

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 18 December 2014**

Case Number: T 0478/11 - 3.2.07

Application Number: 05733743.8

Publication Number: 1742842

IPC: B65B5/10, B65B9/04, B65B41/18

Language of the proceedings: EN

Title of invention:
BLISTERING MACHINE FOR PRODUCING BLISTER PACKS

Patent Proprietor:
I.M.A. INDUSTRIA MACCHINE AUTOMATICHE S.p.A.

Opponent:
Uhlmann Pac-Systeme GmbH & Co. KG

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0478/11 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 18 December 2014

Respondent
(former Appellant I):
(Patent Proprietor) I.M.A. INDUSTRIA MACCHINE AUTOMATICHE S.p.A.
Via Emilia, 428-442
40064 Ozzano dell' Emilia (BO) (IT)

Representative:
Dall'Olio, Giancarlo
Invention S.r.l.
Via delle Armi 1
40137 Bologna (IT)

Appellant II:
(Opponent) Uhlmann Pac-Systeme GmbH & Co. KG
Uhlmannstr. 14-18
D-88471 Laupheim (DE)

Representative:
Wächter, Jochen
Kroher-Strobel
Rechts- und Patentanwälte PartmbB
Bavariaring 20
80336 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
23 December 2010 concerning maintenance of the
European Patent No. 1742842 in amended form.**

Composition of the Board:

Chairman I. Beckedorf
Members: G. Patton
H. Hahn

Summary of Facts and Submissions

I. Appellant I (patent proprietor) lodged an appeal against the interlocutory decision of the Opposition Division maintaining European patent N° 1 742 842 in amended form.

Appellant II (opponent) likewise lodged an appeal against this interlocutory decision.

II. The Opposition Division held that the appellant I's main request (patent as granted) did not fulfil the requirements of Article 54(1) EPC, the first auxiliary request did not fulfil the requirements of Article 123(2) EPC and the second auxiliary request was found to meet the requirements of the EPC.

The opposition had been based on Article 100(a) EPC (novelty and inventive step).

III. With its statement of grounds of appeal dated 29 April 2011 appellant I requested the maintenance of the patent on the basis of the main request (patent as granted) or of new first and second auxiliary requests.

Claim 1 of the new first auxiliary request corresponded, apart from minor amendments, to claim 1 of the second auxiliary request on the basis of which the Opposition Division had maintained the patent.

Claim 1 of the new second auxiliary request comprised further limitations with respect to claim 1 of the first auxiliary request.

IV. In the course of the appeal proceedings, the Board provided its preliminary non-binding opinion annexed to

the summons for oral proceedings that the claims of the main and first auxiliary requests of appellant I did not fulfil the requirements of, respectively, Articles 54(1) and 56 EPC, while the second auxiliary request could be regarded as meeting the requirements of the EPC.

During the oral proceedings held on 18 December 2014, the following issues, *inter alia*, were discussed:

- inventive step of the subject-matter of claim 1 according to the first auxiliary request in view of the teaching of document E1 and the general technical knowledge and practice of the skilled person, taking possibly also into account the teaching of document E2;

- inventive step of the subject-matter of claim 1 according to the second auxiliary request in view of the teachings of documents E1, E2 and E4 and the general technical knowledge and practice of the skilled person.

Appellant I withdrew its main and first auxiliary requests, thus making its second auxiliary request the only request. As a consequence of the aforementioned withdrawal, the Board informed appellant I that the appeal of appellant I was deemed to be withdrawn to which it agreed (appellant I is hence hereinafter called "respondent").

Appellant II stated that it did not object to the adapted description annexed to the decision under appeal.

The present decision was announced at the end of the oral proceedings.

- V. Appellant II requests that the decision under appeal be set aside and that the patent be revoked.
- VI. The respondent requests that in setting aside the decision under appeal the patent be maintained in amended form on the basis of the set of claims filed as second auxiliary request with letter of 29 April 2011 and the adapted description annexed to the decision under appeal.
- VII. Claim 1 of the second auxiliary request reads as follows (in bold the amendments with respect to claim 1 of the patent as granted, strike through the deletions; emphasis added by the Board):

"Blistering machine (M1) for producing blister packs (B1) having a production line, which includes consecutively: at least one thermoforming station (101) of a first continuous band (102) of thermoformable material, in order to define a blister band (102) with blisters containing products (104); a station (105) for feeding said products (104) and filling said blister band (102) with the latter; a feeding station (106) of a second band (107), feeding continuously the second band (107) over said blister band (102) filled with said products (104); a closing station (108), where said first blister band (102) is sealed by said second band (107) to obtain a blister pack band (NB1), said closing station (108) including two opposite rollers (112, 113), the roller situated at the lower level being a driving roller; and a cutting station (R1), in which said blister pack band is cut into respective blister packs (B1); ~~the machine being characterized in that wherein~~ said production line extends, at least beginning from said products feeding station (105),

along a continuous feeding path (A1), substantially horizontal, and ~~in that wherein~~ tension means (114) are situated upstream of said closing station (108), along said path (A1), to cooperate with said rollers (112, 113) of said closing station (108), to perform a determined tension on at least said first band (102), **the machine being characterized in that said tension means (114) include a pair of rollers (116, 117), facing each other and situated on the opposite sides of at least said first blister band (102), at least one roller (116) of said rollers (116, 117) being a power-driven roller; said pair of rollers (116, 117) performing said tension on at least said first blister band (102), so as to ensure a correct and complete matching along a line (T) determined by at least one blister (103) of said first blister band (102), and a relevant seat (112a) made on the driving roller (112) of said rollers (112, 113) of said closing station (108), and in that it includes means (115) for detecting and controlling the coupling between said blister (103) and said seat (112a) made on said driving roller (112) of said closing station (108); said detecting and controlling means (115) acting in counter-reaction on said tension means (114), so as to activate the latter, that is to generate a braking tension on said first blister band (102), when said control means (115) detect an erroneous matching said seat (112a) and said blister (103)."**

VIII. The following documents of the opposition proceedings are of relevance for the present decision:

- E1: DE 201 18 881 U1, cited in the contested patent, [0010]
- E2: JP 2003 291908 A
- E2a: English translation of E2

E4: EP 0 436 476 A1

IX. Appellant II argued in substance essentially as follows:

Document E1, which can be regarded as the closest prior art, discloses all features of claim 1 apart from the blistering machine including "means for detecting and controlling the coupling between said blister and said seat made on said driving roller of said closing station; said detecting and controlling means acting in counter-reaction on said tension means, so as to activate the latter, that is to generate a braking tension on said first blister band, when said control means detect an erroneous matching said seat and said blister" (feature (ii)).

A power-driven roller in the tension means (feature (i)) is regarded as being implicitly disclosed in the redirecting station (13) of E1 for lifting up the loop of blister band between the stations (12) and (13).

The skilled person would consider E4 which discloses a sensor (21) enabling to detect the position of the blisters in order to correct, like in claim 1, a possible erroneous blisters positioning at the closing station. He would then immediately think of applying this teaching to the servomotor (M1) of E2, which acts as tensions means (roller 8; servomotor M1) for the same purpose, and implement this combined teaching to the blistering machine of E1. By doing so, the skilled person would arrive at the claimed subject-matter in an obvious manner (Article 56 EPC).

- X. The respondent argued in substance essentially as follows:

Document E1, which can be regarded as the closest prior art to claim 1, does not disclose features (i) and (ii). Since none of the cited documents discloses at least features (ii), the skilled person, even by combining the teachings of the documents E4, E2 and E1, would not arrive at the claimed subject-matter. Inventive step has therefore to be acknowledged.

Reasons for the Decision

1. Amendments

Claim 1 of respondent's only request (i.e. its second auxiliary request filed with letter of 29 April 2011) comprises the features of claims 1, 2 and 3 of the patent as granted. The requirements of Articles 123(2) and (3) EPC are therefore fulfilled.

This was not contested by appellant II.

2. Novelty

The subject-matter of claim 1 of respondent's request is novel since none of the cited prior art document discloses all the features in combination (Article 54(1) EPC).

This was not contested by appellant II.

3. Inventive step

3.1 The Board concurs with the parties that E1 can be taken as the closest prior art since it lies in the same technical field as claim 1 of blistering machines for producing blister packs with a production line extending, at least beginning from the products feeding station, along a continuous feeding path, substantially horizontal (contested patent, [0015]; E1, page 1, first paragraph and figure 1).

3.2 E1 discloses a blistering machine ("Blistermaschine") for producing blister packs having a production line, which includes consecutively:

- at least one thermoforming station ("Vorheizstation" 3; "Tiefziehstation" 11) of a first continuous band ("Bodenfolie") of thermoformable material ("in den plastischen Zustand gebracht"), in order to define a blister band ("Bodenfolie") with blisters ("Näpfe") containing products ("zur Verpackung pharmazeutischer Produkte, Chemikalien od. dgl.");
- a station ("Befüllung") for feeding said products and filling said blister band with the latter;
- a feeding station ("Deckfolienwickel" 19, 20, 21, 22) of a second band ("Deckfolie"), feeding continuously the second band ("Deckfolie") over said blister band ("Bodenfolie") filled with said products;
- a closing station ("Siegelstation" 23), where said first blister band ("Bodenfolie") is sealed by said second band ("Deckfolie") to obtain a blister pack band, said closing station (23) including two opposite rollers; and
- a cutting station ("Stanz- und Perforierstation" 25; "Stanzwalze" 32), in which said blister pack band is cut into respective blister packs (page 1, first paragraph; page 3, line 17-22; page 4, third paragraph

to page 5, third paragraph; page 6, first paragraph; claims; figures 1, 3-4).

The machine of E1 further comprises:

- a production line that extends, at least beginning from said products feeding station ("Befüllung"), which is located between a redirecting station ("Umlenkungsstation" 13) and the closing station ("Siegelstation" 23) (cf. page 4, last paragraph), along a continuous feeding path, substantially horizontal (cf. figure 1); and
- tension means, i.e. the redirecting station ("Umlenkungsstation" 13), which are situated upstream of said closing station ("Siegelstation" 23; cf. figure 1), along said path, to cooperate with said rollers of said closing station ("Siegelstation" 23), to perform a determined tension on at least said first band ("Bodenfolie").

As explicitly stated in E1, page 4, fifth paragraph, and page 6, first paragraph, the redirecting station (13) of the machine of E1 aims at keeping **a constant tension**. This redirecting station (13) is therefore to be seen as the tension means according to claim 1.

E1 also discloses that the tension means, i.e. the redirecting station (13), include a pair of rollers (cf. figures 1 and 3) facing each other and situated on the opposite sides of the blister band. The said pair of rollers perform the tension on at least said first blister band (page 4, fifth paragraph and page 6, first paragraph; figure 3).

The matching between the blisters and the relevant seat will be, at least to some extent, unambiguously achieved in the device of E1 in order to avoid to

damage the blisters in the closing station (see page 3, last paragraph of appellant II's statement of grounds of appeal). The redirecting station (13) with its tensioning effect participates to this matching.

- 3.3 In view of the wording used in claim 1 ("at least beginning from"), the path is not limited to downstream the products feeding station so that even if the tension means (13) are located upstream of the products feeding station in E1 (opposite to figure 2 of the contested patent), the claimed feature of being "along said path" is unambiguously fulfilled.

It is further noted that the term "consecutively" used in claim 1 does not exclude that other stations, like the coding station ("Codiersstation" 24) in E1, are located between the closing and the cutting stations as shown for instance in figure 2 of the contested patent which comprises a stamping/punching station (109) and a pre-cutting station (110) between the closing and the cutting stations.

These interpretations, which were put forward in the annex to the summons for oral proceedings (cf. point 4.1.2, last two paragraphs), were not contested by the parties at the oral proceedings.

- 3.4 E1 does not explicitly disclose the feature of the preamble of claim 1 that the roller situated at the lower level in the closing station is a driving roller.

Although originally disputed in its written submissions, the respondent referring to the arguments put forward in the annex to the summons to oral proceedings (in particular point 4.1.3), admitted at the oral proceedings that this feature was implicit

from the disclosure of E1 (see also impugned decision, point 2.1; minutes of the oral proceedings before the opposition division, page 1, third paragraph; contested patent, paragraph [0010]).

3.5 As a result of the above, the only distinguishing features of claim 1 over E1 are that:

(i) - at least one roller of the rollers of the tension means is a **power-driven** roller; and

(ii) - the blistering machine "**includes means for detecting and controlling the coupling between said blister and said seat made on said driving roller of said closing station; said detecting and controlling means acting in counter-reaction on said tension means, so as to activate the latter, that is to generate a braking tension on said first blister band, when said control means detect an erroneous matching said seat and said blister**".

3.6 The appellant II's argument that a power-driven roller in the tension means (13) is implicitly disclosed in E1 for lifting up the loop of blister band between the stations (12) and (13) is not convincing to the Board since a power-driven roller in the redirecting station (13) would be in contradiction with the magnetic brake (14) as already put forward in the impugned decision, point 5.4 (cf. page 3 of respondent's letter dated 2 September 2011).

3.7 The distinguishing features (i) and (ii) have the synergetic technical effect to actively modulate the tension in the blister band in order to provide a good matching between the blister and the housing seat of the driving roller of the closing station (contested

patent, paragraphs [0032] and [0034]; impugned decision, point 5.5 of the reasons).

- 3.8 The objective technical problem to be solved is therefore seen as to modify the machine of E1 in order to ensure a correct matching of the blisters of the blister band with the relevant seats of the driving roller of the closing station (impugned decision, point 5.6).

This problem, which was mentioned in the annex to the summons for oral proceedings (cf. point 6.4.4), was neither contested nor reformulated by the parties at the oral proceedings.

- 3.9 At the oral proceedings, appellant II argued that the skilled person would consider E4 which is, like E1 and claim 1, in the technical field of blistering machines for producing blistering packs (column 1, lines 1-6; figure 1). E4 discloses a sensor (21) to detect the position of the prominences (25), i.e. *de facto* of the blisters, in order to correct, like in claim 1, a possible erroneous blisters positioning at the closing station which would result from the shrinkage of the band (column 5, lines 40-46; figure 1). For appellant II, the skilled person would immediately think of applying this teaching to the blistering machine of E2 and more particularly to the servomotor (M1) of E2, which acts as tensions means (roller 8; servomotor M1) for the same purpose (cf. E2a, [0033], [0046]-[0049] and figure 1). By implementing this combined teaching to the blistering machine of E1, the skilled person would arrive at the claimed subject-matter in an obvious manner (Article 56 EPC).

3.10 The Board cannot share the appellant II's view for the following reasons put forward by the respondent during the oral proceedings.

In E4 the blistering machine concerns flat closing plates (8, 9) so that it does not disclose a single line as claimed for matching blisters and seats, but rather several lines. Further, the information taken from the sensor (21) in E4 is used to displace and adjust the position of the frame (7) comprising the plates (8, 9), not to act on tension means upstream the closing station (8, 9) as claimed (column 4, line 56 to column 5, line 34). Therefore, the skilled person will not find the claimed solution in E4. Further he will not think of applying its teaching to the servomotor (8, M1) of E2 as the data obtained from the sensor (21) is used otherwise in E4.

In fact, none of the cited documents discloses a detecting and controlling means which enable to detect and control the coupling between the blister and its relevant seat made on the driving roller of the closing station with its claimed action on the tension means (distinguishing features (ii)).

As a consequence, even if the skilled person were to apply the teaching of E4 to the blistering machine of E2, which is denied, and implement this combined teaching to the blistering machine of E1, he would still not arrive at the claimed subject-matter since the distinguishing features (ii) would still be missing from the final combination. The skilled person will not be in a position to complete this missing step by himself since the distinguishing features (ii) are not known in the present technical field and do not belong to his common general knowledge.

- 3.11 Consequently, the subject-matter of claim 1 of the respondent's second auxiliary request is inventive (Article 56 EPC).
4. Neither appellant II nor the Board could see any objections against the respondent's request to keep the adapted description annexed to the decision under appeal.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division with the order to maintain the patent in amended form on the basis of the following documents:

claims 1 and 2 filed as second auxiliary
request with letter of
29 April 2011

description page 2 filed during the oral
proceedings before the
opposition division on
30 November 2010

pages 3 and 4 of the patent specification

figures 1 to 5 of the patent specification.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated