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**Datasheet for the decision  
of 2 March 2010**

**Case Number:** T 1120/08 - 3.2.07

**Application Number:** 04425106.4

**Publication Number:** 1566359

**IPC:** B67B 3/20

**Language of the proceedings:** EN

**Title of invention:**

Capping head for applying screw caps

**Applicant:**

Arol S.p.A.

**Opponent:**

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**Headword:**

-

**Relevant legal provisions:**

EPC Art. 54, 56, 123(2)

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

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**Keyword:**

"Amendments (allowable)"

"Novelty: yes"

"Inventive step: yes"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1120/08 - 3.2.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.07  
of 2 March 2010

**Appellant:**

Arol S.p.A.  
Regione Secco, 7  
I-14053 Canelli (IT)

**Representative:**

Notaro Giancarlo  
Buzzi, Notaro & Antonielli d'Oulx  
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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 1 February 2008  
refusing European application No. 04425106.4  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** H. Meinders  
**Members:** K. Poalas  
E. Dufrasne

## Summary of Facts and Submissions

- I. European patent application No. 04 425 106.4 was refused by decision of the Examining Division dated 1 February 2008.
- II. In its decision the Examining Division found that the subject-matter of originally filed claims 1 to 3, 9 and 10 is not novel over D1 (US 5 313 765 A) and the subject-matter of originally filed claim 6 does not involve an inventive step. Further, it considered that claim 4 as originally filed is not clear.
- III. The appellant filed an appeal against this decision on 28 March 2008. It requested the grant of a patent based on the set of claims filed together with the grounds of appeal. Oral proceedings were requested as an auxiliary measure. The Board summoned the appellant to oral proceedings. With its letter dated 18 January 2010 the appellant filed a new set of four claims as basis for a patent to be granted and stated that it is ready to withdraw its "previous request for oral proceedings in case the Board indicates that the newly-submitted claims are suitable for acceptance".
- IV. With the communication dated 1 March 2010 the Board cancelled the oral proceedings.
- V. Independent claim 1 as filed with letter dated 18 January 2010 reads as follows:

"A device for applying a cap (C) on the neck of a bottle or similar container, comprising an applying head (1) movable along an axis (2) and provided with an

assembly (3) for gripping the cap (C) having a tubular body (4) with an end mouth (6) which is adapted to receive and hold within it the cap (C), and in which inside said tubular body (4) is mounted an ejector member (9), slidable along said axis, characterised in that said tubular body (4) has at least two diametrically opposite axial slits (12), said ejector member (9) is mounted freely slidable within the tubular body (4) of the gripping assembly (3) and that stop means (13, 14, 10) are provided to limit the upward displacement of said ejector member (9) relative to a fixed reference when the applying head (1) moves upwards, such as to eject a cap (C) when still held within the end mouth (6), wherein said stop means comprise at least one stop surface (13, 14) forming said fixed reference, and a ring (10) rigidly connected to the ejector member (9) and surrounding said tubular body (4), said ring being rigidly connected to the ejector member (9) by means of a transverse pin (11) which engages said two diametrically opposite slits (12) and which is freely slidable therein between an upper and a lower end stop position formed by the respective ends of the slits (12)".

## **Reasons for the decision**

### *1. Amendments - Article 123(2) EPC*

Amended claim 1 is based on the originally filed claims 1, 3, 4, 5 and 7 together with the information disclosed on page 4, lines 13 to 27 of the originally filed description. Claims 2 to 4 are based on the originally filed claims 5, 6 and 8.

The Board considers therefore that the new claims meet the requirements of Article 123(2) EPC.

2. *Novelty - Article 54 EPC*

The Board has ascertained that neither D1 nor the other documents in the file disclose a capping device having all the features of the device of claim 1.

3. *Inventive step - Article 56 EPC*

A device according to the preamble of claim 1 is known from D1.

The device as claimed in claim 1 distinguishes itself over this device in that the tubular body has at least two diametrically opposite axial slits, that the ejector member is mounted freely slidable within the tubular body of the gripping assembly and that stop means are provided to limit the upward displacement of said ejector member relative to a fixed reference when the applying head moves upwards, such as to eject a cap when still held within the end mouth, wherein said stop means comprise at least one stop surface forming said fixed reference, and a ring rigidly connected to the ejector member and surrounding said tubular body, said ring being rigidly connected to the ejector member by means of a transverse pin which engages said two diametrically opposite slits and which is freely slidable therein between an upper and a lower end stop position formed by the respective ends of the slits.

These differentiating features enable the provision of a capping device having an ejector member with an extremely simple and low cost structure, said ejector member avoiding any additional constructive complication of the capping machine in relation to the need to control the axial position of the ejector itself, see page 3, lines 1 to 30 of the originally filed application.

The prior art documents in the file do not give any indication to the person skilled in the art starting from the capping device known from D1 to provide it with the structural features mentioned in the characterizing part of claim 1, nor is it otherwise obvious to provide them as claimed.

Accordingly, the subject-matter of claim 1 involves an inventive step (Article 56 EPC).

4. *Procedural matter*

Under these circumstances the Board considered that the oral proceedings were redundant, as they had only been requested auxiliarily, in case the Board intended to dismiss the appeal.

## 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 grant a patent in the following version:

#### Description:

Pages: 2, 5 to 9 as originally filed.

Pages: 1, 3, 4, 10 filed with the letter dated 18 January 2010.

#### Claims:

Nos.: 1 to 4 filed with the letter dated 18 January 2010.

#### Drawings:

Sheets: 1/5 to 5/5 as originally filed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders