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**Datasheet for the decision
of 28 June 2010**

Case Number: T 1192/08 - 3.2.07

Application Number: 01272208.8

Publication Number: 1349799

IPC: B65D 85/10

Language of the proceedings: EN

Title of invention:

A blank for rigid hinge-lid type wrappers for tobacco products
and a procedure for manufacturing such wrappers

Patentee:

G.D S.p.A.

Opponent:

Focke & Co. (GmbH & Co. KG)

Headword:

-

Relevant legal provisions:

EPC Art. 56, 114(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Late filed document: not admitted"
"Inventive step: yes"

Decisions cited:

-

Catchword:

-



Case Number: T 1192/08 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 28 June 2010

Appellant:
(Opponent)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 17 April 2008
rejecting the opposition filed against European
patent No. 1349799 pursuant to Article 102(2)
EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division to reject the opposition against the European patent No. 1 349 799.

Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step), on Article 100(c) EPC (unallowable amendments) and on Article 100(b) EPC (insufficient disclosure).

The Opposition Division found that the grounds of opposition under Articles 100(a), (b) and (c) EPC do not prejudice the maintenance of the patent as granted.

- II. The following documents are mentioned in the present decision:

D4 : US-A-3 079 064,

D12: US-A-2 369 391.

- III. Oral proceedings before the Board took place on 28 June 2010.

(a) The appellant requested that the decision under appeal be set aside and that the European patent No. 1 349 799 be revoked.

(b) The respondent (patent proprietor) requested that the appeal be dismissed.

IV. Claims 1 and 13 as granted read as follows:

"1. A blank for a wrapper of rigid type with a hinged lid for tobacco products, the wrapper (1) appearing substantially parallelepiped in shape, presenting a front face (5), a rear face (6), two flank faces (7), a top end face (8) and a bottom end face (9), and comprising a container (11) and a lid (13) joined together along a hinge line (14), also a frame (23) with a U-profiled top edge (28), the blank (42) presenting a transverse axis (43) and a longitudinal axis (44) and comprising a main portion (45) destined to form the container (11) and the lid (13) both extending along said transverse axis (43), and an appendage (50) destined to form the frame (23) extending, with respect to the main portion (45) of the blank (42) destined to form the lid (13), the front face (5) and the two flank faces (7), along said longitudinal axis (44), and also extending at opposite side of a central panel (46), defining the front face (5) of the wrapper (1), with respect to the portion defining the lid (13), said appendage (50) presenting a first portion (51) comprising the frame (23) and at least one connecting arm (52), characterised in that the at least one connecting arm (52) is terminating at the opposite ends in first and second precreased fold lines (53, 54) along which the selfsame arm (52) is joined respectively to the main portion (45) and to the first portion (51) comprising the frame (23), the U-profiled top edge (28) of the frame (23) facing towards the main portion (45)."

"13. A procedure for manufacturing a wrapper of rigid type with a hinged lid for tobacco products, wherein

the wrapper (1) is obtained from a flat diecut blank (42) presenting a transverse axis (43), a longitudinal axis (44), a treated face and an untreated face, and comprising a main portion (45) destined to form the container (11) and the lid (13), both extending along said transverse axis (43), and an appendage (50) destined to form a frame (23) with a U-profiled top edge (28), extending, with respect to the main portion (45) of the blank (42) destined to form the lid (13), the front face (5) and the two flank faces (7), along said longitudinal axis (44), said appendage (50) extending at opposite side of a central panel (46), defining also the front face (5) of the wrapper (1), with respect to the portion defining the lid (13), said appendage (50) presenting a first portion (51) comprising the frame (23) and at least one connecting arm (52), characterised in that the at least one connecting arm (52) is terminating at the opposite ends in first and a second precreased fold lines (53, 54) along which the selfsame arm is joined respectively to the main portion (45) and to the first portion (51) comprising the frame (23), the U-profiled top edge (28) facing towards the main portion (45), wherein the procedure comprises the steps of rotating the arm (52) about the first precreased fold line (53) to the point at which it is bent double over the main portion (45), and rotating the first portion (51) of the appendage (50) comprising the frame (23) about the second precreased fold line (54) to the point at which the U-profiled edge (28) has the same orientation as before assembly and the treated face of the selfsame first portion (51) is bent double over the untreated face of the central panel (46) of the main portion (45),

defining the front face (5) and the lid (13) of the wrapper."

V. The appellant argued essentially as follows:

Admittance of D12 into the proceedings

Only five weeks before the oral proceedings the appellant was able to find and file a state of the art disclosing a combination of a cross-folding of a blank and a z-folding as shown in D12. The blank according to claim 1 differs from the one shown in figure 1 of D12 only in that the frame is connected to the front face of the wrapper and not to the rear face. D12 is therefore more relevant than D4 and should be admitted into the proceedings.

Claim 1 - inventive step, Article 56 EPC

A blank according to the preamble of claim 1 is known from D4.

The problem to be solved is to provide a blank which can be folded into a wrapper maintaining thereby the orientation of the front face of the frame with regard to the front face of the wrapper before and after folding and which has when folded, the U-shaped top edge of the frame facing towards the top of the wrapper.

The skilled person starting from the blank known from D4 would apply a z-fold to the frame without exercising an inventive activity, since such a z-fold belongs to the general technical knowledge of the person skilled in the art. By recognising that this z-fold repositions

the frame so that its U-shaped top edge would be facing the bottom of the wrapper the person skilled in the art would simply reposition the frame by rotating it so that in the unfolded stage its U-shaped top edge would be facing the main portion of the blank without exercising thereby an inventive activity.

Claim 13 - inventive step, Article 56 EPC

The argumentation presented above in connection with claim 1 are applicable *mutatis mutandis* also to claim 13.

VI. The respondent argued essentially as follows:

Admittance of D12 into the proceedings

D12 being late filed and also not being more relevant than D4, said last representing the closest prior art and being already in the proceedings, should not be admitted into the proceedings.

Claim 1 - inventive step, Article 56 EPC

A blank according to the preamble of claim 1 is known from D4.

The allegation that the application of a z-fold and the orientation of the frame so that its U-profiled top edge faces towards the main portion are measures belonging to the general technical knowledge of the person skilled in the art which will be applied by the person skilled in the art to the blank known from D4 without exercising inventive activity has been put

forward by the appellant without providing any kind of state of the art for supporting this allegation. Accordingly, such an uncorroborated allegation cannot question the presence of an inventive step by the subject-matter of claim 1.

Claim 13 - inventive step, Article 56 EPC

The argumentation presented above in connection with claim 1 are applicable *mutatis mutandis* also to claim 13.

Reasons for the decision

1. *Admittance of D12 into the proceedings*

D12 was filed far after the expiration of the time limit for filing the grounds of appeal and roughly one month before the oral proceedings. D12 has been therefore filed late and the appellant did not give any reason for this late filing other than it has not been able to find earlier a document disclosing in combination a cross-folding of a blank and a z-fold.

A comparison between the teaching of D12 and the subject-matter of claim 1 shows that not only the characterising feature of claim 1, that the U-profiled top edge of the frame faces towards the main portion, but also the feature of the preamble of claim 1 that the frame is attached to the front face of the wrapper is not known from D12. For this reason, the Board considers D12 as not being more relevant than D4, said

last one being already in the proceedings, and accordingly as not being *prima facie* highly relevant.

D12 is therefore not admitted into the proceedings in accordance with Article 114(2) EPC.

The appellant argued that the U-shaped score line 15 of the locking flap 14 as shown in figure 1 of D12 faces towards the main portion of the blank since it is positioned at said side of edge 18 which lies nearer to the main portion of the blank.

This argument cannot succeed for the following reason:

The Board cannot follow said argument, since the expression "facing towards the main portion" as used in the originally filed application of the contested patent clearly indicates that the convex part of the U-profiled top edge points towards the main portion since this orientation is the one needed for the frame to function properly when the blank is wrapped. It is apparent from figure 1 of D12 that the score line 15 does not have such an orientation.

2. *Claim 1 - inventive step, Article 56 EPC*

It has not been disputed by the parties that D4, representing the most relevant prior art, discloses a blank according to the preamble of claim 1.

It has also not be disputed by the parties that starting from D4 the problem to be solved can be seen as the improvement of the blank known from D4 so that the relative positioning of the front face of the frame

in respect with the front face of the wrapper remains the same both before and after folding.

The appellant argued that the skilled person starting from the blank known from D4 would apply a z-fold to the frame and by recognising that this z-fold would lead to a positioning of the frame so that the U-shaped top edge of the frame would be directed towards the bottom of the wrapper he would simply reposition the frame by rotating it so that in the unfolded stage its U-shaped top edge would be facing towards the main portion of the blank without exercising an inventive activity.

The Board cannot follow the appellant's argument for the following reasons:

The Board can follow the appellant's argument in so far that a z-fold is a generally well known folding technique and that the skilled person starting from D4 and seeking to solve the above mentioned problem would eventually try to apply a z-fold to the blank known from D4. However, a direct application of such a z-fold to the connecting arms 42, 43 of D4 would obviously not work, because the folded frame would project towards the bottom end face of the folded wrapper; this has been admitted by the appellant itself.

In such a situation the person skilled in the art recognises immediately that its first approach of the problem via the application of a z-fold does not lead directly to the subject-matter of claim 1 and is therefore not a success-promising one. Since the application of a z-fold obviously does not represent a

straight forward solution to the above mentioned problem the person skilled in the art would then reject such an approach and would try to elaborate another, eventually more success-promising approach. The Board is persuaded that the person skilled in the art after providing a z-fold to the blank and realising that this does not lead directly to an acceptable solution, it would refrain from rotating the frame so that the blank would be provided with a frame having its U-profiled top edge facing towards the main portion of the blank, since such a repositioning of the frame goes against the teaching of D4, said last defining the starting point for the person skilled in the art trying to solve the above mentioned problem.

For the above-mentioned reasons the Board has not been convinced by the arguments of the appellant that the subject-matter of claim 1 does not involve an inventive step.

Accordingly, in absence of any convincing evidence or argument to the contrary the Board considers that the subject-matter of claim 1 meets the requirements of Article 56 EPC.

3. *Claim 13 - inventive step, Article 56 EPC*

The arguments presented above in connection with claim 1 are applicable *mutatis mutandis* also to claim 13.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

I. Beckedorf