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**Datasheet for the decision
of 10 October 2012**

Case Number: T 2383/10 - 3.2.07

Application Number: 08104573.4

Publication Number: 2008937

IPC: B65D 5/66, B65D 85/10

Language of the proceedings: EN

Title of invention:
Sealed box

Applicant:
Schur Pack Denmark a/s

Headword:
-

Relevant legal provisions:
EPC Art. 56, 52(2)(d)

Keyword:
"Inventive step: no"

Decisions cited:
T 0154/04

Catchword:
-



Case Number: T 2383/10 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 10 October 2012

Appellant: Schur Pack Denmark a/s
(Applicant) J.W. Schurs Vej
DK-8700 Horsens (DK)

Representative: Nielsen, Leif
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 28 June 2010
refusing European patent application
No. 08104573.4 pursuant to Article 97(2) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the Examining Division refusing European patent application 08 104 573.4.
- II. In its decision, the Examining Division held that the subject-matter of claim 1 according to the main request filed with telefax on 8 February 2010 is not clear (Article 84 EPC), is not regarded as an invention (Article 52(2)(d) EPC) and lacks novelty (Article 54 EPC) over D2 (DE-A-195 34 026) and that the subject-matter of claim 1 according to the auxiliary request 1 filed with letter dated 12 April 2010 is not clear (Article 84 EPC), is not regarded as an invention (Article 52(2)(d) EPC) and it does not involve an inventive step (Article 56 EPC) over D2.
- III. In its statement setting out its grounds of appeal the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims filed with letter dated 12 April 2010 as then auxiliary request 1.
Oral proceedings were also requested. With its letter dated 24 September 2012 the appellant withdrew its request for oral proceedings and stated that "a decision on the case may be based on the written file."
- IV. The independent claim 1 according to the appellant's sole request reads as follows:

"A box containing pastilles, including a container and a lid which is pivotably attached to the container, where the box is provided with a sealing between a part

of the lid and the container for maintaining a closed condition of the lid on the container, and where the said lid part is connected to the rest of the lid via a perforation to be broken for opening the lid, and where the said lid part is a flap fastened to one of the sides of the container by means of the sealing, characterised in that the flap is partially or entirely shaped as the pastille in the box."

V. The appellant argued essentially as follows:

The flap according to the characterising part of claim 1 provides the technical effect of identifying the contents of the box independent of the language used by the user of the product. Moreover, visually handicapped persons will more easily recognise the content of the box by the form of the flap. The effect is assisting the user who is not able to read or see the information on the box.

Putting pastilles in a box as known from D2 and showing this is not obvious for a skilled person.

The shape of the flap of the box known from D2 is not related to the content of the box. There is no hint or suggestion in D2 to use the flap for showing that the box has been tampered with and simultaneously evidencing to a user that it is the correct box and content.

Reasons for the decision

1. *Claim 1 - exclusion from patentability; Article 52(2)(d) EPC*

The impugned decision is incorrect in stating that the invention of claim 1 cannot be regarded as an invention as it relates to a presentation of information; it cites Article 52(2)(d) EPC.

However, Article 52(3) EPC qualifies this exclusion from "inventions" in that this only applies to a claim for such a subject-matter "as such". As claim 1 also involves subject-matter having technical character, such as the container, the lid, the perforation and the sealing of the lid, it does not relate to a presentation of information "as such", so that this objection cannot hold.

In this respect the Board fully concurs with the summary of the long-standing Case Law of the Boards of Appeal as given in T 154/04, OJ EPO 2008, 46, Reasons, 5(C).

2. *Claim 1 - Inventive step; Article 56 EPC*

- 2.1 D2 discloses a box containing elongated objects, including a container ("Behälter 2") and a lid ("Deckel 4") which is pivotably attached ("Falzlinie 13") to the container, where the box is provided with a sealing ("gummierter Bereich 28") between a part of the lid ("Zunge 16") and the container for maintaining a closed condition of the lid on the container, and where the said lid part ("Zunge 16") is connected to the rest of

the lid via a perforation ("Reißlinie 22") to be broken for opening the lid ("Deckel 4"), and where the said lid part is a flap fastened to one of the sides of the container by means of the sealing ("gummierter Bereich 28"), see D2, column 2, line 28 to column 3, line 34; figures 1 and 2.

2.2 The box of claim 1 differs from the box known from D2 in that

(a) it contains pastilles

and in that

(b) the flap is partially or entirely shaped as the pastille in the box.

2.3 The Board notes that since in the box of D2 the lid part ("Zunge 16") is connected to the rest of the lid via a perforation ("Reißlinie 22") to be broken for opening the lid ("Deckel 4") said lid part and the corresponding perforation provide the technical effect of "showing tampering", see D2, column 1, lines 46 to 51 and column 1, line 64 to column 2, line 5. Thus, the technical problem of providing "a security that there has not been tampered with the content of the box", as argued by the appellant, is already solved in the box known from D2 and accordingly this technical problem need not be considered for inventive step of the subject-matter of claim 1.

2.4 Feature (a)

The flip-top box known from D2, see claim 1 and column 1, lines 3 to 5, is suitable for packaging of any kind of elongated objects, the use for cigarettes being mentioned therein only as a special use. It is thus

obvious to the skilled person that said box can also be used for elongated pastilles as long as they fit into the internal volume of the box. Indeed, it is stated on page 1, lines 10 to 24 of the present application that fliptop boxes are well-known in the art for cigarettes as well as for pastilles. Filling therefore the fliptop box known from D2 with pastilles does not demand from the person skilled in the art to exercise an inventive activity.

The appellant has not provided any supporting arguments for its statement in the grounds of appeal that the presence of pastilles in the box known from D2 is not obvious for a skilled person.

2.5 Feature (b)

The appellant argues that

"[t]he flap provides a technical effect in that the element would **identify** the contents of the box independent of the language used by the user of the product. Moreover, people which are visually handicapped will from the form recognise the content of the box. Hereby there would be an effect in securing the user who is not able to read or see the **information** on the box" (emphasis added by the Board).

It also argued that the flap

"gives the security that it is the correct box and content which the user has in his hand".

The Board notes that in its above-mentioned arguments the appellant itself obviously recognises that the form of the flap is used in order to "identify" the content

of the box and/or to give "information" about said content.

Accordingly, the Board considers that the effect of the shape of the flap is not a technical one since it only provides a visualisation of the content of the box (pastilles), which is a way of presenting information. Since this **information** does not interact with the technical subject-matter of claim 1 for solving a technical problem (be it keeping the lid sealed to the container of showing that the box has been tampered with) feature (b) does not provide a technical contribution to the prior art and thus can be ignored in the assessment of inventive step; see T 154/04, OJ EPO 2008, 46, Reasons, 5(F).

Furthermore, claim 1 refers only to the "shape" of the pastille in the box without any reference to the "size" or "colour" of the part of the flap being shaped as the pastille in the box. The Board is not convinced that a flap according to claim 1, which is possibly only partially "shaped" as the pastille in the box, but can have an arbitrarily selected "size" or "colour" would enable persons which are visually handicapped or not capable of reading a written information on the box to recognise the contents of the box as argued by the appellant.

- 2.6 In view of the fact that, as stated above, filling the box known from D2 with pastilles (feature (a)) does not demand from the skilled person the exercise of an inventive activity and feature (b) is to be ignored in the assessment of inventive step the subject-matter

of claim 1 does not involve an inventive step in accordance with Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders