

Internal distribution code:

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

**Datasheet for the decision
of 21 January 2016**

Case Number: T 1668/12 - 3.2.04

Application Number: 01996047.5

Publication Number: 1345521

IPC: A47K10/42, B65D83/08, B65D5/42

Language of the proceedings: EN

Title of invention:
OPTIONALLY HANGABLE CONTAINER AND DISPENSING METHOD

Patent Proprietor:
KIMBERLY-CLARK WORLDWIDE, INC.

Opponent:
SCA Hygiene Products AB

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - main request (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 1668/12 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 21 January 2016

Appellant: SCA Hygiene Products AB
(Opponent) 405 03 Göteborg (SE)

Representative: Farrington, Edward John
Valea AB
Box 1098
405 23 Gothenburg (SE)

Respondent: KIMBERLY-CLARK WORLDWIDE, INC.
(Patent Proprietor) 401 North Lake Street
Neenah, WI 54956 (US)

Representative: Davies, Christopher Robert
Dehns
St Bride's House
10 Salisbury Square
London EC4Y 8JD (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 May 2012 concerning maintenance of the
European Patent No. 1345521 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: J. Wright
C. Schmidt

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal, received 23 July 2012, against the interlocutory decision of the opposition division posted on 22 May 2012 on the amended form in which European patent no. 1345521 can be maintained. The appeal fee was paid at the same time. The statement setting out the grounds was received on 17 September 2012.
- II. The opposition was filed against the patent as a whole and based, *inter alia*, on Article 100(a) together with Articles 52(1) and 56 EPC for lack of inventive step. The opposition division held that the patent as amended met all the requirements of the EPC. *Inter alia* the division found that the subject matter of claims 1 and 13 as amended involved an inventive step, Article 56 EPC, having regard to the following documents, amongst others:
- E1: US5332117 A
 - E2: US4879442 A
 - E4: US5516000 A
 - E5: CA974203 A
 - E6: GB2270901 A
- III. Oral proceedings were duly held before the Board on 21 January 2016 in the absence of the appellant who had been duly summoned and who had informed the Board in a letter of 7 December 2015 that they would not attend the oral proceedings.
- IV. The appellant (opponent) requests that the decision be set aside and that the patent be revoked.

The respondent (proprietor) requests that the appeal be dismissed. Alternatively, they request that the

decision under appeal be set aside and the patent be maintained in an amended form, according to the claims of auxiliary requests 1 to 3.

V. The wording of the independent claims according to the main request is as follows:

1. "A packaged product comprising:

a container (16) having a first end (18), a second end (20), and a sidewall (24,48,50,52), said container having a partition (26) attached to an interior surface of the container forming a first compartment (30) and a second compartment (32); and comprising

a first opening (34) into the interior of the first compartment adapted to dispense an absorbent paper material (12) located inside the first compartment; and

a space (38) provided by the second compartment adapted to elevate the absorbent paper material away from surfaces (40), thereby protecting the absorbent paper material from damage due to liquids on the surface (40), wherein the container has at least one second opening (46) in the second compartment adapted to hang the container from a support member, characterised in that the container is capable of being orientated vertically on a surface (40) so that it has a greater height than width and depth while providing the second compartment (32) and space (38) between the paper material (12) and the surface (40)."

13."A method of dispensing an absorbent paper material (12) in a container (16), characterised by the acts of:

providing the packed product as defined in claim 1;

placing the container on a surface (40) with the second compartment beneath the first compartment such that the space (38) provided by the second compartment elevates the absorbent paper material from the surface protecting the absorbent paper material from damage due to any liquids on the surface; and withdrawing the absorbent paper material through the first opening."

VI. The appellant (opponent) argued as follows:

E6 discloses a paper product container with two portions, the second (lower) one having a drawer. Any opening can serve to hang the container from a support member, therefore the opening of the drawer is a second opening as claimed. E6 discloses all the remaining features of claim 1 except that it has a horizontal indentation line separating the two portions rather than a partition as claimed. A partition and indentation line serve the same purpose, so the problem is to find an alternative separation for the portions. The skilled person knows of partitions from their general knowledge or from E1 or E2, therefore they would replace the indentation line with a partition as a matter of obviousness.

Alternatively, starting from E1 or E2, the only difference between claim 1 and the containers disclosed in these documents is that the height is greater than the width and depth dimension. It would be obvious to modify either container to arrive at the subject matter of claim 1, since the feature is known from E4 or E5.

Since the subject matter of claim 1 lacks inventive step, the same applies to claim 13 which refers to claim 1.

VII. The respondent (proprietor) argued as follows:

Not only does claim 1 differ from the container disclosed in E6 by the partition feature, but also by the opening adapted to hang it from a support member. It is not clear that the opening in the drawer of the second compartment of E6 would be suitable for hanging the container from a support member. The skilled person would not modify the container of E6 by replacing the indentation separating the two container compartments with a partition, since this would prevent replenishing the paper product in the first compartment from below. Nor would it be obvious to reconfigure the second compartment for hanging the container, since the drawer is incompatible with hanging the container.

Starting from the container of E1 or E2, neither disclose a partition attached to an internal surface of the container, nor an opening adapted to hang the container or the height being the container's major dimension. It would not be obvious to arrive at the subject matter of claim 1 even when considering E4 and E5 which disclose containers of small footprint.

If the subject matter of claim 1 involves an inventive step, so too must that of claim 13.

Reasons for the Decision

1. The appeal is admissible.
2. Background of the invention

The present invention concerns a packaged absorbent paper product, such as tissue, in a container from which it can be dispensed, and a method of dispensing the absorbent paper. An aim of the invention is to reduce or eliminate the amount of counter space required for standing the packaged product. A further aim is to protect the product from liquid on surfaces when it stands on a counter, (see patent specification, paragraphs [0001], [0003] and [0006]).

3. In the decision under appeal, the opposition division held, inter alia, that the subject matter of claims 1 and 13 of the main request involved an inventive step. This is the sole contentious issue with which the present decision is concerned (see decision, section 18).
 - 3.1 The appellant has challenged inventive step of claim 1 starting from E6 combined with general knowledge or with E1 or E2 (see grounds of appeal, section 3.1) and starting from E1 or E2 in combination with E4 or E5 (see grounds of appeal, section 3.2). In the following the Board will first review these proposed starting documents.
 - 3.1.1 E6 (page 4, second paragraph, page 5, second paragraph, page 6, second paragraph and page 7, second paragraph, and figures 2 and 7) discloses a packaged product

comprising a container with side and end walls. In the embodiment of figure 7, the container is divided into first and second compartments. As shown in figure 7 the container has a first (upper) compartment containing paper tissue product, which can be dispensed from an opening therein. The second (lower) compartment has a drawer 42. Thus the space provided by the second compartment elevates and so protects the product from potentially wet standing surfaces. As can best be seen in figure 7, when standing on such a surface, the container's height is greater than its width or depth.

It is common ground that E6 does not directly and unambiguous disclose a partition attached to an interior surface of the container. Rather the parties agree with the impugned decision (reasons point 17.6) that the indented portion shown in figure 7 is what separates the first and second compartments. The board has no reason to doubt this assessment.

The decision considered, as does the appellant, that the arrangement in figure 7 also discloses a second opening in the second compartment adapted to hang the container from a support member (decision reasons, point 17.4 (f)). The Board disagrees. Whilst it is true that the second compartment has an opening, this is only adapted to admit the drawer 42, which then completely fills the opening. Thus this opening would not allow the container to be hung up once the drawer was inserted. Even considering the U-shaped cutaway in the drawer itself as an opening, this is adapted to admit a finger for opening the drawer, not to hang the container. Formed as it is in the sliding drawer, the container could never be reliably suspended using this opening. Nor, if it were possible to hang the container

in this way (the Board holds this not to be so), would the contents of the drawer be accessible. Therefore the Board agrees with the respondent in seeing a further differing claim feature of the second opening adapted as claimed.

- 3.1.2 E1 (see column 1, line 60 to column 2, line 50 and figures 1 to 3) likewise discloses a packaged product comprising a container 20 with first and second ends and side walls. The container also has a partition in the form of a tray 24 that divides the container into a first (upper) compartment, with its paper tissue products, and a second (lower) compartment, as can best be seen in figure 1. Thus the space formed by the second compartment elevates the product above standing surfaces as claimed.

It is common ground that the container's height is not its major dimension. Thus the subject matter of claim one differs from E1 by its last feature. The Board sees two further differences.

Firstly, the side walls of the container are provided with rack like ramps and notches forming successive steps 22, best seen in figure 3. By pushing on the tray 24 from underneath, the tray can be ratcheted up the container, advancing the bottom of the stack of tissues stepwise towards the first opening as tissues are consumed. The user does this by entering their hand into the opening 30 and pushing on the partition (tray) 24 (column 1, line 67 to column 2, line 2). Therefore, far from the partition 24 being attached to an interior surface of the container as claimed, it has to be unattached in order to move up the container.

Furthermore, nothing in E1 suggests that the container is designed to be hung up, let alone that the opening 30 is suitable or adapted for hanging the container from a support member. Nor has this been argued by the appellant. Rather, as explained above, the opening 30 is only adapted for admitting the user's hand once tissues have been consumed. When the tray 24 is in its lowest position, for example when the container is full of new tissues, the partition will rest on the bottom of the container below the start of the first set of ramps. In this position it will therefore completely block the opening 30, thus preventing any support member from entering the container and preventing the container from being hung therefrom. Therefore the Board finds that the second opening is not adapted to hang the container from a support member as claimed.

3.1.3 E2 (see column 2, line 36 to column 3, line 33 and figures 1 to 4) also discloses a packaged product in a container having end and side walls. A first (upper) compartment containing an absorbent paper product 20 is separated from a second (lower) compartment 30 by a partition 28 (column 2, lines 64 to column 3, line 1).

The second compartment provides a space that elevates the paper product above any wet standing surface, thus implicitly it protects the product. However its main purpose, which can best be seen in figure 4, is to receive used tissues through the slit 36 in the bottom of the box. These fill a plastic bag 32 which pushes on the partition 28. This advances the fresh tissues 20 upwards in the container (column 3, lines 25 to 29).

As with E1, it is not disputed that the height of the container is not its major dimension. Therefore the

subject matter of claim one differs from E2 in respect of the last claim feature.

The board sees two further differing claim features. Just as with E1, the partition 28 is not attached to an inner surface of the compartment. This can best be seen from figure 3, where it is shown unattached within the container. Indeed, were it attached to an internal surface of the container it could not be progressively raised as used tissues are stuffed into the bag 32.

Furthermore the board is not convinced that the opening 36 (slit in bag 32) is adapted for hanging the container from a support member, nor has this been argued by the appellant. Nothing in E2 suggests that the container can be hung up. The opening 36 is only said to be adapted for receiving soiled tissues. When no used-tissues are in the bag 32, it is in a collapsed state and the partition rests on the bottom of the container (column 3, lines 12 to 24). Therefore the second compartment could not receive a support member. Nor is the Board convinced that such a slit in a plastic bag would be able to support the weight of the container. Therefore, just as with E1, the Board does not consider that E2 discloses a second opening in the second compartment adapted to hang the container from a support member.

3.2 In the following the Board will now consider inventive step of claim 1 from the various starting points proposed by the appellant.

3.3 Starting from E6, the difference of the second opening in the second compartment being adapted to hang the container from a support member is said in the patent to provide protection from moisture by hanging the

container up, while eliminating the need for counter-space on which to stand the container (specification, paragraph [0001]). However, E6 already proposes hanging the container, see figure 7, to the same effect. The second opening in the second compartment, which results in the container being oriented upside down rather than the upright, is then seen to represent an alternative way of hanging.

- 3.3.1 According to the patent, the further difference of a partition secured to an internal surface of the container means that the the paper product is better or more securely contained when the orientation of the container is changed (specification paragraph [0011]), e.g. between the two dispensing positions. This also holds vis-a-vis the indentation between compartments disclosed in E6, i.e. the partition is more than a mere alternative way of separating compartments.

From the above the corresponding objective technical problem when starting from E6 can be formulated as: how to provide an alternative way of hanging the container, while ensuring that the paper product is securely contained in its compartment.

- 3.3.2 E6 itself gives no hint as to an alternative hanging arrangement or using a partition to secure contents when changing orientation. Nor is this obvious in the light of common general knowledge. The drawer of the figure 7 embodiment must always be opened with the contents facing upwards and is not intended to be hung upside down. Nor does the Board consider that it would be obvious from the skilled person's general knowledge to then replace the indentation separating the two portions of the container with a partition attached to an internal surface of the container. Indeed this goes

against E6's teaching to refill the container with fresh tissues via the bottom of the housing (page 6, second paragraph with figure 3), as a partition between the first and second compartments would prevent this. Therefore the skilled person would dismiss the idea of replacing the separating indentation line with a partition.

Nor do E1 or E2 suggest that their containers can be hung upside down with a partition to secure their contents when changing orientation. Rather, both disclose containers that are intended to be used in an upright orientation, with the tissue dispensing opening being located in the *top* or *upper* surface of the container (see E1, column 1, lines 65-67; E2, column 2, lines 49-52). Moreover, as noted above, the openings in the bottom compartment of E1 and E2 do not allow their containers to be hung thereby.

Furthermore, as explained above (see points 3.1.2 and 3.1.3) both documents propose partitions which are *detached* from the interior surfaces of the container, rather than *attached* thereto. Therefore the combination of E6 with either document would not, as a matter of obviousness, lead the skilled person to the partition as claimed. Consequently, the Board confirms the impugned decision's finding in this respect (reasons point 18.2).

- 3.3.3 For these reasons the Board holds that the subject matter of claim 1 is not obvious starting from E6 combined with general knowledge and/or combined with E1 or E2.

- 3.4 Starting from containers disclosed in either E1 or E2, the two main differences identified above (points

3.1.2, 3.1.3) are seen in reference to specification paragraphs [0007] and [0011] to eliminate or reduce the need for counter-space (opening in the second compartment adapted for hanging) and securing its contents during reorientation (attachment of the partition to the container's interior) and the objective technical problem can be formulated accordingly.

- 3.4.1 Nothing in documents E1, E2 suggests that the containers disclosed therein can be hung up upside down via an opening in the second compartment. As already noted above they are not intended for such a use, nor are openings in their bottom compartments suitable for such a use.

Moreover their teachings are predicated on a movable partition, which allows a user to advance the stack of new tissues upwards within the box. Therefore, in the Board's view, for this reason alone the skilled person would reject the idea of attaching the partition to an interior surface of the container.

Nor do E4 and E5 offer the skilled person the claimed solution. E4 and E5 disclose containers that are placed upright on their lower surfaces and that have single compartments without partitions (E4, abstract and figure 1, E5 figures 3 and 4, page 4 first paragraph).

- 3.4.2 For the above reasons, the Board finds that the subject matter of claim 1 is not obvious starting from either E1 or E2 whether or not considered in conjunction with E4 or E5.

- 3.5 In conclusion, the Board holds that the arguments presented by the appellant fail to demonstrate a lack

of inventive step of the subject matter of claim 1 as upheld by the decision under appeal.

3.6 The remaining independent claim, method claim 13, involves the step of providing the packaged product as defined in claim 1. Since the Board finds the subject matter of claim 1 to be not obvious, it cannot be obvious to provide the product. Therefore the Board concurs with the decision (reasons, point 18.4) in finding the subject matter of claim 13 to be non-obvious for the same reasons as apply to claim 1.

3.7 In summary, the arguments presented by the appellant fail to demonstrate a lack of inventive step of the subject matter of claims 1 and 13 as upheld by the decision under appeal, that is according to the main request. The Board therefore confirms the decision's positive finding of inventive step, Article 100(a) with Articles 52(1) and 56 EPC. Thus there is no need for the Board to consider the respondent's auxiliary requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated