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**Datasheet for the decision
of 7 November 2012**

Case Number: T 1904/09 - 3.2.07

Application Number: 04743991.4

Publication Number: 1646579

IPC: B67B 3/20, B67B 3/28

Language of the proceedings: EN

Title of invention:
A capping unit for closing containers with respective caps

Patentee:
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Opponent:
WEIGHTPACK S.r.L

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step - no (main and auxiliary request)"

Decisions cited:
-

Catchword:
-



Case Number: T 1904/09 - 3.2.07

DECISION
of the Technical Board of Appeal 3.2.07
of 7 November 2012

Appellant:
(Opponent)

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted 16 July 2009
rejecting the opposition filed against European
patent No. 1646579 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman: H. Meinders
Members: H.-P. Felgenhauer
I. Beckedorf

Summary of Facts and Submissions

I. The opponent (appellant) has filed an appeal against the decision of the opposition division rejecting the opposition against European patent No. 1 646 579.

It requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed, alternatively, that in setting aside the decision under appeal the patent be maintained in amended form on the basis of claim 1 filed as auxiliary request with letter of 7 April 2010.

II. **Claim 1 according to the main request** (claim 1 as corrected by the opposition division on 25 September 2009) defines

"A capping unit for closing containers (2) with respective caps (3), of the type comprising:

a carrier and conveyor component (5) on which to advance the containers (2) and the relative caps (3); a motor (6) associated with the carrier and conveyor component (5) by which the said carrier and conveyor component (5) is set in rotation about a respective primary axis (5a);

a plurality of capping assemblies (11) associated with the carrier component (5), each positioned above a corresponding container (2) and capable of movement vertically between a first position, distanced from the

respective container (2), and a second position actively engaging the container,

wherein each capping assembly (11) presents a gripping mechanism (17) such as can be associated with a relative cap (3) when the corresponding capping assembly (11) is in the second position, and

the gripping mechanism (17) is rotatable in such a way as to screw the cap (3) onto a threaded neck (4) of the respective container (2) about a respective secondary axis (17a);

first drive means (14) by which the single capping assemblies (11) can be set in motion vertically, one independently of another;

second drive means (18) presenting a plurality of secondary electric motors (18a), each one of which associated with a respective gripping mechanisms (17) by which the single mechanisms (17) can be set in rotation one independently of another;

characterized in that

the first drive means (14) comprise a plurality of primary electric motors (14a), each one of which associated with a respective capping assembly (11) and in that

the capping unit further comprises an electronic controller device (40) connected to each of the primary electric motors (14a) and the secondary electric motors (18a) and

a processing block (41) by means of which to vary the operating parameters of each primary electric motor (14a) and each secondary electric motor (18a)

according to the dimensions of the respective containers (2)

by entering instructions via said processing block".

Claim 1 according to the auxiliary request is identical to claim 1 of the main request, with the feature of the processing block being further defined as "which sends a signal (S1) which is processed according to the height of the container and can differ from one capping assembly, hence one primary motor, to another".

III. The decision is based on the following documents relied upon in the impugned decision:

D1 US-A-4 535 583

D2 US-A-5 301 488.

D6 DE-A-37 15 935 was filed with the grounds of appeal.

IV. According to the decision under appeal the capping unit of claim 1 (of the present main request) is sufficiently disclosed and involves an inventive step over the combination of the teachings of the documents D1 and D2.

V. The submissions of the appellant can be summarized as follows:

- (a) Document D6 should be admitted due to its *prima facie* relevance.
- (b) Concerning sufficiency of disclosure it needs to be considered that the only dimension of the container referred to in the patent in suit is its height. Consequently it remains open which other dimension(s) of a container (claim 1 mentions "according to the dimensions") are to be considered with respect to the claimed variation of operating parameters. This lack of disclosure poses an undue burden on the skilled person trying to reduce the capping unit according to claim 1 to practice.
- (c) It is evident that the hydraulic actuators serving as first drive means in the capping unit of D1 can be set in motion vertically, one independently of another. Furthermore, from the disclosure of this document it can be derived that the control device controls, next to the second drive means explicitly referred to in this respect, also the first drive means. It is evident that the motions of the first drive means and the second drive means are dependent on each other and must be controlled accordingly.
- (d) The problem resulting from the effect(s) of the features distinguishing the capping unit of claim 1 from the one of D1 needs to be considered in the examination of inventive step, irrespective

of whether or not this problem finds any support or mention in document D1.

(e) D2 discloses on the one hand the structure of an apparatus comprising among other units a capping unit and on the other hand the manner in which the apparatus and with it its capping unit is controlled. It is evident that the disclosure given with respect to the control of the apparatus can be applied irrespective of the particular structure of the apparatus and its capping unit.

(f) Thus the teaching of D1 can be combined with the disclosure of D2 concerning the control of the first and second drive means to solve the problem underlying the capping unit of claim 1, without hindsight being involved.

Combined consideration of these teachings renders the capping unit of claim 1 obvious.

(g) The arguments given with respect to claim 1 of the main request apply correspondingly to claim 1 of the auxiliary request since the feature added to this claim does not change in substance the teaching defined by this claim.

VI. The submissions of the respondent can be summarized as follows:

(a) Document D6 should not be admitted due to its late filing and since it lacks *prima facie* relevance.

- (b) Considering sufficiency of disclosure it is evident that, besides the height of the containers explicitly referred to in the patent in suit, other dimensions of the containers, such as their stiffness, depending e.g. on their wall thickness and the materials they are made of, can likewise require a variation of the operating parameters.
- (c) D1 does not disclose that the hydraulic actuators serving as first drive means can be set in motion vertically, one independently of another. From the disclosure of D1 it cannot be derived that the control device controls, next to the second drive means, also the first drive means.
- (d) Concerning the examination of inventive step it needs to be taken into account that the problem underlying the capping unit of claim 1 does not find any support in D1.
- (e) It further needs to be taken into account that D2 relates to a capping unit of a different type, in that only one capping assembly is provided. Since moreover this capping assembly has a different structure as compared to those of the capping assemblies of D1, no reason exists for the skilled person to combine the teachings of D1 and D2.
- (f) Combined consideration of these teachings, with the result that the capping unit of claim 1 does not involve an inventive step thus, can only be seen as the result of an inadmissible application of hindsight.

(g) The arguments given with respect to claim 1 of the main request apply even more to the capping unit of claim 1 of the auxiliary request since for the additional feature (see point II, last paragraph), no indication is given in D1 or D2.

VII. The Board referred in the annex to the summons for oral proceedings to the issues to be discussed during the oral proceedings. These concerned i.a. sufficiency of disclosure and inventive step. For the latter reference was made i.a. to the disclosures of D1 and D2, the problem to be formulated in case the capping unit of D1 is considered as closest prior art and a combined consideration of the teachings of D1 and D2.

VIII. Oral proceedings before the Board took place 7 November 2012.

Reasons for the Decision

1. *Admissibility of D6*

The admittance of D6 filed with the grounds of appeal, objected to by the respondent and discussed during the oral proceedings requires no further consideration in view of the following finding that the subject-matters of the claims 1 of the main and the auxiliary request do not involve an inventive step considering the teachings of D1 and D2.

2. *Subject-matter of claim 1*

2.1 Claim 1 according to the main request is directed to a capping unit for closing containers with respective caps.

This unit is of the type comprising:

A carrier and conveyor component which are set in rotation to advance the containers and the caps; this unit has not been further discussed by the parties.

The capping unit comprises furthermore a **plurality of capping assemblies** associated with the carrier component, each **positioned above a corresponding container** and **capable of movement vertically between a first position**, distanced from the respective container, **and a second position** actively engaging the container.

Each capping assembly presents a **gripping mechanism** such as can be associated with a relative cap when the corresponding capping assembly is in the **second position** which is **rotatable in such a way as to screw the cap onto a threaded neck of the respective container** about a respective secondary axis.

By means of **first drive means** the capping assemblies **can be set in motion vertically, one independently of another.**

Via **second drive means** presenting a **plurality of secondary electric motors**, each one of which is associated with a respective gripping mechanism, the

single gripping mechanisms can be set in rotation, one independently of another.

2.2 According to the characterizing features of claim 1

(a) said first drive means comprise a **plurality of primary electric motors**, each one of which is associated with a respective capping assembly

and the capping unit is further equipped with

(b) an **electronic controller device** connected to each of the primary electric motors and the secondary electric motors and

(c) a **processing block** is provided by means of which the **operating parameters of each primary electric motor and each secondary electric motor can be varied**

(d) according to the dimensions of the respective containers

(e) by entering instructions via said processing block.

2.3 As discussed during the oral proceedings regarding the understanding of claim 1 and, based on that, concerning the examination of inventive step, the two types of drive means (plurality of primary and secondary electric motors) defined in claim 1 and their control (cf. features (b) - (e)) are of particular importance.

2.3.1 *Definitions in claim 1 concerning the structure and the function of the first and second drive means*

The **first drive means** are given as a plurality of **primary electric motors**, each one being associated with a capping assembly **to move** the respective capping assemblies, and with it the associated gripping mechanisms, one independently of another **vertically between a first position**, distanced from the respective container, **and a second position** actively engaging the container.

The **second drive means** are given as a plurality of **secondary electric motors**, each one of which is associated with the respective gripping mechanism, by which the individual mechanisms can be set in **rotation** one independently of another to screw a cap onto a threaded neck of the respective container.

2.3.2 *Definition in claim 1 concerning the control of the first and second drive means*

To each of the primary electric motors and the secondary electric motors an **electronic controller device** is connected (feature (b)).

A **processing block** is provided by means of which the **operating parameters** of each primary electric motor and each secondary electric motor **can be varied** according to the dimensions of the respective containers by entering instructions via said processing block (features (c) - (e)).

As indicated by the Board during the oral proceedings these features define that the **primary and the secondary electric motors** are **controlled** by means of the **electronic controller device** via **operating parameters which depend on the dimensions of the containers** to be capped. During the oral proceedings in particular the height of the containers has been discussed as an important dimension in this respect since it determines at least the second position of the vertical movement of the capping assemblies.

These features further define that in case **containers of different dimensions** have to be capped the **operating parameters can be varied correspondingly**, by entering instructions via the processing block.

As further indicated by the Board during the oral proceedings these features cannot be understood as defining that a particular sequence in which containers of different dimensions are to be capped underlies the variation of the operating parameters (such as a batch wise capping of containers of same dimensions or the capping of containers of which the dimensions change in a given order or even at random).

The Board considers in this respect the opinion expressed by the respondent to be correct, that the possibility to vary the operating parameters necessitates that each of the first and the second drive means can be set in motion independently of one another.

2.4 In **claim 1 according to the auxiliary request**, concerning the control of the primary motors, it is

further defined that a signal is sent by the processing block which depends on the height of the container, which can differ from one capping assembly to another.

3. *Sufficiency of disclosure*

3.1 The appellant criticises that only one dimension of the container is referred to in the patent in suit, namely the height of the container. This is contrary to the reference to "dimensions" in the claims 1 of both requests defining that the operating parameters are varied according to the dimensions of the respective containers. Since the patent in suit does not disclose any other dimension of the container to be considered in connection with the variation of operating parameters the subject-matter of claim 1 is insufficiently disclosed.

The Board considers correct the opinion of the respondent that i.a. the overall stiffness of a container depending e.g. on its form, thickness and material is among the dimensions to be considered.

3.2 The question of sufficiency of disclosure, which includes the question whether the person skilled in the art can reduce the solution to the problem as defined by claim 1 (both requests) to practice based on the information given by the patent in suit (and possibly general technical knowledge) does not need any further consideration in view of the following finding that the subject-matters of the claims 1 of the main and auxiliary request do not involve inventive step.

4. *Disclosure of document D1 / distinguishing features*

4.1 It is undisputed that D1 qualifies as closest prior art and that it discloses a capping unit of the kind concerned, namely one having a carrier and conveyor component on which the containers and the respective caps are advanced, the component being able to be set in rotation and having a plurality of capping assemblies associated therewith. Each of the capping assemblies has a secondary electric motor 12, a gripping mechanism 13 and cylinder actuator 16 as first drive means (cf. column 3 line 61 - column 4, line 31; figures 1, 2).

4.1.1 Concerning the evaluation of the impugned decision (reasons, point 4.1) that D1 discloses the features of the preamble of claim 1 the respondent denied this only for the feature: "first drive means (14) by which the single capping units can be set in motion vertically, one **independently of another**" (marking in bold added by the Board).

In its view the first drive means of D1, namely the cylinder actuators 16 cannot be set in motion vertically, one independently of another, due to their structure and correspondingly their function. According to the appellant the pistons of such vertical cylinder actuators can be set in motion independently of one another.

The Board is of the opinion that in general cylinder actuators of this kind can, considering the sequence of operations, be set in motion one independently of another.

This feature thus cannot be considered as a distinguishing feature with respect to the unit of D1.

4.1.2 The Board in this respect considers correct the further argument of the respondent, which also pertains to characterizing features c) and d): that D1 does not disclose the capability to vary the operating parameters of each cylinder actuator as first drive means according to the dimensions of the respective containers. In this respect, contrary to the view expressed by the appellant, the Board is unable to find any support in D1 for the assumption that the cylinder actuators can cause a vertical motion different from the - fixed - stroke of its piston.

4.2 For the characterizing features of claim 1 it is common ground that the unit of claim 1 is distinguished from the one of D1 by feature (a): the first drive means comprise a plurality of **primary electric motors**, each one of which is associated with a respective capping assembly.

4.2.1 It is common ground that corresponding to a part of characterizing feature (b) in the unit of D1 an electronic controller device is connected to each of the secondary electric motors (cf. column 4, lines 32 - 47; column 4, line 60 - column 5, line 7; column 6, line 56 - column 7, line 8; figures 2, 3: control unit 19, 19').

Although proper functioning of the unit of D1 requires synchronized motion / activation of the first and second drive means for each capping assembly the Board

is, contrary to the view expressed by the appellant, unable to find in D1 a direct and unambiguous disclosure that this is done by the control circuit 19 / 19'.

Therefore feature (b), understood as meaning that both drive means are connected to one and the same electric controller (cf. point 2.3.2 above), is considered to be a distinguishing feature. The same applies to features (c) - (e) according to which a processing block is provided by means of which the operating parameters of each primary electric motor and each secondary electric motor can be varied according to the dimensions of the respective containers by entering instructions via said processing block.

5. *Effect(s) of the distinguishing features / problem solved over D1*

5.1 Following the well known and commonly applied problem-solution-approach in the examination of inventive step as referred to by the Board during the oral proceedings the effect(s) of the distinguishing features are to be determined and starting exclusively therefrom the problem solved by the claimed subject-matter with respect to the closest prior needs to be formulated. Proceeding in this manner provides a safeguard against an examination of inventive step with hindsight, i.e. knowledge of the teaching of the patent in suit.

Consequently the general objection of the respondent that the Board's examination of inventive step is based on hindsight, for which no factual reasons were given, does not hold, as in the following the Board has

defined the problem to be solved by starting from the capping unit according to D1.

5.2 **The distinguishing features (b) - (e) relating to the control of the capping unit** by means of an electronic controller device have the effect that the capping unit can easily be adapted to containers of varying dimensions, e.g. varying heights. This is done such that the **operating parameters of each primary and secondary electric motor can be varied according to the dimensions of these respective containers.**

5.3 **Distinguishing feature (a) according to which as first drive means electric motors are used** which have, compared to the cylinder actuators in the capping unit according to D1, the effect that they can be controlled if not more precisely (cf. point 4.1.2 above) then at least in an easier manner.

Thus this distinguishing feature contributes to the effect of distinguishing features (b) - (e) referred to above.

5.4 Based on these effects of the distinguishing features the **problem** to be considered starting from the capping unit of D1 can be seen as stated in the patent in suit, namely **to provide a capping unit which is versatile and suitable for use with any type of container,** irrespective of its size (paragraph [0020]).

6. *Obviousness*

6.1 In line with the problem-solution-approach in the examination of inventive step as referred to before

(point 5.1) it needs to be examined whether or not starting from the capping unit according to the closest prior art, namely D1, the discussed solution to the problem (cf. point 5.4 above) is obvious or not. In this process it also needs to be examined whether further prior art, presently D2, has to be taken into account and whether such a combination of teachings renders the capping unit of claim 1 obvious or not.

6.2 The respondent objected to the consideration of D1 in connection with the problem as defined above on the grounds that, as expressed in the impugned decision (reasons, point 4.1), firstly this problem is not expressly stated in D1 and secondly this document does not give a hint leading to the solution.

As to the first point the Board, in line with the arguments of the appellant, maintained its view as expressed in the annex (point 6.4.6) to its summons that the problem relates to the intended use of the capping unit of D1. If this capping unit is to be used depending on different requirements (e.g. based on customer needs as is usually the case) it is to be modified such that it allows easy adjustment of the vertical motion of the capping assemblies and combined therewith the rotation of the gripping mechanisms, to accommodate the dimensions of the containers to be capped.

With respect to the second point the Board is of the opinion, as expressed during the oral proceedings, that in the present examination of inventive step it is of no relevance whether D1 gives a hint towards the solution as defined by claim 1 or not.

What matters is whether or not the capping unit of D1 can be considered as a feasible starting point. The answer to that is affirmative since, as indicated above (cf. point 4.2.1) D1 discloses a capping unit of the kind claimed having a plurality of capping assemblies which, for the capping of containers of given dimensions, need to be controlled with respect to the vertical motion of each one of these capping assemblies as well as with respect to the rotation of each of the respective gripping mechanisms.

If the problem as defined above is also mentioned in D1, that is a further indication that D1 is a proper starting point. However, this does not mean that the absence of such a mention disqualifies D1 as such, or that it is needed to define the problem, or to help the skilled person define the problem. In this respect the Board considers the impugned decision to be incorrect; the objective technical problem is to be defined starting from the effect(s) of the distinguishing features, as done above, points 5.2 to 5.4.

6.3 *Consideration of D2*

- 6.3.1 It is also reasonable to assume that the person skilled in the art takes D2 into account even though it relates, as argued by the respondent, to a capping unit having only one capping assembly and not a plurality as is the case for the capping unit of claim 1 as well as the one of D1. This is because in the capping unit of D1 each single capping assembly needs adaptation. Teachings of individual capping assemblies will therefore be taken into account.

6.3.2 Concerning the question whether the skilled person, starting from the capping unit of D1 will consider the one of D2 in an attempt to solve the problem it is decisive that D2 discloses among other units (filling unit, plugging unit) a capping assembly and that it deals with the same problem as the patent in suit (see column 1, lines 63 - 66) where it concerns filling and capping. It solves this problem for all units by means of a single controller which controls e.g. for the capping assembly a first motor for the vertical motion and a servo motor for the rotation of the cap (cf. claims 7 - 9; column 2, lines 7 - 47; column 4, lines 25 - 36). These are variably controlled by means of a programmable logic controller allowing treatment of containers of various sizes (column 5, lines 65 - 67) as well as a control of the rotation (column 3, lines 42 - 50: degree of torque to be applied during capping).

Irrespective of the fact that D2 refers to the first motor (for the vertical motion) being preferably a fluid motor (column 2, lines 37 - 38) it is indicated in this document that although pneumatic motors are referred to (i.a. in connection with the vertical motion of the capping unit), these motors "can also be replaced by electrical servos. This would be a function of economy and accuracy needed for these positionings." (column 5, lines 29 - 34).

Thus D2 discloses all the information required to accommodate in a capping unit for variations in the size (= dimensions) of the containers to be capped. This information the skilled person will use when trying to solve the problem with the capping unit of D1.

6.4 The person skilled in the art has merely to utilize the information given by D2 concerning the control of primary and secondary motors of a singular capping assembly to modify the individual capping assemblies of D1 such that they are able to cap containers of varying sizes without structural adjustments with regard to the primary and secondary drive motors, and their respective motions, being necessary.

The only modifications required are, as indicated by the Board during the oral proceedings, those associated with the features distinguishing the capping unit according to claim 1 from the one of D1.

Thus the hydraulic actuators serving as first drive means according to D1 need to be replaced by electric motors. As indicated above, D2 gives a clear indication for such an exchange of drive means (column 5, lines 29 - 34).

The other measure required is to replace or modify the controller device used in the capping unit of D1 (cf. point 4.2.1 above) such that it enables the variation of the operating parameters for its primary and the secondary electric motors. For this D2 likewise gives a clear indication as referred to above (cf. section 6.3.2).

In view of the disclosures of D1 and D2 and the conclusion that combined consideration of these teachings is performed by the skilled person to solve the problem underlying the subject-matter of claim 1, it is obvious that the above modifications can be

carried out by the skilled person without inventive step being involved.

The subject-matter of claim 1 thus does not involve inventive step (Article 56 EPC).

6.5 The above result also holds considering the following arguments of the respondent.

6.5.1 According to one argument the modifications of the capping unit of D1, which are required in order to solve the problem, necessitate considerable efforts which cannot be expected from the skilled person. In support of this argument the respondent referred to the necessity to not only replace the hydraulic actuators of D1 by electric motors but also to arrange these motors on the capping assemblies as well as the necessity to connect the primary and secondary motors to the electronic controller device.

Concerning the question what is to be expected from the skilled person within the framework of regular design practice the Board indicated during the oral proceedings that the technical knowledge and the technical capabilities of the skilled person, who is not an amateur, have to be taken into account. In the present case the Board considers the necessary modifications to fall within such regular design practice of the skilled person who is a mechanical engineer, specialized in automatic filling and capping machines.

Further, as indicated by the Board during the oral proceedings, only those measures which specifically

correlate to features of claim 1 need be taken into account.

These measures are only those discussed in point 6.4 above.

- 6.5.2 Concerning the argument of the respondent that the structure of the single capping assembly according to D2 is incompatible with the plurality of individual capping assemblies of the capping unit according to D1, the Board indicated during the oral proceedings that replacement of the hydraulic actuators as first drive means by electric motors and replacement adaptation of the electronic controller device as indicated in D2 does not require any major, non-obvious modification with respect to the structure of the capping assemblies as known from D1. The Board further indicated in this respect that this assumption can be made considering the fact that apart from feature (a) claim 1 does not comprise a structural feature of the capping assemblies that is among the features distinguishing the capping unit of claim 1 from the one according to D1.
- 6.5.3 The allegation of the respondent that the conclusion that the capping unit of claim 1 does not involve inventive step, starting from the capping unit of D1 and taking into account the actuators and the electronic controller device of D2, is based on hindsight has been dealt with above (cf. point 5.1). As final remark concerning this objection the Board draws the attention to the fact that, with the exception of the formulation of the problem which naturally requires knowledge of the distinguishing features with respect to D1 and their technical effects (cf. point 5.4 above),

the above examination of inventive step is based solely on the consideration of the teachings of documents D1 and D2. Using the technical effects of the distinguishing features for determining the technical problem generally results in an objective formulation of the problem, i.e. without hindsight.

7. *Claim 1 according to the auxiliary request*

7.1 Claim 1 according to the auxiliary request differs from claim 1 according to the main request in that the processing block as last feature has been further defined by an additional feature. According to this feature the processing block sends a signal (S1) which is processed according to the height of the container and can differ from one capping assembly, hence one primary motor, to another.

7.2 Concerning the features common with those of claim 1 of the main request the considerations outlined above apply correspondingly to the capping unit of claim 1 according to the auxiliary request.

7.3 Concerning the feature added to claim 1 the Board considers the opinion of the appellant to be correct that this feature neither relates to the electric controller device nor to the processing block as such but to the functioning of these elements, which has already been considered in the examination of inventive step for the capping unit of claim 1 according to the main request. The Board indeed considers the signal which is processed according to the height of the container and sent by the processing block to be one on which the variation of the operating parameters

referred to earlier in the claim (and thus also in claim 1 according to the main request) is based. Furthermore, the height of the container is among the dimensions according to which the operating parameters are varied.

The remaining part of the additional feature, that the signal can differ from one capping assembly (hence one primary motor) to another, concerns the manner in which the control works or, in other words, how fast it can respond to changes with respect to the height of the containers. Given the fact that claim 1 does not comprise any feature with regard to the functioning of the control itself and that in the patent in suit it is, as indicated by the Board during the oral proceedings, stated "the electronic controller 40 consists in an electronic processor of **conventional** type" (paragraph [0078]) this part of the additional feature cannot contribute to claim 1 involving inventive step.

The capping unit according to claim 1 of the auxiliary request thus does not involve an inventive step (Article 56 EPC).

- 7.4 For that reason it can be left open whether or not this claim satisfies the requirements of Articles 83, 84 and 123(2) EPC as objected to by the appellant.
- 7.5 The above result concerning lack of inventive step holds true considering the argument of the respondent that neither D1 nor D2 gives an indication with respect to a signal being processed according to the height of the container and sent by a processing block.

In this respect the Board considered the counterargument of the appellant to be more convincing. Accordingly, it is inherent to the electric controller device of D2 to process a signal according to the height of container, in case the height is one of the dimensions which vary, and to send such a signal to the electric controller device, since otherwise it cannot serve its purpose to relate the height of a container to the operating parameter for the primary electric motor of the capping assembly in question.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders