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**Datasheet for the decision  
of 24 July 2014**

**Case Number:** T 1875/11 - 3.2.07

**Application Number:** 04254067.4

**Publication Number:** 1495967

**IPC:** B65B9/22, B65B59/04

**Language of the proceedings:** EN

**Title of invention:**

A packaging machine former support

**Patent Proprietor:**

TNA Australia PTY Limited

**Opponent:**

ISHIDA CO., Ltd.

**Headword:**

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - all requests (no)

**Decisions cited:**

T 1072/07

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 1875/11 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 24 July 2014**

**Appellant I:**  
(Opponent)

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**Appellant II:**  
(Patent Proprietor)

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**Representative:**

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**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
4 July 2011 concerning maintenance of the  
European Patent No. 1495967 in amended form.**

**Composition of the Board:**

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

## **Summary of Facts and Submissions**

- I. Appellants I and II (opponent and patent proprietor) lodged each an appeal against the interlocutory decision of the opposition division maintaining European patent No. 1 495 967 in amended form.
- II. Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step).
- III. The opposition division found that the subject-matter of claim 1 according to the third auxiliary request filed during the oral proceedings meets the requirements of the EPC.
- IV. Oral proceedings took place before the Board on 24 July 2014.
  - a) The appellant I requested that the decision under appeal be set aside and that the European patent No. 1 495 967 be revoked.
  - b) The appellant II requested that the appeal of the appellant I be dismissed (main request), alternatively, that in setting aside the decision under appeal the patent be maintained in amended form on the basis of one of the sets of claims filed as first and second auxiliary requests with letter dated 19 June 2014, and as third auxiliary request with letter dated 18 July 2014, or that in case that the case be remitted to the opposition division a different apportionment of costs be ordered.

V. Claim 1 according to the **main request**, i.e. of the patent in the version as upheld by the opposition division is identical with each of the claims 1 according to the **first and the second auxiliary requests** and reads as follows:

"A combination including a packaging machine former (14) and a support (20) for the former (14) to support the former (14) for movement relative to a packaging machine (15), said former including:  
a former shoulder (29) over which strip bag material is passed to be formed into tubular bag material to be delivered to the packaging machine (15);  
said support (20) including:  
a first portion (28) attached to the former 14; and a second portion (23) for attachment to the packaging machine (15); and attached to the first portion (28);  
wherein  
said first portion (28) is movable relative to said second portion (23) while still attached to the second portion (23) so that the former (14) is supported by the second portion (23) and movable between a first position aligned with the packaging machine (15) so as to deliver the tubular bag material thereto, and a second position spaced from the first position to facilitate access to the former (14) while said former (14) is supported by said second portion (23) in both positions,  
the first portion (28) includes at least one member (24) upon which the shoulder (29) is mounted, and the second portion (23) receives said first portion (28) to provide for movement of said shoulder (29) between the first and second positions thereof;  
characterised in that said shoulder (29) is removably attached to the member (24)".

Claim 1 according to the **third auxiliary request** reads as follows (amendments over claim 1 of main request are depicted in bold):

"A combination including **a cabinet (11), a packaging machine (15) with the cabinet (11)**, a packaging machine former (14) and a support (20) for the former (14) to support the former (14) for movement relative to the a packaging machine (15), said former including: a former shoulder (29) over which strip bag material is passed to be formed into tubular bag material to be delivered to the packaging machine (15); said support (20) including: a first portion (28) attached to the former 14; and a second portion (23) for attachment to the packaging machine (15); and attached to the first portion (28); wherein said first portion (28) is movable relative to said second portion (23) while still attached to the second portion (23) so that the former (14) is supported by the second portion (23) and movable between a first position aligned with the packaging machine (15) so as to deliver the tubular bag material thereto, and a second position spaced from the first position to facilitate access to the former (14) while said former (14) is supported by said second portion (23) in both positions, the first portion (28) includes at least one member (24) upon which the shoulder (29) is mounted, and the second portion (23) receives said first portion (28) to provide for movement of said shoulder (29) between the first and second positions thereof; characterised in that said **cabinet has an access opening (13) to provide for access to the former (14), with the second position being spaced from the first position toward said access opening (13), and in that**

**said** shoulder (29) is removably attached to the member (24)".

VI. Appellant I's arguments, in so far as they are relevant for the present decision, may be summarised as follows:

*Claim 1 according to one of the main, first auxiliary or second auxiliary request - inventive step, Article 56 EPC*

Both the originally filed application and the patent in suit deal with the problems arising by removing and disconnecting the entire former but there is no mention at all of the problem to be solved by the characterising feature of claim 1 that "the shoulder is removably attached to the member". This feature is directed to the removable attachment of the shoulder as such, without any relation to the removing of the entire former.

Given the fact that the apparatus known from D4 already discloses a removable former and in view of the above-mentioned differentiating features of the characterising part of claim 1 the problem to be solved has to be defined in less ambitious terms, namely reducing to practice of the generic teaching of D4.

It is well within the ambit of the person skilled in the art to provide different kinds of connecting means for securing the shoulder to its supporting member. Choosing only bolts and clamps out of the four well-established connecting means: bolts, pins, clamps or welding, to realise a dismountable connection does not require exercise of an inventive activity from the person skilled in the art.

There is no need for the skilled person to find a specific motivation in the state of the art towards a dismountable connection since there has in any case to be a selection of the means needed for connecting the shoulder to its supporting member. Since all four above-mentioned connecting means are equally suitable for this purpose and for that reason equally obvious, the choice of two from these four possible connecting means, i.e. bolts or clamps, cannot involve an inventive step.

*Claim 1 according to the third auxiliary request -  
inventive step, Article 56 EPC*

The person skilled in the art seeking to provide protection against the contamination from outside of the packaging machine known from D4, but maintaining good accessibility to its exchangeable former, would provide a cabinet for said packaging machine which has an opening to provide access to the former, and with said access opening being positioned in front of the former without exercising an inventive activity.

In any case, the use of a cabinet for such a packaging machine is well known to the person skilled in the art as it is acknowledged as such in paragraph [0003] of the patent in suit.

VII. Appellant II's arguments, in so far as they are relevant for the present decision, may be summarised as follows:

*Claim 1 according to one of the main, first auxiliary or second auxiliary requests - inventive step, Article 56 EPC*

The goal of the packaging machine of D4 is the provision of an assembly in which parts can be quickly and easily removed and replaced, see column 5, lines 33 to 35.

An element is removably attached to another element if it can be removed without much effort, e.g. by the operator. In the present case removing the shoulder in D4 would require the complete dismantling of the assembly. This assembly consists of bulky components and there is no motivation in D4 for changing a single part, i.e. the shoulder of the assembly.

The skilled person would interpret the expression "securing" in column 5, line 65 of D4 as defining a non-detachable connection.

*Claim 1 according to the third auxiliary request - inventive step, Article 56 EPC*

No hint is to be found in D4 for providing a cabinet for the packaging machine of D4, nor for the positioning of its opening as defined now in claim 1.



## Reasons for the Decision

1. *Procedural matters*
- 1.1 Appellant II, when filing the notice of appeal and the statement setting out the grounds of appeal, had requested that the decision under appeal be set aside and that the patent be maintained as granted; the claims in the granted version were attached to the statement of grounds of appeal and marked as "Main Request". That original main request was followed by a number of auxiliary requests directed at maintaining the patent in amended form.
- 1.2 With its letter of 19 June 2014, appellant II "confirmed" its earlier requests *inter alia* as follows:  
"Main As filed with our Grounds of Appeal on 28 October 2011 = claims as upheld by the Opposition Division".
- 1.3 At the beginning of the oral proceedings, appellant II clarified its requests by confirming that, following its letter dated 19 June 2014, its main request was directed to requesting that the appeal of the appellant I be dismissed, i.e. that a patent be maintained in the version upheld by the decision under appeal, and that it no longer pursued its original appeal (see minutes of the oral proceedings of 24 July 2014, page 2/4).
- 1.4 That clarification of the scope of the main request implied an amendment of the original main request by limiting the claimed subject-matters. According to its (new, clarified) main request, appellant II no longer sought that the impugned decision be set aside and that the patent be maintained as granted, of which the

Opposition Division had held the subject-matter of claim 1 to lack novelty.

Instead, the (new, clarified) main request was directed at confirming the findings of the Opposition Division in respect of what appellant II had filed as third auxiliary request during the oral proceedings before the Opposition Division.

1.5 The (new, clarified) main request implicates in legal terms that appellant II no longer pursued its appeal against the impugned decision of the Opposition Division and defended the patent in suit only in an even more restricted form pursuant to its first and second auxiliary requests filed with letter of 19 June 2014 and as third auxiliary request filed with letter of 18 July 2014. In other words, appellant II chose not to act any longer in its original capacity as appellant but purely as a respondent with regard to the appeal of appellant I.

1.6 Consequently, the appeal of appellant II is deemed to have been withdrawn.

2. *Claim 1 according to one of the main, first auxiliary or second auxiliary requests - inventive step, Article 56 EPC*

2.1 It is undisputed that the form-fill-seal apparatus known from D4 represents the closest prior art for the subject-matter of claim 1 and that said apparatus involves all the features of the preamble of claim 1.

2.2 It is further undisputed that the shoulder 214 of the apparatus known from D4 is secured to the shoulder plate 218, said last being a member of the first portion of the former support, see column 5, lines 64

to 65. Although D4 is silent about the type of connecting means used between the shoulder and the shoulder plate it is common ground that these may be one of the following well-established connecting means: bolts, pins, clamps or welding. It is also well known to the person skilled in the art that at least two of the four above listed connecting means, namely the bolts and the clamps, provide for a detachable connection.

2.3 Apparatus claim 1, by claiming in its characterising part that the shoulder is **removably attached** to the member, implicitly defines that the shoulder and the shoulder plate are connected to each other via **detachable connecting means**. The Board considers therefore that the packaging machine with its former and support for the former according to claim 1 differs from the apparatus known from D4 in that a detachable connecting means for the connection between the shoulder and the shoulder plate is chosen.

2.4 The Board notes, and this was also not disputed by the parties, that the problem to be solved and as mentioned in the patent specification concerning the improvement of the serviceability and exchangeability of the former, see paragraphs [0003] to [0007], has been already addressed and solved in D4 by providing a detachable "change part assembly 200", see column 5, lines 28 to 36. It notes further that the patent specification is completely silent on the problem to be solved by using a detachable connection between the shoulder and its supporting member or on any unknown or surprising effects connected with said detachable connection.

- 2.5 Given the fact that in the present case the above-mentioned technical problem referred to in connection with the former in the description of the patent in suit has been already solved by the apparatus known from D4 and in the absence of any convincing evidence that further, unknown or surprising, effects are obtained by the selection of these detachable connecting means, the feature of the characterising part of claim 1 is exclusively the result of reducing into practice the generic teaching of D4.
- 2.6 To answer the question of obviousness it is necessary in the present case to determine what the skilled reader of D4 would have undertaken to realise the generic teaching of D4 as far as it concerns the connection between the shoulder and the shoulder plate supporting it.
- 2.7 The Board finds that the skilled person aiming to realise the apparatus known from D4 in this respect would have to make a selection out of the above-mentioned four well-known connecting means, see point 2.2 above, but **would** be most inclined to choose one of the least complicated solutions, i.e. bolts or clamps. Both are detachable. In the terms of claim 1 he **would** therefore provide such a "removable connection" between the shoulder and the shoulder plate and this without the need for exercising an inventive activity.
- 2.8 Appellant II stresses the point that D4 contained no pointer for the skilled person to select among the above-mentioned possible connecting means exactly those providing a detachable connection.
- 2.9 The Board notes that it is clear to the skilled person from the teaching in D4 that all known conventional

- connecting means, including those providing a detachable connection, are suitable for securing the former shoulder to the member of the first portion of the former support. Thus, all known conventional connecting means, irrespective of their number, are equally promising candidates for connecting the former shoulder to its support, but since they are all conventional, none of them can support inventive step.
- 2.10 The Board considers relevant in this respect also T 1072/07, point 6 of the reasons. Since the Board cannot see any unknown or surprising effects resulting from the choice as discussed, inventive step can neither be acknowledged on that basis.
- 2.11 Appellant II argues further that in the context of the patent in suit and as commonly understood by the skilled person an element is **removably attached** to another element, only if it can be **removed without much effort**, which would not be the case in the apparatus of D4, since the shoulder's removal would require the complete dismantling of the change part assembly, the elements of said assembly being furthermore bulky components.
- 2.12 The Board notes in this respect firstly that there is no basis in the patent in suit for the appellant II's argument that a "removable attachment" of an element is an attachment where said element can be removed "without much effort". Neither is there information in D4 that the change part assembly 200 consists of bulky components which can only be taken apart with much effort.

The Board notes further that claim 1 only requires the presence of a removable connection, i.e. the presence

of detachable connecting means, nothing more. The Board follows in this respect appellant I's argument that the removable attachment between the shoulder and the shoulder plate in D4 may be taken apart when the complete change part assembly has been already removed from the packaging machine. There is no restriction in claim 1 requiring that the former and the shoulder have to be removed at the same time or that the removal of the shoulder has to take place exclusively inside the machine.

Furthermore, if according to the teaching of D4 the skilled person is in a position to remove the change part assembly from the packaging machine there would not be great difficulty to remove also single parts of said assembly out of the packaging machine.

- 2.13 Also for its argument that the skilled person would interpret the expression "securing" in column 5, line 65 of D4 as defining exclusively a non-removable connection, appellant II does not provide any supporting evidence.
- 2.14 In view of the above the Board concludes that the subject-matter of claim 1 according to one of the main, first auxiliary or second auxiliary requests does not involve an inventive step and therefore it does not comply with the requirements of Article 56 EPC.
3. *Claim 1 according to the third auxiliary request - inventive step, Article 56 EPC*
- 3.1 The combination claimed in claim 1 according to the third auxiliary request differs from the one claimed in claim 1 discussed above in that the packaging machine is now housed within a cabinet, said cabinet having an

access opening to provide for access to the former, with the second position being spaced from the first position towards said access opening.

3.2 With regard to the packaging machine known from D4, said additional features mean that a cabinet covering at least a part of the packaging machine is provided, an access opening is provided for access to the former, said access opening being provided on the side of the cabinet positioned in front of the seam sealer of said packaging machine.

3.3 It is well known to the person skilled in the art that in order to protect the parts of a packaging machine against the ingress of contamination such as dust, that the machine or at least parts of said machine is/are normally located within a cabinet. This fact is also acknowledged by the patent in suit where it is stated that the formers, which are parts of such packaging machines, are generally located within a cabinet provided with an access opening, see paragraphs [0002] and [0003].

Thus the provision of such a cabinet for the packaging machine known from D4 cannot be considered as involving an inventive step.

3.4 Such a cabinet would obviously have to encompass the former and the seam sealer having thereby a closure in front of said seam sealer. The Board notes in this respect that in order to allow the serviceability and exchangeability of the change part assembly of the packaging machine known from D4 the person working with the machine would need to have access to the toggle lock mechanism 50 securing said assembly in its first position, see column 6, lines 22 to 49 of D4. It is

therefore obvious to the skilled person that in order to access said mechanism an access opening has to be provided on said front wall of the cabinet. Such an access opening provides also an access to the former and due to its positioning in front of the sealer, when the change part assembly is slid out of its secured first position into a second position spaced from said first position, the said assembly is in said second position closer to said access opening than in its first position. In this case the condition claimed in the characterising part of claim 1 of the third auxiliary request requiring from the second position to be spaced from the first position toward the access opening is automatically met.

3.5 From the above the Board concludes that the provision of a cabinet covering at least the front parts of the packaging machine known from D4 and having an access opening as defined in claim 1 does not require from the person skilled in the art the exercise of an inventive activity.

3.6 Appellant II argues that in the absence of any hint in D4 for positioning the machine in such a cabinet the person skilled in the art would have no incentive for providing said additional features of claim 1 to the machine of D4. It argues further that the provision of a cabinet is incompatible with the teaching of D4 since its ambit is the removability of the entire assembly 200 and since the skilled person would then have to completely modify the packaging machine known from D4.

3.7 The Board cannot follow the above-mentioned arguments for the following reasons.

The Board considers in this respect that since the



provision of a cabinet for protecting the part of the packaging machine disclosing a removable and replaceable former is well known to the person skilled in the art as acknowledged in paragraphs [0002] and [0003] of the patent in suit and since the user would have to access the removable former from its side allowing him to remove the former from its fixed position, it is mandatory for the skilled person to position the access opening in front of the removable former of the packaging machine known from D4. Thus the above-mentioned additional features of claim 1 are practically imposed on the person skilled in the art due to the acknowledged need for protecting the parts of a packaging machine from contamination and from the need for accessing the removable former.

The Board considers further that it is normal procedure to adapt the dimensions of a cabinet provided for protecting a part of a packaging machine to the dimensions to the machine or of its corresponding part and not the other way around, namely to adapt the dimensions of the packaging machine to the protective cabinet. Thus, the provision of a cabinet does not impose any modification of the packaging machine known from D4, as argued by appellant II.

- 3.8 In view of the above the Board concludes that the subject-matter of claim 1 according to the third auxiliary request does not involve an inventive step and therefore it does not comply with the requirements of Article 56 EPC.
  
4. In view of the above-mentioned conclusions of the Board there is no need for remitting the case to the opposition division and the corresponding request of appellant II for a different apportionment of costs in

case of a remittal becomes obsolete.

## Order

### For these reasons it is decided that:

1. Due to the limitation of its appeal, the appeal of the patent proprietor is deemed to have been withdrawn.
2. The decision under appeal is set aside.
3. The patent is revoked.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated