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**Datasheet for the decision  
of 23 June 2009**

**Case Number:** T 1060/08 - 3.2.06

**Application Number:** 01129573.0

**Publication Number:** 1214991

**IPC:** B21D 17/04

**Language of the proceedings:** EN

**Title of invention:**

Device for straining extruded or drawn bodies

**Patentee:**

FRATTINI S.p.A.-COSTRUZIONI MECCANICHE

**Opponent:**

Envases (UK) Limited

**Headword:**

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**Relevant legal provisions:**

EPC Art. 56

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Inventive step (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 1060/08 - 3.2.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.06  
of 23 June 2009

**Appellant:** Envases (UK) Limited  
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**Representative:** Davies, Gregory Mark  
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**Respondent:** Frattini S.p.A. Costruzioni Meccaniche  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 1 April 2008  
rejecting the opposition filed against European  
patent No. 1214991 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** P. Alting Van Geusau  
**Members:** G. Pricolo  
K. Garnett

## Summary of Facts and Submissions

I. The appeal stems from the decision of the Opposition Division posted on 1 April 2008 to reject the opposition filed against European patent No. 1 214 991.

II. Independent claim 1 of the European patent reads as follows:

"1. A device (10-100) for the localized straining of an extruded or drawn body, especially a container or bomb (66) provided with a mouth, made from aluminum or other suitable material, having a cylindrical form, painted and/or lithographed in the internal and/or external lateral surface(s), fed on a grasping means or pliers of a rotary-table, multiple-station tapering machine, comprising: at least a straining tool (64, 64', 150, 150') cooperating with the counter-mold (90, 156, 156') to obtain at least a raised and/or recessed impression on said container; supporting (72,72',142,142') and guide (80,82,146,146') means for said at least one straining tool (64,64',150,150'), suitable to lead said straining tool to cooperate with said counter-mold (90,156,156'); the device further being characterized by a substantially cylindrical tubular body, having differentiated diameters, wherein a lever (44, 110, 110') is arranged that bears a counter-mold (90,156 156') in touch with the internal lateral surface of the container (66) that extends toward the mouth."

III. The Opposition Division considered that the claimed subject-matter was novel and also involved an inventive step over the cited prior art. In particular, the Opposition Division rejected the opponent's objection

of lack of inventive step based on the combination of documents

D1 : EP-A-0 275 369, and

D3 : EP-A-0 507 380,

on the grounds that these documents related to devices for performing a tapering or necking operation whilst claim 1 of the patent in suit related to a device for forming a discrete local impression, and that "*neither D1 nor D3 gave the skilled person any lead to combine their respective teachings in order to produce defined localised impressions on the workpiece*".

IV. The appellant (opponent) lodged an appeal against this decision, received at the EPO on 9 June 2008, and simultaneously paid the appeal fee. With the statement setting out the grounds of appeal, received at the EPO on 8 August 2008, the appellant relied exclusively on lack of inventive step having regard to the disclosure of D1 and D3.

V. A communication of the Board was sent as an annex to the summons for oral proceedings. The communication included a preliminary analysis of the content of documents D1 and D3 in relation to the claimed subject-matter of the patent in suit.

VI. Oral proceedings, at the end of which the decision of the Board was announced, took place on 23 June 2009.

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

At the end of the oral proceedings the respondent (patent proprietor) withdrew the auxiliary requests filed with its letter of reply to the grounds of appeal. It requested simply that the appeal be dismissed.

VII. The arguments submitted by the appellant in support of its request can be summarized as follows:

Claim 1 of the patent in suit did not require the additional restriction implied by the Opposition Division, namely that the localized straining meant specifically a discrete local impression. In any case, the constriction at the mouth of a container which was formed by the device of D1 and D3 was a discrete constriction and therefore could be regarded as a discrete local impression. The contribution of the patent in suit over the prior art was not to provide, generally, a discrete local impression, as this was well known in the art, but to provide a specific manner of making a discrete local impression, using a lever bearing a countermold that could be introduced into a container. This specific manner of providing an impression was disclosed by D3. Thus the skilled person would regard it as a normal design option to include in the device of D1 a lever bearing a countermold in accordance with the teaching of D3 thereby arriving at the subject-matter of claim 1 of the patent in suit without an inventive step.

VIII. The respondent's reply can be summarized as follows:

D1 and D3 related to devices for making a continuous deformation at the open end or mouth of a container,

extending along the whole lateral surface of the container. In contrast thereto, the device according to claim 1 of the patent in suit provided an impression in a localized zone of the lateral surface of the container. D1 and D3 did not give any hint how to provide a localized impression. Moreover, there was no motivation for a skilled person to combine D1 and D3 as they both related to devices for performing the same function of shaping the mouth of a container. Furthermore, even if the skilled person would consider combining the teachings of D1 and D3, he would not arrive at a device in accordance with claim 1 of the patent in suit. The device according to D3 included a lever carrying a roller, which corresponded to the counter-mold according to claim 1, and an annular anvil, which corresponded to the straining tool according to claim 1. By specifying that the device comprised supporting and guide means suitable to lead the straining tool to cooperate with the counter-mold, claim 1 required that the straining tool was movable in order to cooperate with the counter-mold. However, in the device according to the D3 the anvil, i.e. the straining tool, was fixed. The use of a straining tool and a counter-mold that were both movable allowed an impression to be produced in a localized zone of the lateral surface of a metal container which was at a distance from the mouth.

## **Reasons for the Decision**

1. The appeal is admissible.

2. The Board has no reason to depart from the undisputed view that document D1 represents the closest state of the art and that it discloses (see Fig. 14) a device for tapering the upper part near the mouth of an extruded or drawn body (can 16) comprising, in the terms of claim 1 of the patent in suit, a straining tool (die 45) cooperating with a counter-mold (45'); supporting means (120) for said straining tool; a substantially cylindrical tubular body (die 45) having differentiated diameters (see col. 8, lines 47 to 54).
  
3. Contrary to the opinion of the Opposition Division in the decision under appeal (see page 6, the sentence before paragraph 3.3), the Board takes the view that also "*a bead surrounding the whole container*", such as the tapered portion near the mouth of the can (16) formed by the device of D1, can be regarded as a raised or recessed impression obtained as a result of a localized straining in accordance with the definition of claim 1. Such a bead is indeed an impression and it is localized in the sense that it only extends over a limited (longitudinal) portion of the can (16). Accordingly, document D1 also discloses the features identified as distinguishing features by the Opposition Division (see page 6, first paragraph of the decision under appeal), according to which the device of D1 is for localized straining and the straining tool and the countermold are adapted to obtain at least a raised and/or recessed impression on said container.
  
4. However, D1 undisputedly does not disclose the feature of claim 1 according to which the substantially cylindrical tubular body comprises a lever that bears

the counter-mold in touch with the internal lateral surface of the container that extends toward the mouth.

Furthermore, there is no disclosure in D1 that the straining tool (die 45) is movable with respect to the counter-mold (45'). Accordingly, D1 also does not disclose the feature of claim 1 according to which there is a supporting and guide means for said at least one straining tool which is suitable to lead the straining tool to cooperate with the counter-mold.

5. As compared to the device of D1, whose function is to deform the mouth of the container by pushing it into the space between the countermold (45') and the straining tool (die 45'), the provision of a counter-mold mounted on a movable lever and a straining tool which can be led to cooperate with the counter-mold allows the mouth of the container to pass untouched over the straining tool and counter-mold, whereby these can be moved into cooperation at a distance from the mouth. Accordingly, it is possible to provide an impression on the container also at a distance from the mouth.

Therefore, the objective technical problem solved consists in providing a more versatile device.

6. D3 undisputedly discloses a device whose purpose is the same as that of D1, namely shaping the mouth of an extruded or drawn body, which comprises (see Fig. 1) a roller (10) mounted on a lever (11), and an annular anvil (8). According to D3 (see col. 1, lines 27 to 36), during use of the device the end rim of a can body (3) is pressed against the anvil (8) in the axial direction



(arrow 6 in Fig. 1) by means of a pushing member (7, see col. 2, lines 34 to 37), and subsequently the end rim of the body is pressed forcibly against the anvil by means of the roller (10) which then performs a rolling operation. Using the terms of claim 1 of the patent in suit, the roller (10) and the anvil (8) constitute the straining tool and the counter-mold that cooperate for the localized straining of the container. Contrary to the appellant's opinion, as expressed during the oral proceedings, there is no disclosure in D3 that the anvil (8) is movable. In fact, D3 explicitly discloses that the anvil (8) is clamped to the frame (17) of the device (see col. 3, lines 2 to 6) and therefore, that the anvil is fixed. Hence, in the device of D3 only one of the two elements that cooperate for performing the localized straining, namely the roller (10) mounted on the lever (11), is movable, whilst the other is fixed. Therefore, if the skilled person would consider applying this teaching to the device of D1, as argued by the appellant, he would not arrive at a device according to claim 1 of the patent in suit, which not only requires that the counter-mold is movable (since it is mounted on a lever), but also that the straining tool is movable (since it is mounted on supporting and guide means suitable to lead the straining tool to cooperate with the counter-mold).

7. Moreover, since the function of the device of D1 (see col. 1, lines 1 to 3) is exclusively to provide the open mouth zone of a metal can with a constricted end portion, D3 would also not suggest the provision of a movable anvil (8), i.e. of a movable straining tool, in

combination with the movable counter-mold represented by the roller (10).

8. From the above it follows that the subject-matter of independent claim 1, and likewise of dependent claims 2 to 10 and of claim 11 directed to the use of a device according to any one of claims 1 to 10, involves an inventive step (Article 56 EPC) over the available prior art represented by documents D1 and D3.
9. Therefore, the Opposition Division's decision to reject the opposition must, in effect, be confirmed.

## **Order**

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

The appeal is dismissed

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau