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**Datasheet for the decision
of 22 January 2009**

Case Number: T 1159/07 - 3.2.07

Application Number: 99830621.1

Publication Number: 1088764

IPC: B65D 5/74

Language of the proceedings: EN

Title of invention:

Closable opening device for sealed packages of pourable food products

Patentee:

Tetra Laval Holdings & Finance SA

Opponents:

Bericap GmbH & Co.KG
Elopak Systems AG
Terxo AG
SIG Technology Ltd.

Headword:

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Relevant legal provisions:

EPC Art. 56

Relevant legal provisions (EPC 1973):

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Keyword:

"Inventive step: no"

Decisions cited:

-

Catchword:

-



Case Number: T 1159/07 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 22 January 2009

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Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal against the decision of the Opposition Division revoking European patent No. 1 088 764.
- II. Four oppositions had been filed against the patent as a whole based on Article 100(a) EPC, for lack of novelty (Article 54 EPC) and lack of inventive step (Article 56 EPC).
- III. The Opposition Division found that the subject-matter of claim 1 as granted and also the subject-matter of claim 1 according to the auxiliary request did not involve an inventive step and thus did not meet the requirements of Article 56 EPC.
- IV. The documents cited in the present decision are the following (from the opposition proceedings):
- D1 = EP-A-0 385 603,
D3 = FR-A-2 765 194,
D4 = JP-A-08 011873,
D9 = CH-A-497 275,
D12 = US-A-5 482 176.
- V. With its notice of appeal the appellant requested that "1) The decision to revoke European Patent No. 1088764 shall be set aside on the basis of the Statement of Grounds of Appeal", and that "2) an oral hearing be appointed should the request in the above point 1) be refused".

In the second paragraph of its letter dated 25 September 2007 with its grounds of appeal it was stated that:

"in the name of the Proprietor/Appellant, we request that the impugned decision be set aside and the patent be maintained as granted; we also request that oral proceedings be held, should the Board of Appeal have the intention of dismissing the appeal".

VI. Independent claim 1 as granted reads as follows:

"A closable opening device (2) for a sealed package (1) containing a pourable food product, said device (2) comprising:

- a frame (15) defining a through hole (16) and fitted about a pierceable portion (4) of said package (1);
 - a removable cap (17) cooperating with said frame (15) to close said hole (16); and
 - a substantially tubular cutting member(18) engaging, in use, said hole (16) in angularly and axially movable manner, and having an end edge (40) in turn having, on the face, cutting means (41) cooperating with said pierceable portion (4) to open said package (1);
- whereby said frame (15) and said cutting member (18) are molded in one piece in a preassembly configuration, wherein they are secured coaxially to each other by a number of radial connecting bridges (62), characterized in that said bridges (62) extend between a further end edge (63) of said cutting member (18), opposite said end edge (40), and a surface (19a) by which said frame (15) is fitted to said package (1); said connecting bridges (62) being broken as said cutting member (18) engages said hole (16)".

- VII. In their replies to the appeal all four respondents (opponents) requested the rejection of the appeal. As auxiliary measure oral proceedings were requested.
- VIII. With the communication dated 20 November 2008 the Board summoned the parties to oral proceedings on 12 February 2009. In the letter accompanying the summons the Board stated under points 4.1 to 4.5 the following (in square brackets the necessary additional information in respect of the claim and the documents):
- "4.1 ... However, respondent IV also brings D12 in the field, in particular for the manner in which the cutting member is assembled with the frame, namely screwed in from below (see points III and IV of its reply to the appeal grounds).
- 4.2 In the opinion of the Board this arrangement makes D12 more relevant than D2, as it shows where the cutting member should be immediately prior to assembly with the frame. The device of claim 1 differs from the one disclosed in D12 only in that the cutting member and the frame are (were) connected together at their interface (bottom of the frame-edge of the cutting member opposite the cutting means) by bridges, which should be broken (have been broken) on assembly of the two parts.
- 4.3 This solves the problem of producing the parts of the opening device more efficiently and economically, i.e. it is a production problem. It appears, however, that D9 provides exactly the right solution to this problem, by providing breakable radial bridges 4 at the interface between the two parts to be assembled [to

form a frame and a closing stopper in that frame] and by moulding them as one entity before assembly.

4.4 Transfer of this solution to the opening device of D12 does not appear to require inventive skills of the skilled person and results in the device of claim 1.

4.5 There also does not appear to be a prejudice against forming the cutting member and the frame from the same material, see D1, D3 or D4...."

IX. With a fax dated 15 December 2008 the appellant informed the Board that it withdrew ("revokes") its request for oral proceedings and "thus will not attend the oral proceedings on February 12, 2009". No further arguments as to substance were submitted.

The oral proceedings were therefore cancelled.

Reasons for the Decision

1. After having been informed about the Board's preliminary opinion that the subject-matter of claim 1 as granted lacks an inventive step over the combination of the teachings of documents D12 and D9 the appellant withdrew its request for oral proceedings and informed the Board that it would not attend these proceedings.
2. Given the fact that on the one hand the Board sees no reason, after having reconsidered all documents, arguments and submissions present in the file, to deviate from its preliminary opinion and on the other hand no counterarguments were filed by the appellant,

the Board comes to the conclusion that for the reasons given in point VIII above, notified to the appellant with the summons to oral proceedings, the subject-matter of claim 1 as granted does not involve an inventive step in the sense of Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders