Internal distribution code:

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

Datasheet for the decision of 5 November 2014

Case Number: T 0746/12 - 3.2.07

Application Number: 05728441.6

Publication Number: 1777173

IPC: B65D85/72, B65D30/28, B65D17/00

Language of the proceedings: EN

Title of invention:
EASILY OPENED FLEXIBLE VACUUM PACKAGING FOR SINGLE PORTIONS OF PASTY FLUIDS

Patent Proprietor:
Mora Negrin, Pedro Ramon

Opponents:
UNILEVER PLC / UNILEVER NV

Headword:

Relevant legal provisions:
EPC Art. 108
EPC R. 99(2)

Keyword:
Admissibility of appeal -
appeal sufficiently substantiated (no)

Decisions cited:
G 0001/95, T 0220/83, T 1045/02

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

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 0746/12 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 5 November 2014

Appellant: (Patent Proprietor)	Mora Negrin, Pedro Ramon C/ Hernan Cortes 43 Edificio Magarza, Portal 2-6 Izda. 38010 Santa Cruz de Tenerife (ES)
Representative:	PROPI, S.L. Clarke, Modet & Co. Suero de Quiñones, 34-36 28002 Madrid (ES)
Respondents: (Opponents)	UNILEVER PLC / UNILEVER NV Unilever House, 100 Victoria Embankment/ Weena 455 London EC4Y 0DY / 3013 AL Rotterdam (GB)
Representative:	Fijnvandraat, Arnoldus Unilever N.V. Unilever Patent Group Olivier van Noortlaan 120 3133 AT Vlaardingen (NL)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 9 February 2012 revoking European patent No. 1777173 pursuant to Article 101(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division revoking the European patent No. 1 777 173, which was granted on application number 0 572 8441.6.

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) and on Article 100(c) EPC (unallowable amendment).

III. The opposition division found that the subject-matter of the patent as granted extends beyond the content of the application as filed, see point 15 of the reasons for the impugned decision, and therefore that the ground of opposition according to Article 100(c) EPC holds against the patent as granted.

In the form of three *obiter dicta* the opposition division considered in point 16 "Additional remarks" that

- the subject-matter of independent claim 1 does not involve an inventive step over the teaching of D2 in combination with the general technical knowledge of the person skilled in the art,

- the subject-matter of independent claim 1 neither involves an inventive step over the teaching of D4 in combination with the teaching of any one of D6, D7, D8 or D9, and

- the subject-matter of dependent claim 2 does not involve an inventive step over the teaching of D2 in

combination with the teaching of D8 or D9.

IV. In its appeal dated 3 April 2012 the appellant expresses its "desire ... **to Appeal this decision of revocation** of the European file 05728441.6".
No request for (auxiliary) oral proceedings was filed by the appellant. The statement of grounds of appeal was filed with letter of 8 June 2012.

V. In its reply to the statement of grounds of appeal dated 12 October 2012 the respondents (opponents) request the rejection of the appeal as inadmissible, and in case the Board would consider the appeal as admissible, the dismissal of the appeal.
As an auxiliary measure oral proceedings are requested.

The appellant has not presented any arguments concerning the admissibility of its appeal.

VI. In its to reply the appeal the respondents argue in respect with the admissibility of the appeal as follows:

The opposition division has stated under point 15 of the impugned decision that the patent was revoked on the ground that it contains subject-matter which extends beyond the content of the application as filed, since the claimed feature of "heat sealing" is not supported by the application as filed.

The appellant's statement setting out its grounds of appeal is entirely silent on this ground forming the main reason for revocation of the patent. Instead, the appellant only provides arguments against the observations in the decision which are classified by the opposition division as "Additional remarks".

Therefore, due to lack of adequate substantiation the present appeal is not admissible, in agreement with the established jurisprudence of the Boards of Appeal.

Reasons for the Decision

1. *Admissibility of the appeal*

1.1 Article 108, third sentence, EPC provides that "[w]ithin four months of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations". Pursuant to Rule 99(2) EPC, "[i]n the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based".

1.2 Under the established jurisprudence of the Boards of Appeal the grounds of appeal should specify the legal and factual reasons relied upon to give the Board all the elements needed to decide whether or not the appealed decision has to be set aside (G 1/95, OJ EPO 1996, 615; T 220/83, OJ EPO 1986, 249, point 4, followed by numerous decisions). To enable the Board this examination, they have to deal with the main reasons of the impugned decision, at least implicitly (see T 1045/02, not published in OJ EPO, point 1)

1.3 As stated under point IV above the appellant expresses in its letter of appeal dated 3 April 2012 only its "desire ... to Appeal this decision of revocation of the European file 05728441.6".

The Board understands the above-mentioned appellant’s statement as a request to set aside the decision under

appeal and to maintain the patent as granted.

1.4 In its statement setting out its grounds of appeal the appellant presents exclusively arguments against the inventive step objections in the decision, based on the combination of the teaching of D4 with one of the teachings of D6, D7, D8 or D9 (see point 16.2.4 of the impugned decision). Since these objections are "*obiter*", they are not the main reason for revocation.

The main reason of the decision is based on Article 100(c) EPC, with the opposition division's finding that due to the fact that "heat sealing" is not mentioned in the application as filed the patent in suit contains subject-matter which extends beyond the content of the application as filed, see point 15 of the reasons for the decision.

This finding has not been dealt with by the appellant and has thus remained uncontested.

1.5 The Board has therefore not been presented, not even implicitly, with any legal or factual reasons why the impugned decision should be set aside.

The appeal is therefore inadmissible.

1.6 Since no request for oral proceedings was filed by the appellant the present decision can be taken in written proceedings.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

G. Nachtigall H. Meinders

Decision electronically authenticated