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**Datasheet for the decision  
of 28 November 2013**

**Case Number:** T 0919/11 - 3.2.07

**Application Number:** 03767964.4

**Publication Number:** 1697224

**IPC:** B65D 39/08, B65D 41/58

**Language of the proceedings:** EN

**Title of invention:**  
Closure plug and overseal

**Patent Proprietor:**  
American Flange & MFG Co Inc.

**Opponent:**  
Schütz GmbH & Co. KGaA

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 111(1)

**Keyword:**  
"Remittal - yes"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0919/11 - 3.2.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.07  
of 28 November 2013

**Appellant:** Schütz GmbH & Co. KGaA  
(Opponent) Schützstrasse  
D-56242 Selters (DE)

**Representative:** advotec.  
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**Respondent:** American Flange & MFG Co Inc.  
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**Representative:** Weston, Robert Dale  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted 10 February 2011  
rejecting the opposition filed against European  
patent No. 1697224 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman:** I. Beckedorf  
**Members:** H.-P. Felgenhauer  
H. Hahn

## 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. 1 697 224.

It requested the impugned decision to be set aside and the patent be revoked.

The respondent (proprietor) requested the appeal to be dismissed.

II. Claim 1 as granted reads as follows:

"1. A closure plug and tamper evident, closure overseal combination for shipping containers comprising:

a cup-shaped closure plug (6) having:

a plug sidewall (8),

axially-extending, wrench-engaging lugs (12) about the inner periphery of the plug sidewall (8),

and

an inner, segmented locking groove (17);

and

an overseal (20) having:

axially extending, resilient legs (23), each with a radially-extending foot (24) for hidden, complimentary, snap-fit, interlocking engagement with locking groove segments (17), and

a visible frangible portion (26) to permit removal of the overseal from the plug;

characterised in that:

the inner, segmented locking groove (17) is formed by a radial undercut at the base of each lug (12)".

III. Impugned decision

(a) According to the impugned decision the combination of features of claim 1 involves an inventive step over the closure plug and closure combination of D1.

(b) The charactering feature has been considered as the feature distinguishing the combination of claim 1 over the one of D1.

(c) The effects of the distinguishing feature have been seen as leading

(i) to a closure plug which can more easily be moulded,

(ii) while at the same time assuring a tamper proof and hidden interlocking between the foot of the resilient legs and the groove

(reasons, no 3.3).

(d) The problem has been formulated based on the effect (i) only as to provide a closure plug and tamper evident overseal combination, comprising a closure plug which can be more easily manufactured (reasons, no. 3.4).

IV. The following documents are referred to:

D1 DE-A-36 37 644

D2 DE-U-91 09 185

D3 EP-A-0 324 196

D4 DE-U-200 11 618.

Documents D1 to D3 were taken into account in the impugned decision. D4 was filed with the statement setting out the grounds of appeal.

V. The submissions of the appellant relevant for the present decision are as follows:

- (a) The subject-matter of claim 1 solves with respect to the closure plug and closure overseal combination of D4, to be considered as closest prior art, two partial problems. The first one being directed to savings of material and the second one to the provision of an alternative for the arrangement of locking elements.
- (b) Considering D4 by itself or with D1, D2 or D3 renders the solution to either one of these problems according to the subject-matter of claim 1 obvious.

VI. The submissions of the respondent relevant for the present decision are as follows:

- (a) Late filed document D4 is not to be admitted since it is no more relevant than D1, which represents the closest prior art.
- (b) The problem solved by the subject-matter of claim 1 lies in the provision of an overseal snap-fit with a plug, irrespective of the relative angular position of these elements.
- (c) Material savings are not to be considered as a problem in relation to the subject-matter of claim 1. There is no basis for such a problem in the granted patent or any other prior art document considered during the prosecution or opposition proceedings.

The subject-matter of claim 1 involves an inventive step over D4 considered by itself or in combination with D1, D2 or D3.

VII. In the annex to the summons to oral proceedings (in the following: the annex) the Board gave its preliminary opinion in particular concerning the examination of inventive step according to the impugned decision and the further proceeding of the case.

- (a) Under the heading "6.4 Remittal of the case for further prosecution" the assessment of the subject-matter of claim 1 in the impugned decision was referred to as follows: "Since the impugned decision appears to be based on an insufficient

understanding of the subject-matter of claim 1 which forms an important aspect in the examination of inventive step it appears to be appropriate to remit the case for the examination of inventive step based on a proper understanding of the features of claim 1 and their effects and starting therefrom the proper assessment of the prior art documents".

- (b) Furthermore under the heading "6.5 Procedural aspect" the following opinion was expressed: "It appears that a decision concerning the remittal can be reached without oral proceedings to be held. Thus if the parties declare their consent to such a proceeding in due time (cf. point 7 below) the summons for oral proceedings will be cancelled and a decision concerning remittal be given in the written proceedings".

VIII. As a response to the annex both parties declared their consent to the proposed approach (appellant: letter dated 19 September 2013; respondent: letter dated 16 October 2013).

### **Reasons for the Decision**

1. The findings of the preliminary opinion given in the annex have not been objected to by any of the parties.
  - 1.1 Moreover the parties have consented to the further proceeding as outlined in points 6.4 and 6.5 of the annex: remittal of the case without oral proceedings to be held.

1.2 Consequently the findings of the annex, being no longer considered as of a preliminary nature, form the base of the present decision.

1.3 The nomenclature of claim 1 as relied upon in the annex will also be used in the following:

"The cup-shaped closure plug is defined as having:

- (a) a plug sidewall,
- (b) axially-extending, wrench-engaging lugs about the inner periphery of the plug sidewall and
- (c) an inner, segmented locking groove.

The overseal is defined as having

- (d) axially extending resilient legs,
- (e) each with a radially-extending foot for hidden, complimentary, snap-fit, interlocking engagement with locking groove segments, and
- (f) a visible frangible portion to permit removal of the overseal from the plug.

According to the characterising feature

- (g) the inner, segmented locking groove is formed by a radial undercut at the base of each lug".



2. *Examination of inventive step according to the impugned decision*

2.1 As indicated in the annex the **opposition division took only effect (i)** (cf. point III (c) above) in connection with the distinguishing feature **into consideration**, according to which the inner, segmented locking groove is formed by a radial undercut at the base of each lug, whereas the **further cited effect (ii)** "while at the same time assuring a tamper proof and hidden interlocking between the foot of the resilient legs and the groove" has been taken as granted but otherwise **not taken into consideration** in the examination of inventive step (cf. annex, point 6.1.1).

2.2 The Board is, as can be concluded from the annex (cf. point 6.1.2), of the opinion that the **problem derivable from the description of the patent in suit is based on the effect (ii)** (cf. paragraph [0006]) whereas the problem considered in the impugned decision (reasons, no. 3.4) based on the effect (i) is not referred to in the description as also argued by the respondent (cf. point VII (c) above).

2.3 According to the annex (cf. point 6.1.3) it appears that the **effect (ii)**, which **concerns the cooperation of the closure plug and the overseal cannot be attributed to the characterising feature** which concerns solely the closure plug.

In that respect the annex (point 6.1.3) reads as follows:

"Taking feature (e) into consideration, it becomes apparent that the cooperation between the closure plug and the overseal is defined as resulting in a snap-fit, interlocking engagement of the radially extending feet on the side of the overseal and the segmented locking groove (features (c) and (g)) on the side of the closure plug.

It appears to be evident that such a snap-fit requires beyond the features referred to above a further definition that either the interlocking engagement leading to the snap-fit is a particular one (first possibility) or that further means of engagement between the closure plug and the overseal are provided (second possibility).

Claim 1 does not comprise such a further definition.

The description and the figures appear to give a disclosure only with respect to the second possibility in that it is indicated "The overseal 20 is in an interference fit on the container neck bead 5" (cf. paragraph [0016] and figures 1, 3). The interference fit appears to provide for the reaction force required for the snap-fit.

Furthermore it appears that a proper snap-fit between the feet and locking groove segments according to feature (e) requires proper alignment of the legs of the overseal and the locking groove segments (cf. paragraph [0016], figures 1, 3). Without such an

alignment the feet could be arranged within gaps 14 between the wrench engaging lugs 12 (cf. figure 3) which would, contrary to feature (e), not lead to the snap-fit defined by this feature.

In other words if the legs and their feet are positioned offset of the lugs and the locking grooves provided therein effect (ii) would not occur".

2.4 As a consequence of the above considerations relating to the effect (ii) it has been concluded in the annex (point 6.1.4)

"As can be derived from the above claim 1 apparently does not define all means required such that effect (ii) occurs".

This has the consequence that the problem referred to in the description (paragraph [0006]) is not solved.

2.5 Furthermore in the annex (point 6.1.5) the following has been indicated with respect to the problem based on the effect (i):

"It also appears to be doubtful whether the problem on which the opposition division based its examination of inventive step (impugned decision, reasons, point 3.4) has been solved. In the decision under appeal it appears that no reason is given as to why the effect (i) has been considered as being associated with feature (g) or any other combination of features of claim 1".

In this respect in the annex (point 6.1.6) it has been concluded:

"It thus appears to be doubtful whether the impugned decision is correct in considering the effects (i) and (ii) and the problem based on the effect (i)".

2.6 As indicated in the annex (point 6.1.7) the above aspects "effect the understanding of the subject-matter of claim 1, and based on that the relevance of the prior art documents relied upon in the opposition proceedings and in the grounds of appeal (D4), as well as the examination of inventive step".

3. *Subject-matter of claim 1*

Following the conclusion of the annex (point 6.2) "the subject-matter of claim 1 needs to be assessed taking into account whether one or both of the effects (i) and (ii) can be attributed to the characterising feature (g) or any combination of this feature with further features of claim 1".

4. *Admissibility of document D4*

Concerning the admissibility of D4 following the annex (point 6.3) it needs to be taken into account "... i.a. ... the understanding of the subject-matter of claim 1 and whether in view of this understanding the combination closure plug / overseal of D4 is more relevant than the combinations according to the prior art considered in the impugned decision: D1, D2 and D3".

5. *Remittal of the case for further prosecution*

Since the impugned decision is based on an insufficient understanding of the subject-matter of claim 1 which forms an important aspect in the examination of inventive step it is, as indicated in the annex (point 6.4) appropriate "**to remit the case for the examination of inventive step** based on a proper understanding of the features of claim 1 and their effects and starting therefrom the proper assessment of the prior art documents".

6. The present decision concerning the remittal has been reached without oral proceedings being held, since the parties consented to this approach (cf. point 1.1 above).

**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 for further prosecution.

The Registrar:

The Chairman:

G. Nachtigall

I. Beckedorf