require such central positioning.

The added features in claim 1 of the second and third auxiliary request:

"thereby form the channel between the bottleneck and the pouring spout and secure the central position of the pouring spout in the bottleneck"

have no basis in this form in the originally filed application.

These findings have been communicated to the parties as well with the Board's communication dated 3 April 2008 and they were not disputed by the appellant.

The Board therefore comes to the conclusion that the claims 1 of the first, second and third auxiliary request do not meet the requirements of Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders