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**Datasheet for the decision  
of 9 September 2014**

**Case Number:** T 0612/13 - 3.2.07

**Application Number:** 06776001.7

**Publication Number:** 1926663

**IPC:** B65B69/00

**Language of the proceedings:** EN

**Title of invention:**

A HANDHELD APPARATUS FOR DISENGAGEMENT OF A DOSE UNIT FROM ITS PACKAGING

**Applicant:**

Pirutech APS

**Headword:**

**Relevant legal provisions:**

EPC Art. 84, 123(2)

**Keyword:**

Claims - essential features (all requests-no)  
Amendments - intermediate generalisation (all requests - yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
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Case Number: T 0612/13 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 9 September 2014**

**Appellant:** Pirutech APS  
(Applicant) Krakasvej 17  
3400 Hillerød (DK)

**Representative:** Høiberg A/S  
St. Kongensgade 59 A  
1264 Copenhagen K (DK)

**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 19 October 2012 refusing European patent application No. 06776001.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** H. Meinders  
**Members:** H. Hahn  
E. Kossonakou

## Summary of Facts and Submissions

- I. The applicant lodged an appeal against the decision of the Examining Division to refuse the European patent application No. 06 776 001.7.

With its statement of grounds of appeal the appellant requested that the decision be set aside and a patent be granted on the basis of the claims 1-19 of the main request, alternatively on the basis of claims 1-19 of the first auxiliary request, or of claims 1-17 of the second auxiliary request, or of claims 1-15 of the third auxiliary request, all as filed together with the statement of grounds of appeal. As an auxiliary request oral proceedings were requested.

- II. The following document of the examination proceedings is mentioned in the present decision:

D1 = GB-A-2 383 988

- III. The Examining Division held that claim 1 of the main request dated 13 August 2012 contravened Articles 123(2) EPC ("An **automated** handheld and **ergonomic** apparatus ...") and 84 EPC (for being inconsistent with the embodiments according to the figures 6-9) and further considered that the subject-matter of claim 1 of the main request lacked novelty over D1. Claim 1 of the first auxiliary request dated 13 August 2012 was likewise considered to contravene Article 123(2) EPC and to lack novelty over D1. The Examining Division further held that claim 1 of the second auxiliary request filed at the oral proceedings of 13 September 2012 did not comply with Articles 84, 123(2) and 54 EPC, either. Therefore the application was refused.

IV. Independent claim 1 of the main request reads as follows (amendments as compared to claim 1 as originally filed are in bold with deletions in strikethrough; emphasis added by the Board):

"1. A handheld apparatus for directional disengagement of a dose unit **(17)**, such as a pill, from a packaging **(16)**, said apparatus comprising:

a housing **(2)** having a first and **a** second end, where the housing **(2)** is provided with an opening **(2c)** for receiving and ~~supporting a packaging and~~ positioning of a dose unit **(17)** in ~~this a packaging (16) relative to the housing (2) in said opening (2c) and holding means (6) for supporting said packaging and holding means (16) arranged adjacent to~~ in said opening **(2c)** ~~of~~ at the second end; **and**

expelling means comprising a plunger **(5)** which by actuation of drive means **(1)** can be pushed **into the opening (2c) and** against ~~the said dose unit (17) positioned on the said~~ holding means **(6)** and hereby having a dose unit **(17)** disengaged; **and**

**wherein said drive means (1) is activated by an activation unit (10) placed on the exterior of said housing (2)."**

V. Claim 1 of the first auxiliary request reads as follows (amendments as compared to claim 1 as originally filed are in bold with deletions in strikethrough; emphasis added by the Board):

"1. **An handheld** apparatus for directional disengagement of a dose unit **(17)**, such as a pill, from a packaging **(16)**, said apparatus comprising:

a housing (2) having a first and **a** second end, where the housing (2) is provided with an opening (2c) for receiving and ~~supporting a packaging and~~ positioning of a dose unit (17) in ~~this a packaging (16) relative to the housing (2) in said opening (2c) and holding means (6) for supporting said packaging and holding means (16) arranged adjacent to~~ in said opening (2c) ~~of~~ at the second end; **and**

expelling means comprising a plunger (5) which by actuation of drive means (1) can be pushed **into the opening (2c) and** against ~~the said dose unit (17) positioned on the said~~ holding means (6) and hereby having a dose unit (17) disengaged; **and**

**wherein said drive means (1) is activated by an activation unit (10) placed on the exterior of said housing (2), characterised in that**

**the drive means (1) is activated by an activation unit (10) placed in a first end of the housing (2) on the exterior of said housing (2), so that the apparatus is handheld during use."**

VI. Claim 1 of the second auxiliary request reads as follows (amendments as compared to claim 1 of the first auxiliary request are in bold; emphasis added by the Board):

"1. An ~~handheld~~ apparatus for directional disengagement of a dose unit (17), such as a pill, from a packaging (16), said apparatus comprising:

a housing (2) having a first and a second end, where the housing (2) is provided with an opening (2c) for

receiving and ~~supporting a packaging and~~ positioning of a dose unit (17) in ~~this~~ a packaging (16) relative to the housing (2) in said opening (2c) and holding means (6) for supporting said packaging ~~and holding means~~ (16) arranged ~~adjacent to~~ in said opening (2c) ~~of~~ at the second end; ~~and~~

expelling means comprising a plunger (5) which by actuation of drive means (1) can be pushed into the opening (2c) and against ~~the~~ said dose unit (17) positioned on the said holding means (6) and hereby having a dose unit (17) disengaged; and

wherein said drive means (1) is activated by an activation unit (10) placed on the exterior of said housing (2), characterised in that

the drive means (1) is activated by an activation unit (10) placed in a first end of the housing (2) on the exterior of said housing (2), so that the apparatus is handheld during use; **and in that**

**the first end is an upper portion (2a) of the housing (2) and a lower portion (2b) of the housing is formed so that the housing (2) integrally provides the holding means (6) with an exit hole (7) and defining a gap (2c) therebetween for receiving and supporting the packaging."**

- VII. Claim 1 of the third auxiliary request reads as follows (amendments as compared to claim 1 of the first auxiliary request are in bold; emphasis added by the Board):

"1. An ~~handheld~~ apparatus for directional disengagement of a dose unit (17), such as a pill, from a packaging (16), said apparatus comprising:

a housing (2) having a first and a second end, where the housing (2) is provided with an opening (2c) for receiving and ~~supporting a packaging and~~ positioning of a dose unit (17) in ~~this~~ a packaging (16) relative to the housing (2) in said opening (2c) and holding means (6) for supporting said packaging ~~and holding means~~ (16) arranged ~~adjacent to~~ in said opening (2c) ~~of~~ at the second end; ~~and~~

expelling means comprising a plunger (5) which by actuation of drive means (1) can be pushed into the opening (2c) and against ~~the~~ said dose unit (17) positioned on the said holding means (6) and hereby having a dose unit (17) disengaged; and

wherein said drive means (1) is activated by an activation unit (10) placed on the exterior of said housing (2), characterised in that

the drive means (1) is activated by an activation unit (10) placed in a first end of the housing (2) on the exterior of said housing (2), so that the apparatus is handheld during use; **and in that**

**the holding means (6) are pivotally arranged for movement between an active position and a passive position for storage of the apparatus."**

VIII. With a communication dated 12 June 2014 annexed to summons for oral proceedings set for 9 September 2014 the Board presented its preliminary and non-binding opinion with respect to the claims of the main request

and the first to third auxiliary auxiliary requests as filed with the statement of the grounds of appeal.

The Board stated amongst others that it would be necessary to discuss the admissibility of the amendments made in all four requests as follows:

*"3. Admissibility of amendments made (Articles 84 and 123(2) EPC)*

*3.1 First of all, it is clear from the entire description of the application as originally filed (corresponding to the published WO-A-2007/033673 which in the following is quoted) that the problem underlying the invention (likewise the solution thereto) is actually the disengagement of a dose unit (e.g. pill, tablet, capsule) from a **blister pack** but not from any type of package. Therefore it is evident that the presently claimed apparatus generally is **not** suitable for the disengagement of a dose unit (a pill) from e.g. a plastic box or a pill bottle (containing e.g. 100 pills). Furthermore, it also appears to be evident that the claimed holding means is a **blister pack holder** (= "blister holder" or "blister pack support device") and must have **at least one exit hole** through which the dose unit (pill) can be disengaged from the blister pack by the action of the plunger which, when activated, will be pressed against said blister pack in said blister pack holder.*

*Consequently, any independent claim 1 should contain these essential features to comply with Article 84 EPC.*

*Main request*



3.2 Claim 1 as originally filed defines a handheld apparatus for directional disengagement of a dose unit from a packaging (i.e. a blister pack) comprising a housing having a first and a second end, this second end having an opening for receiving, supporting and positioning of a dose unit in a packaging (i.e. a blister pack). The apparatus further comprises a holding means (i.e. a blister pack holder or blister pack support device) arranged adjacent to said opening and expelling means comprising a plunger which can be pushed against the blister pack support device by actuation of drive means to disengage a dose unit.

Claims 2 and 3 as originally filed further define that the plunger is pushed into the opening and that the drive means be activated by an activation button, preferably placed in the first end of the housing.

3.3 Claim 1 of the main request now defines a housing having a first and a second end which housing has an opening for receiving and **positioning of a dose unit in a packaging relative to the housing at the second end**. In this context the question arises, how can this opening of the apparatus position said dose unit (with)in the blister pack relative to the housing, since **no** basis for this wording could be found in the WO-A-2007/033673. It further comprises **holding means** in said opening for supporting said packaging **in said opening** which is **at the second end**. It further comprises expelling means comprising a plunger which, by actuation of drive means, can be pushed into the opening and against said dose unit positioned on the said holding means (which has been stated to be positioned relative to the housing in said opening ??) and said drive means is actuated by an activation **unit placed on the exterior** of said housing.

3.3.1 However, the apparatus embodiments according to the quoted figures 1-3 as well as the quoted passage on page 9, lines 1 to 3 (which actually refers to the activation button (10) of the embodiment of figure 1), are stated to have **"An actuation unit 10, a hand support 12 and a blister holder unit 6 is provided on the outer surface of the housing"** (page 6, lines 30 and 31 referring to the embodiment of figure 1). According to these figures 1-3 said actuation unit or actuation button (10) is **"placed in the first end of the housing"**, i.e. in the proximity of the hand support unit 12 for ergonomic reasons, not anywhere else on the outer surface of the housing.

3.3.2 The apparatus embodiments of figures 1-3 have an opening in the second end of the housing (i.e. the lower part of the housing) in which exclusively the plunger but **neither** the holding means **nor** the blister pack including the dose units is arranged. Thus the question arises how said plunger can be pushed **into** said opening since it is already arranged therein.

Furthermore, all apparatuses of these figures 1-3 comprise **an energy supply and a control means for electrically actuating the drive means.**

Thus it appears that the subject-matter of claim 1 of the main request as currently amended represents an intermediate generalisation of claim 1 as originally filed in combination with features (or generalised features) extracted in isolation from the embodiments of the original figures 1-3. In addition said figures do **not** depict any **opening (2c)**, let alone one **in the second end** of the housing wherein the holding means is arranged or wherein the blister pack can be supported

or positioned - without any basis in the application as originally filed, contrary to Article 123(2) EPC.

3.3.3 An opening **(2c)** in the second end of the housing is not shown in the original figures 1-3. On the other hand, a gap **(1c)** between an upper portion 1a and a lower portion 1b of the housing 1 of the apparatus according to figures 8 and 9 - which represents an embodiment that does **not** contain any opening in the second end 1b of the housing 1 - is actually only depicted in figure 9 of the WO-A-2007/033673.

Furthermore, according to this embodiment of figures 8 and 9 the blister holder is **not** in the gap - if a gap were to represent an opening - between the upper portion 1a and the lower portion 1b but is integrally provided by said lower portion 1b (see page 11, line 29 to page 12, line 2). Hence none of the depicted embodiments according to figures 1-3 and 6-9 shows a housing with an opening in the second end in which the blister holder or the blister pack is arranged.

...

3.3.7 Hence the main request appears to contravene Articles 84 and 123(2) EPC. The main request therefore appears not to be allowable.

*First auxiliary request*

3.4 Compared to the main request claim 1 of the first auxiliary request is redrafted in the two-part form. Contrary to the appellant's arguments however the subject-matter of claim 1 of the first auxiliary request is **not** identical with that of the main request although it contains almost the identical features, so

that the above objections concerning claim 1 of the main request apply *mutatis mutandis*, since:

- i) firstly, it defines that "the drive means (1) is activated by an activation unit (10) placed **in a first end of the housing**" (which is also objectionable under Article 84 EPC since this wording "in a first end of the housing" allows the assumption that it refers to a first end of the housing different from the one defined in line 3 of this claim 1), and
- ii) secondly, it defines that "the drive means (1) is activated by an activation unit (10) placed in a first end of the housing (2) on the exterior of said housing (2), **so that the apparatus is handheld during use**".

3.4.1 It is not clear to the Board what the difference should be between a "**handheld** apparatus", i.e. an apparatus which during its use - i.e. after activating the drive means by said activating unit with one hand - will or at least can also be held in the hands of the user, and an apparatus wherein "the drive means (1) is activated by activation unit (10) placed ... **so that the apparatus is handheld during use**", i.e. an apparatus that is (only) suitable to be handheld during its use if the activation unit (10) is placed at a certain position (?).

If there exists a difference between these definitions no explicit basis appears to exist in WO-A-2007/033673 for this wording "the apparatus is **handheld during use**" nor does this wording appear to be directly and unambiguously derivable therefrom - then this new definition contravenes Article 123(2) EPC.

If there exists no difference, then the question arises why this amendment, which additionally appears to

define a "result to be achieved" (Article 84 EPC), has been made.

3.4.2 In any case, the objections concerning intermediate generalisations without a basis in WO-A-2007/033673 and concerning clarity raised with respect to claims 1, 8, 9, 17 and 18 of the main request appear to apply to the respective claims of this request *mutatis mutandis*.

3.4.3 Hence the first auxiliary request appears not to be allowable.

#### Second auxiliary request

3.5 Claim 1 of the second auxiliary request is based on claim 1 of the first auxiliary request with the additional feature "and in that **the first end is an upper portion (2a) of the housing (2) and a lower portion (2b) of the housing is formed so that the housing (2) integrally provides the holding means (6) with an exit hole (7) and defining a gap (2c) therebetween for receiving and supporting packaging**".

Consequently, the above objections concerning claim 1 of the first auxiliary request apply *mutatis mutandis*.

3.5.1 Furthermore, the added feature represents a generalisation without basis in WO-A-2007/033673 of the very specific embodiment of figures 8 and 9 (see also page 11, line 29 to page 12, line 2) where the first end of the housing corresponds to the upper portion 1a of the housing 2 and the second end corresponds to the lower portion 1b of the housing which includes a main portion (which is between the upper and lower portion defining a gap 1c between them) with a hand support 12

and which lower portion is formed so that it (i.e. the lower portion 1b) integrally provides a blister (pack) support holder 6 with an exit hole 7 and wherein the plunger 5 is arranged in the upper portion 1a and is extendable out of the distal end thereof.

Thus it is **not** the housing, which additionally includes a main portion between the upper and lower portion, but only the lower portion 1b which integrally provides a blister support holder 6 with an exit hole 7.

Furthermore, the definition omits that the second end of the housing is the lower portion. The present definition allows that the housing at the first end has an upper portion and relative thereto, also at the first end, a lower portion of the housing. Such an embodiment has **no** basis in the application as originally filed. Furthermore, the definition "**and defining a gap (2c) therebetween**" of this feature appears to render claim 1 additionally unclear since it is not clear whether it refers to said holding means with an exit hole or to said upper and lower portions.

...

3.5.5 Consequently, the second auxiliary request does not appear to comply with Articles 84 and 123(2) EPC and thus appears not to be allowable.

Third auxiliary request

3.6 Claim 1 of the third auxiliary request is also based on claim 1 of the first auxiliary request. Consequently, the above objections in point 3.4 concerning claim 1 of the first auxiliary request apply *mutatis mutandis*.

3.6.1 It contains the additional feature "and in that **the holding means (6) are pivotally arranged for movement between an active position and a passive position for storage of the apparatus**".

Hence the subject-matter of claim 1 of this third auxiliary request goes into a completely different direction than that of claim 1 of the second auxiliary request and therefore represents a diverging request.

3.6.2 Furthermore, this feature is based on claim 8 as originally filed, which appears **not** to have any counterpart in the description of WO-A-2007/033673 and which referred to a more general handheld apparatus having an opening at the second end of the housing and holding means adjacent to this opening of the second end but did not refer to the specific embodiment according to the figures 8 and 9. In this context it is remarked that this specific embodiment of the figures 8 and 9 does **not** appear to allow any pivotable movement of the blister holder 6 since it is integrally formed with the lower portion 1b of the housing. Accordingly, there appears to exist no need for such a movement of this blister holder for the storage of this specific apparatus. Hence it appears to be apparent that another intermediate generalisation without any basis in the application as originally filed is created by this definition, contrary to Article 123(2) EPC.

...

3.6.6 Consequently, also the third auxiliary request appears not to comply with Articles 84 and 123(2) EPC and thus appears not to be allowable."

- IX. With letter dated 22 July 2014 the appellant stated "Please be informed that the Applicant will not attend the oral proceedings."

This letter did **not** contain any further arguments concerning the objections raised in the above mentioned Board's communication.

### **Reasons for the Decision**

1. The statement of the appellant in its letter dated 22 July 2014 - that it will not attend the oral proceedings (see point IX above) - is interpreted by the Board, as is constant jurisprudence (see Case Law of the Boards of Appeal, 7<sup>th</sup> edition 2010, III.C.2.3.1), that the appellant withdraws its auxiliary request for oral proceedings and relies on its submissions of the written proceedings.
2. In the communication accompanying the summons for oral proceedings the Board, taking account of the submissions of the appellant, has raised objections under Articles 84 and 123(2) EPC against the main request and the first to third auxiliary requests, explaining why in the Board's opinion the subject-matter of claim 1 of the main request does not contain all essential features (Article 84 EPC) and represents an intermediate generalisation without basis in the application as originally filed (Article 123(2) EPC). Further, it is explained why the objections raised with respect to claim 1 of the main request apply *mutatis mutandis* to the claims 1 of the first to third auxiliary requests (see point VIII above).



3. The appellant did not reply in substance to these objections (see point IX above). Since there has been no attempt by the appellant to refute or overcome the objections raised in the above communication, the Board sees no reason to depart from its preliminary opinion expressed therein.
4. Taking account of the preceding observations, the Board concludes - for the reasons already set out in the communication dated 23 September 2013 (see point VIII above) - that the subject-matter of the claims 1 of the main request and of the first to third auxiliary requests contravene Articles 84 and 123(2) EPC.
5. Consequently, the main request and the first to third auxiliary requests are not allowable.

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated