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

Case Number: T 1988/08 - 3.2.04

Application Number: 04701533.4

Publication Number: 1592330

IPC: A47J 36/24

Language of the proceedings: EN

Title of invention:
Beverage container warmer

Patentee:
Hamm, Andrew J., et al

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 52(1), 54

Relevant legal provisions (EPC 1973):
-

Keyword:
"Novelty (main request: yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 1988/08 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 22 January 2009

Appellant:

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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 13 May 2008
refusing European application No. 04701533.4
pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: A. de Vries
T. Bokor

Summary of Facts and Submissions

- I. The Appellant lodged an appeal, received at the EPO on 8 July 2008, against the decision of the Examining Division posted 13 May 2008, refusing the European patent application no. 04 701 533.4 filed as an international patent application PCT/US2004/000717, and simultaneously paid the appeal fee.

The statement of grounds of appeal was filed on 19 September 2008.

The Examining Division held that the application did not meet the requirements of Articles 52(1) and 54 EPC, as the subject-matter of apparatus claim 1 lacked novelty in view of in particular:

D1: DE-A1-3 245 478

The following further documents were also cited:

D2: US-A-5 408 068

D3: US-B1-6 278 091

D4: US-A-5 436 429

A further independent method claim 17 was not subject of the decision.

- II. In a telephone conversation of 3 December 2008 as minuted in an attendance note posted 5 December 2008 the Board drew the appellant's attention to an apparent contradiction in the wording of claim 1 of the main request. The Appellant filed a new main request with accordingly amended claims and description pages received at the EPO on 5 December 2008.

The Appellant requests that the decision under appeal be set aside and a patent be granted based on claims and description in accordance with a main request filed 5 December 2008, or, in the alternative, in accordance with a first request filed with the statement of grounds.

III. The wording of the independent claims of the main request is as follows:

"1. A flexible heating jacket (10, 70) for keeping a hot beverage contained in a container having the shape of a frustum of a cone at the desired elevated temperature for consumption, comprising:
a substantially flat structure having upper and lower edges (11, 12) and ends (13, 14), wherein said upper and lower edges arc curved and said ends converge towards the lower edge;
detachable attachment means (50, 51) at each end for detachably attaching the two ends together, so that said flexible heating jacket (10, 70) forms the shape of a frustum of a cone into which said container can be removably inserted such that the flexible heating jacket substantially surrounds and contacts at least a portion of a curved surface of said container,
electrically powered heating means (20) embedded in said flexible heating jacket; and
means for supplying electric power to said flexible heating jacket."

"15. A method of keeping a hot beverage contained in a container having the shape of a frustum of a cone at the desired elevated temperature for consumption, comprising:

providing a substantially flat structure having upper and lower edges(11, 12) and ends (13, 14), wherein said upper and lower edges are curved and said ends converge towards the lower edge,
detachably attaching the two ends (13, 14) together using detachable attachment means (50, 51) at each end, so that a flexible electrically heated jacket (10, 70) is formed having the shape of a frustum of a cone for substantially surrounding and contacting at least a portion of a curved surface of said container,
providing a rechargeable battery (60) contained in a battery unit detachably attached and disconnectably connected electrically to the heating jacket; and
providing a battery exchange station wherein a partially discharged battery unit could be exchanged for a fully recharged battery unit."

Reasons for the Decision

1. The appeal is admissible.
2. *Allowability of amendments under Article 123(2) EPC*

Claims 1 combines the features of original claims 1, 3 and 4, while adding features of the main preferred embodiment setting out the shape of the jacket in use and the shape of the substantially flat structure resulting in that shape, see the paragraph bridging as filed description pages 6 and 7 and figure 3. Similarly, the same features of the jacket in its main preferred form have also been incorporated in method claim 15, based on originally filed method claim 14 relating to a

specific use of the jacket as described on as filed pages 9 and 10 in relation to figure 5.

In the light of the above, the Board is satisfied that the amendments to in particular claims 1 and 15 of the main request do not infringe Article 123(2) EPC.

3. *Novelty with regard to D1 (main request)*

3.1 The invention concerns a device for keeping the contents of a cup or the like hot. This device is in the form of a flexible heating jacket with embedded electrical heating means and an electrical supply, which in use is wrapped around the cup. When not in use it can be easily stowed away (description page 3, first paragraph).

According to claim 1 of the main request the jacket is comprised of a substantially flat structure with curved upper and lower edges and ends that converge towards the lower edge and which in use is shaped into the form of a frustum of a cone into which the container/cup can be inserted. Means are provided at each end for detachably attaching the two ends so as to form the jacket.

3.2 D1, see figures 2 and 3 and page 6, line 7, to page 7, line 2, discloses a heating "jacket" in the form of carrier ("Träger") 6 which has a frustum conical shape - see figure 2 - into which a container 3 is insertable. The jacket is flexible, being made of flexible isolating paper ("flexiblem Isolierpapier", page 6, lines 10-11) and is formed by connecting together via appropriate attachment means, see the sentence bridging

pages 6 and 7, the ends of a substantially flat strip in the shape of a section of a ring ("Kreisringsektorförmigen", page 6, lines 15, 30), i.e. with curved edges and converging ends, as shown in detail in figure 3. A conductive heating coil further serves as electrically powered heating means ("Heizwicklung ... für eine Spannung von 220V ausgelegt", page 6, lines 13 to 14).

The final paragraph of page 6 in reference to figure 3 describes the heating coil as formed of windings 11 wound about the carrier 6a at slots 10 ("Aufnahmevertiefungen 10 für die Windungen 11 aus einem bandförmigen Heizleiter"; "Bewicklung des Trägers 6a"). As also clearly shown in figure 3 the individual windings 11 lie on the surface of the carrier 6a, rather than that they are embedded within the carrier in the sense of being "fixed firmly within the surrounding mass" of the carrier material (Oxford English Dictionary). The heating means are thus not embedded in the jacket as required by claim 1.

Moreover, as regards the attachment means of the carrier 6, the sentence bridging pages 6 and 7 refers to "Nieten, Verklebung od. dergleichen", i.e. riveting, bonding or similar. The carrier 6 is a heating element of a (frustum-conical) container 3 for like shaped tins (page 6, lines 4 to 6). Both are assembled within a housing 1 as is clear from page 5, lines 31 to 33 describing figure 2 to form a heating device shown in turn in figure 1. It may therefore safely be assumed that the ends of the carrier are not intended to be disengaged once assembled. For all practical purposes therefore the fastening of the ends by "riveting,

bonding or similar" is *permanent* and this is how the skilled person intent on a reasonable technical understanding of the claimed invention in the light of the prior art will understand D1.

The jacket of claim 1 thus differs from D1 in the features of an *embedded* heating means and of a *detachable* attachment means.

- 3.3 Of the further prior art cited in the decision and in the search report the most pertinent - D2, D3 and D4 - relate to flexible heating jackets with embedded conductors which in use are wrapped around the container with ends held in place by detachable fasteners (e.g. velcro) at both ends. Each of these known jackets is formed of a substantially flat *rectangular* strip of flexible material so as to heat essentially cylindrical containers, in particular bottles (see D2, column 1, lines 39 to 40, figure 2; D3, abstract, figure 1; D4, title, figures 1,2).

Vis-a-vis these known jackets that of claim 1 differs in the particular shape of the jacket when flat, which allows it to form a frustum conical shape for like shaped containers.

- 3.4 In view of the above the Board finds that the subject-matter of claim 1 of the main request is novel over the cited (and searched) prior art. The sole ground upon which the decision is based has thus been removed by the amendments to claim 1 according to the main request.

- 3.5 The further independent claim directed at the method was not a subject of the appealed decision. The Board

nevertheless adds that as method claim 15 of the main request also incorporates the differing features discussed above its subject-matter is perforce also novel over the cited prior art.

4. So as not to deprive the Appellant of the right to have all issues decided before two instances, the Board, pursuant to Article 111(1) EPC, remits the case to the Examining Division for further prosecution based on the main request and for the express purpose of examining the application for compliance with the remaining requirements of the EPC, in particular that of inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte