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**Datasheet for the decision  
of 3 November 2014**

**Case Number:** T 0094/12 - 3.3.05

**Application Number:** 06110620.9

**Publication Number:** 1734598

**IPC:** H01M2/04

**Language of the proceedings:** EN

**Title of invention:**

A lid for batteries and a battery including the lid

**Patent Proprietor:**

Exide Italia S.r.l.

**Opponent:**

VB Autobatterie GmbH

**Headword:**

Lid for batteries/Exide

**Relevant legal provisions:**

RPBA Art. 13(1), 13(3)

EPC R. 46(3)

EPC Art. 101(3), 123(2), 123(3)

Article 1 of the Decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the EPC of 29 November 2000

Article 2 of the Decision of the Administrative Council of 7 December 2006 amending the Implementing Regulations to the EPC 2000

EPC 1973 Art. 83, 56

**Keyword:**

Late-filed request - admitted (yes)  
Rule 43(6) EPC 2000 applicable to amendments of a European patent granted in respect of a European patent application pending at the time of entry into force of the EPC 2000 (yes)  
Reference in a claim to the drawings absolutely necessary (yes, allowable)  
Sufficiency of disclosure - (yes)  
Inventive step - (yes)

**Decisions cited:**

T 0398/00, J 0003/06, T 0193/06, T 0986/97, T 0893/99

**Catchword:**



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Case Number: T 0094/12 - 3.3.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.05**  
**of 3 November 2014**

**Appellant:** VB Autobatterie GmbH  
(Opponent) Am Leineufer 51  
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**Representative:** Meissner, Bolte & Partner GbR  
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**Respondent:** Exide Italia S.r.l.  
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**Representative:** Rambelli, Paolo  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 2 December 2011  
rejecting the opposition filed against European  
patent No. 1734598 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** G. Rath  
**Members:** A. Haderlein  
C. Vallet

## Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the decision of the opposition division rejecting the opposition against the patent No. 1 734 598. The patent in suit concerns a lid for batteries and a battery including the lid.

The opposition division held that the grounds for opposition mentioned in Article 100(c), 100(b), and 100(a) in conjunction with Articles 52(1) and 56 EPC did not prejudice the maintenance of the patent as granted, having regard to the following documents in particular:

D1: EP-A-0 763 862

D2: EP-A-0 570 703

- II. In the statement setting out the grounds of appeal, the appellant argued that the grounds for opposition mentioned in Article 100(c), 100(b), and 100(a) EPC in conjunction with Articles 52(1) and 56 EPC prejudiced the maintenance of the patent as granted, having regard to D1 and D2.
- III. In its reply to the appeal, the respondent filed a first and a second auxiliary request.
- IV. In its letter dated 27 September 2012, the appellant objected to the first auxiliary request for lack of clarity, added subject-matter, and extension of the scope of protection. It also objected to the second auxiliary request for lack of compliance with Rule 43(6) EPC and extension of the scope of protection.

- V. The parties were summoned to oral proceedings to be held on 3 November 2014.
- VI. The appellant informed the board that it would not be represented at the oral proceedings.
- VII. At the oral proceedings, the respondent filed a new main request replacing all previously filed requests.
- VIII. The wording of the sole independent claim 1 of the main request reads as follows (amendments with respect to granted claim 1 underlined):

"1. A lid for an accumulator battery, comprising:  
- a substantially flat main closure element (1) for closing a container of the battery, in which closure element a plurality of holes (33) is formed to afford access to the interior of the battery container,  
- a secondary closure element (4) which is mounted on the main element and in which there is a plurality of plugs (43) that are fitted in the holes (33) of the main element of the lid, and  
- at least one duct (52) which is formed in at least one of the main and secondary elements, is in flow communication with the holes, and is provided for the discharge of the gases that are generated inside the battery container, wherein the main and secondary elements together form a box-like structure (3, 4) defining a chamber (6) which is in flow communication with the holes and inside which the main and secondary elements are connected to one another by a plurality of partitions (34, 44, 35, 45, 37, 47, 38, 48, 39, 49) that extend substantially perpendicularly relative to the plane in which the main element extends and are arranged in a manner such as to define a labyrinth which connects the holes of the main element with the

gas-discharge duct,

wherein the plurality of partitions comprises a plurality of transverse walls (37, 47) which are interposed between each hole (33) and the adjacent hole (33) and which extend so as to divide the labyrinth chamber (6) into a plurality of subchambers (6a, 6b, 6c, 6d, 6e, 6f), each subchamber (6a, 6b, 6c, 6d, 6e, 6f) thereby housing a respective hole of the plurality of holes (33), and

wherein the subchambers are separately in flow communication with the channel (39a, 49a) which extends along one side of the chamber (6) and communicates with the gas-discharge duct,

characterised in that inside each subchamber (6a, 6b, 6c, 6d, 6e, 6f)

the plurality of partitions comprises a radially inner circumferential wall (34, 44) and a radially outer circumferential wall (35, 45) which concentrically surround the hole (33) of the subchamber and define a circumferential space (36, 46) interposed between them, the radially inner circumferential wall (34, 44) and the radially outer circumferential wall (35, 45) having respective passageways (34a, 35a) formed therein which put the circumferential space (36, 46) into flow communication to one side with the hole (33) and to the other side with the subchamber, the passageways of the circumferential walls being formed in positions diametrically opposite one another,

the plurality of partitions further comprises a central wall (38, 48) which extends with a meandering shape in a direction mainly parallel to the transverse walls, and which at one end is connected to the respective radially outer circumferential wall (35, 45) of the hole (33) and is also connected to a respective transverse wall of the plurality of transverse walls in such a way as to divide the subchamber into an open

space, which is in direct flow communication with the channel (39a, 49a), and a blind space, which is in flow communication with the channel (39a, 49a) through the open space, and

the passageways (34a, 35a) of the circumferential walls are oriented transverse with respect to the direction of the central wall (38, 48), and the passageway (35a) of the radially outer circumferential wall (35, 45) faces on the blind space of the subchamber, wherein the labyrinth defined in the chamber is configured as shown in figures 3 and 6."

- IX. The appellant's arguments, in as far as they are relevant to the main request, can be summarised as follows:

*Rule 43(6) EPC 2000*

The reference to the drawings in claim 1 infringed Rule 43(6) EPC 2000.

*Amendments*

In line with decision T 398/00 amendments based on a drawing needed to be assessed carefully. The feature disclosed in a drawing and incorporated in the claim must not only be directly and unambiguously disclosed in the drawing but it must be clear to the skilled person that it was the result of the technical considerations which had led to the solution of the technical problem posed. There was no technical problem disclosed in the application as filed which could be related to the added features. These features were not mentioned in the description and, therefore, could also not be mentioned in the context of a problem to be solved.

The feature that the central wall extended with a meandering shape in a direction mainly parallel to the transverse walls was neither disclosed in the description nor in figure 3. In figure 3, the central wall extended in a number of directions, in particular also largely transversely to the transverse walls.

The feature relating to the transverse orientation of the passageways of the circumferential walls constituted an inadmissible intermediate generalisation.

The application as filed did not disclose the subchamber being divided into an open space and a blind space.

The remaining features added to claim 1 likewise did not appear to belong to the invention, but rather appeared to constitute incidental illustrations.

Claim 1 was not covered by granted claim 1. In particular, claim 1 as granted did not cover the embodiment depicted in figure 6. Hence, the amendments were such that the scope of protection conferred by the patent in suit was extended.

#### *Sufficiency*

The description related to a different subject-matter from that of the claims. Therefore, the requirement of sufficiency of disclosure was not met.



*Inventive step*

- X. The respondent's arguments can be summarised as follows:

*Amendments*

T 398/00 did not rule out a claim amendment based on features which could be directly and unambiguously derived from the drawings. Figure 3 could not be considered as a schematic drawing. The subject-matter of claim 1 was therefore directly and unambiguously derivable from the application as filed.

*Rule 43(6) EPC 2000*

Under Rule 43(6) EPC 2000, a reference in a claim to a drawing was exceptionally admissible where it was absolutely necessary. An example of such an exception was a particular shape depicted in the drawings. This was the case here. Therefore, the reference to figures 3 and 6 in claim 1 was allowable.

- XI. The appellant requested in writing that the contested decision be set aside and that the European patent be revoked.

The respondent requested that the patent be maintained on the basis of the main request filed at the oral proceedings.

## **Reasons for the Decision**

1. Admissibility of the main request
  - 1.1 The main and sole request was filed at the oral proceedings before the board. It was therefore within the discretion of the board to admit the request into the proceedings (Article 13(1), (3) RPBA).
  - 1.2 It was readily apparent that claim 1 corresponds to granted claim 1 including a reference to figures 3 and 6 and that the dependent claims correspond to their granted counterparts with claims 2, 3, 5, and 6 being deleted. Moreover, the reference to the figures was already present in claim 1 of the second auxiliary request filed with the reply to the statement of the grounds of appeal. Thus, the amendments did not raise issues which the board or the appellant could not reasonably have been expected to deal with without adjournment of the oral proceedings. Moreover, the amendments clearly addressed the issue of added subject-matter raised by the appellant in its statement of grounds of appeal and in its submissions dated 27 September 2012.
  - 1.3 The board therefore decided to admit the new main request into the proceedings.
2. Applicability of Rule 43(6) EPC 2000
  - 2.1 Rule 43(6) EPC 2000 has the following wording:

*"Except where absolutely necessary, claims shall not rely on references to the description or drawings in*

*specifying the technical features of the invention. In particular, they shall not contain such expressions as "as described in part... of the description", or "as illustrated in figure... of the drawings".*

2.2 Claim 1 of the main request corresponds to claim 1 of the patent in suit in amended form. The patent in suit was granted in respect of a European patent application which was filed on 3 March 2006 and which was pending at the time of entry into force of the revised EPC ("EPC 2000"). Thus, the question arises whether Rule 43(6) EPC 2000 is applicable in the present case.

2.3 Amendments of a patent in opposition proceedings are governed by Article 101(3) EPC 2000.

According to Article 1 of the Decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the EPC of 29 November 2000 (Special edition OJ EPO No. 1/2007, 197), Article 101 EPC 2000 shall apply to European patents granted in respect of European patent applications pending at the time of its entry into force.

In the case at hand, the patent in suit was granted in respect of a European patent application pending at the time of entry into force of Article 101 EPC 2000. Hence, Article 101(3) EPC 2000 is applicable to the present case.

2.4 According to Article 2 of the Decision of the Administrative Council of 7 December 2006 amending the Implementing Regulations to the EPC 2000, "The Implementing Regulations to the EPC 2000 shall apply to all... European patents..., in so far as the foregoing

are subject to the provisions of the EPC 2000" (Special edition OJ EPO No. 1/2007, 89).

- 2.5 According to J 3/06 (Reasons 3, 3rd paragraph), a Rule in the Implementing Regulations can be assumed to apply to a particular EPC 2000 Article if it puts a more detailed construction on that Article, in keeping with the purpose of "implementing" the EPC.
- 2.6 Rule 86 EPC 2000 refers to "documents filed in opposition proceedings" and, thus, relates to amendments to a patent filed in opposition proceedings. Hence, Rule 86 EPC 2000 gives a more detailed construction on Article 101(3) EPC 2000 in that it relates to requirements that need to be fulfilled on filing of "amendments by the proprietor of the European patent during the opposition proceedings" mentioned in that Article. Thus, Rule 86 EPC 2000 is applicable to the present case.
- 2.7 Rule 86 EPC 2000 states that "Part III of the Implementing Regulations shall apply mutatis mutandis to documents filed in opposition proceedings". The board does not see any reason why "the Implementing Regulations" in Rule 86 EPC 2000 would not refer to the Implementing Regulations to the EPC 2000. Rule 86 EPC 2000 thus also refers to Rule 43(6) EPC 2000 since the latter is comprised in Part III of the Implementing Regulations to the EPC 2000.
- 2.8 In conclusion, Rule 43(6) EPC 2000 applies to amendments to a European patent granted in respect of a European patent application pending at the time of entry into force of the EPC and, thus, is applicable in the present case.

2.9 In this context the board is aware of decision T 193/06 in which it was held that Rule 43 EPC 2000 was applicable with respect to amendments to European patent applications filed before the entry into force of the EPC 2000 and pending at that time (see Reasons 1.2.4). But that case concerned an appeal against a decision to refuse a patent application and, therefore, was different from the case at hand.

3. Compliance with Rule 43(6) EPC 2000

3.1 According to the appellant, the reference to figures 3 and 6 in claim 1 infringed Rule 43(6) EPC 2000.

3.2 It is, however, clear from the wording of Rule 43(6) EPC 2000 that such a reference may be exceptionally allowed, namely if such a reference is "absolutely necessary". The board thus needs to assess whether such a reference is in the present case absolutely necessary.

3.3 According to the case law of the Boards of Appeal, the absolute necessity to make reference in a claim to the drawings may arise if the claim is directed to a particular shape and, without the reference to the drawings, the claim would be less clear or less concise (see for instance T 986/97, Reasons 2.2) or it would even be impossible to express by appropriate wording the relevant technical content (see for instance T 893/99, Reasons 3.1).

In the case at hand, as can be readily seen from the drawings in figures 3 and 6, the labyrinth formed by, in particular, the concentric walls (34,44,35,45), the passageways (34a,35a) formed therein, the central wall (38,48,38a,48a), the branch of the transverse wall

(37b,47b), the end wall (39,49) and its passageway (39b), is a complex structure. Describing this structure in a claim without a reference to the drawings, the claim would be at least less concise, if not less clear. It follows that it is absolutely necessary to make reference in claim 1 to the drawings in figures 3 and 6.

3.4 Therefore, claim 1 complies with Rule 43(6) EPC 2000.

4. Allowability of the amendments

4.1 Article 123(2) EPC 2000

4.1.1 Claim 1 is based on claims 1, 7 and 8 as filed and on figures 3 and 6 and the corresponding passages of the description as filed. The dependent claims are based on their respective counterparts in the application documents as filed.

4.1.2 According to the appellant, in line with decision T 398/00 amendments based on a drawing needed to be assessed carefully. The feature disclosed in a drawing and incorporated into the claim must not only be directly and unambiguously disclosed in the drawing but it must be clear to the skilled person that it was the result of the technical considerations which had led to the solution of the technical problem posed. There was no technical problem disclosed in the application as filed which could be related to the added features. These features were not mentioned in the description and, therefore, could not be mentioned either in the context of a problem to be solved.

4.1.3 The board takes the view that the case underlying T 398/00 is substantially different from the case at

hand and for this reason alone the conclusions drawn in it cannot be directly applied. In particular, in T 398/00 the contentious feature was illustrated in the drawings only schematically (see Reasons 3.4) whereas in the present case the drawings on which the amendments are based are of a technical character and appear to be true to scale.

While it is true that the application documents as filed do not explicitly state a problem to be solved, it is clear to the person skilled in the art that the core of the invention is the labyrinth defined by the various partitions and the passageways defined therein (see for instance page 1, second paragraph; claim 1; page 12, second and fifth paragraph) and that this labyrinth serves the purpose of preventing or at least reducing leakages of electrolyte during incorrect handling or in the event of accidental tilting (see page 12, last sentence).

Since the entirety of the amendments, and in particular the explicit reference to figures 3 and 6, are directed to features defining the labyrinth depicted in them, these features are clearly a "deliberate result of technical considerations directed to the solution of the technical problem involved" as required by T 398/00 (see Reasons 3.4, second paragraph, penultimate sentence). So, even applying the criteria developed in T 398/00, the subject-matter of claim 1 is directly and unambiguously derivable from the application documents as filed.

- 4.1.4 According to a further argument of the appellant, the feature that the central wall extended with a meandering shape in a direction mainly parallel to the transverse walls was disclosed neither in the

description nor in figure 3. In figure 3, the central wall extended in a number of directions, in particular also largely transversely to the transverse walls.

4.1.5 Considering this argument, the board notes that claim 9 as filed disclosed "central walls (38,48) each of which is disposed in a respective chamber of the subchambers and extends with a meandering shape in a direction mainly parallel to the transverse walls". As claim 9 as filed is clearly directed to the embodiment shown in the drawings, in the language of the documents originally filed, the central wall (38,48) depicted in figures 3 and 6 extends with a meandering shape in a direction "mainly parallel to the transverse walls". This feature is therefore directly and unambiguously disclosed in the application documents as filed.

4.1.6 According to the appellant, the feature relating to the transverse orientation of the passageways of the circumferential walls constituted an inadmissible intermediate generalisation.

This objection is overcome by the inclusion of the reference to the labyrinth depicted in figures 3 and 6 since the passageways in the circumferential walls form part of the labyrinth and are specified in said figures.

4.2 According to a further argument of the appellant, the application as filed did not disclose the subchamber being divided into an open space and a blind space.

It is true that the application as filed does not explicitly refer to the expressions "open space" and "blind space". However, in the context of claim 1, and in particular in view of the reference to figures 3



and 6, these features clearly refer to the two spaces delimited by the central wall 38 and the two transverse walls 37 on the right and on the left of the central wall and defining the subchamber, one space being "open", i.e. directly connected to the channel 39a by the passageway 39b, the other space being "blind", i.e. comprising no direct connection to the channel 39a and being closed by the loop 38a. Thus, the feature that the subchamber is divided into an open space and blind space is directly and unambiguously derivable from the application documents as filed.

- 4.2.1 According to another argument of the appellant, the remaining features added to claim 1 did not appear to belong to the invention either, but rather appeared to constitute incidental illustrations.

This argument cannot convince the board for the same reasons as set out in 4.1.3 *supra*, second paragraph. In fact, all the amendments to claim 1 including the reference to figures 3 and 6 aim at defining the labyrinth which, as already explained, is the core of the subject-matter disclosed in the application as filed.

- 4.2.2 It follows that the amendments do not go beyond the content of the application documents as filed (Article 123(2) EPC 2000).

4.3 Article 123(3) EPC 2000

- 4.3.1 According to the appellant, claim 1 was not covered by the scope of granted claim 1. In particular, claim 1 as granted did not cover the embodiment depicted in figure 6. Hence, the amendments were such that the scope of protection conferred by the patent in suit was

extended.

4.3.2 The board fails to see that the scope of protection conferred by the patent in suit is extended. The board is of the opinion that claim 1 as granted was a generalisation of the sole embodiment shown in the application documents as filed, i.e. the one depicted in the figures and described in the corresponding passages of the description. The introduction of the reference to figures 3 and 6 is a restriction to a lid comprising the labyrinth of this embodiment. Moreover, as is clear from the application documents as filed, figures 3 and 6 both relate to the same embodiment, i.e. figure 3 is a plan view of the main element of the lid of figure 1 whereas figure 6 is a plan view of the lower side of the secondary element of the lid of figure 1 (see page 2, lines 1 to 14).

4.3.3 For these reasons, the amendments do not result in the scope of the protection conferred by the patent in suit being extended (Article 123(3) EPC 2000).

## 5. Sufficiency of disclosure

5.1 According to the appellant, the description related to a different subject-matter from that of the claims. Therefore, the requirement of sufficiency of disclosure was not met.

5.2 As explained above in particular in 4.2.1 *supra*, second paragraph, the subject-matter of claim 1 is directed to a lid for a battery comprising the labyrinth as defined in figures 3 and 6. Thus, the argument of the appellant does not succeed at least for this reason.

5.3 The board is satisfied that the patent discloses the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 83 EPC 1973).

6. Inventive step

6.1 The invention relates to a lid for an accumulator battery.

6.2 The appellant started from D2 as the closest prior art. The board can agree with this choice. D2 discloses a lid for an accumulator battery (see abstract), comprising a flat main closure element (5) for closing a container of the battery, in which closure element a plurality of holes is formed to afford access to the interior of the battery container. A secondary closure element (19) is mounted on the main element. A duct (16) is in flow communication with the holes formed in the main element. The duct is provided for the discharge of the gases that are generated inside the battery container. The main and secondary elements together form a box-like structure defining a chamber which is in flow communication with the holes and inside which the main and secondary elements are connected to one another by a plurality of partitions that are arranged in a manner such as to define a labyrinth which connects the holes of the main element with the gas-discharge duct.

6.3 According to the patent in suit, as is derivable from paragraph [0044], last sentence, the problem was to prevent or at least reduce leakages of electrolyte during incorrect handling or in the event of accidental tilting.

- 6.4 As a solution to this problem, the patent in suit proposes a lid according to claim 1, characterised in particular in that the labyrinth defined in the chamber is configured as shown in figures 3 and 6.
- 6.5 As to the success of the solution, a comparison is made between D2 and the patent in suit. Compared to the labyrinth disclosed in figures 2 and 4 of D2, the labyrinth disclosed in figures 3 and 6 of the patent in suit provides for a more tortuous pathway. For instance, the "open space" in figures 3 and 6, i.e. the space which is directly connected to the channel 39a/49a via the passageway 39b, comprises a branch 37b whereas the space 15 in figure 2 of D2 does not comprise such a branch. Furthermore, liquid entering the space 15 in figure 2 of D2 is directly conveyed to the channel 16 whereas according to figure 3 of the patent in suit it is diverted by the loop 38a and the wall 39. Thus, it is credible that the problem is solved. A reformulation of the problem to be solved is therefore not necessary.
- 6.6 As to obviousness, the board observes that none of the documents the appellant relied upon, and in particular D1, disclose a labyrinth as depicted in figures 3 and 6 of the patent in suit. In particular, D1 does not disclose a central wall having a loop as depicted in figure 3 of the patent in suit. It follows that even if the skilled person had combined the teachings of D2 and D1, he would not have arrived at the subject-matter of claim 1.
- 6.7 The requirements of inventive step are therefore met (Article 56 EPC 1973).

## Order

### For these reasons it is decided that:

- The decision under appeal is set aside.
- The case is remitted to the opposition division, with the order to maintain the patent in amended form on the basis of the main request (claims 1 to 5) filed at the oral proceedings before the board and a description to be adapted.

The Registrar:

The Chairman:



C. Vodz

G. Rath

Decision electronically authenticated