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**Datasheet for the decision
of 22 May 2017**

Case Number: T 1259/13 - 3.2.07

Application Number: 04725951.0

Publication Number: 1626008

IPC: B65D17/50, B65D77/20

Language of the proceedings: EN

Title of invention:

CLOSURE FOR TINS

Patent Proprietor:

Industrias Alimentarias De Navarra, S.A.

Opponents:

IMPRESS Group B.V.
Ardagh MP Group Netherlands B.V.

Headword:

Relevant legal provisions:

EPC Art. 54(1), 56

Keyword:

Novelty - main request (no)
Inventive step - auxiliary request (no)

Decisions cited:

T 1704/06

Catchword:



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Case Number: T 1259/13 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 22 May 2017

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 28 March 2013
revoking European patent No. 1626008 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman K. Poalas
Members: G. Patton
 I. Beckedorf

Summary of Facts and Submissions

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division revoking European patent No. 1 626 008.
- II. Two oppositions had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and/or inventive step), Article 100(b) EPC (insufficiency of disclosure) and Article 100(c) EPC (unallowable amendments).
- III. With its statement setting out the grounds of appeal the appellant requested that the decision of the opposition division be set aside and that the patent be maintained in amended form on the basis of the main request or, alternatively, on the basis of the auxiliary request, both requests filed with the statement setting out the grounds of appeal dated 27 May 2013.

Opponent 1 (respondent 1) did not respond to the appeal and opponent 2 (respondent 2) requested the dismissal of the appeal.

- IV. In its communication pursuant to Article 15(1) RPBA annexed to the summons to oral proceedings, the board gave its provisional opinion concerning *inter alia* novelty of the subject-matter of claim 1 of the main request and inventive step of the subject-matter of claim 1 of the auxiliary request. The corresponding parts of said communication, sections 4 and 5 respectively, read as follows:

"4. Main request

4.1 Claim 1 of the main request is based on claim 1 of the sixth auxiliary request underlying the impugned decision. Hence, it is referred to points II.6 and II.9 of said decision, in which novelty of the subject-matter of claim 1 is denied vis-à-vis D3(=US-A-4 540 105).

4.2 The appellant points out that the claimed subject-matter is directed towards a closure for "canned-food cans". This intended use would hence imply structural feature(s) on the claimed closure which would not be disclosed in D3. In this respect, the appellant refers to annex 1 where "canning" is described (see pages 5 and 6): cooking of food, filling and sealing the can, sterilization (using a retort).

The appellant considers that in view of the different configurations for the composite panel 15 in D3, the disclosed composite panel 15 would not be suitable for the intended use so that it would not comprise said implied structural features. Novelty should hence be recognized for the claimed subject-matter.

4.3 The Board cannot preliminarily share the appellant's view since the only example in the contested patent for the claimed film is "a conventional complex from a metal sheet internally coated with a plastic film", see end of paragraph 20. This corresponds to the first embodiment disclosed in D3 and mentioned by the appellant: plastic and metal foil. Further, the film in the contested patent is attached to the peripheral frame ("metal panel" 10) by

heat sealing, like in D3, column 2, lines 25-33 and figure 3.

As a consequence, the appellant's argument that the lid of D3 would not be suitable for the intended use does not appear to be convincing.

Should it be the case, a disclosure in the contested patent would be missing pursuant to Article 83 EPC as to why the lid of the contested patent would on the contrary be suitable for the intended use of canned-food cans. The contested patent appears to be silent on the said "implied structural features" (see point 4.2 above).

In this respect, the Board notes that Article 100(b) EPC is a ground for opposition which has been raised by the respondents (see impugned decision, point II.2).

4.4 The appellant also argues that the following features of claim 1 are also not known from D3:

a) the presence of a mechanical union by mechanical means; and

b) the marginal area of the flange near its free end is on the inside of the container, covered by the heat soldered film

4.5 Concerning feature a) the appellant refers to its written submissions in the letter dated 21 January 2013.

The Board cannot however preliminarily see in which respect and/or to which extent the interpretation of this feature ("merely by contact") put forward in the

impugned decision, point II.2, would be wrong. It appears therefore that feature a) is disclosed in D3 (see the rolled edge 12 in figure 2). The Board further emphasizes that clinching, seaming or indenting for that purpose is not disclosed in the contested patent.

4.6 Concerning feature b) the appellant refers to the meaning of the term "covered": "to place or spread something over so as to protect or conceal" (see annex 2, first definition), in order to argue that the direction in which the flange is rolled with respect to the container (or to the flat area of the lip) is implicit in claim 1 and would be contrary to that disclosed in D3, see figure 2. This would enable to achieve the desired effect of avoiding galvanic corrosion, which is not mentioned in D3.

The Board cannot preliminarily share this appellant's view. The term "covered" used in claim 1 encompasses many meanings, including the one given in the impugned decision, point II.6. It is referred in this regard to the Merriam-Webster dictionary annexed to the present communication, page 2, items 4, 5 or 6 (D8: <https://www.merriam-webster.com/dictionary/cover>), where it is stated in regard with the term "covered": "to lay or spread something over", "to spread over" or "to place or set a cover or covering".

There is no definition of the verb "cover" given in the contested patent so that its meaning cannot be seen as being restricted in the way proposed by the appellant, namely restricting brine access to the free end of the marginal area of the flange as argued by the appellant. That avoiding galvanic corrosion is an effect allegedly to be achieved specified in the description does not affect the meaning of the term "covered". The Board is

hence of the preliminary opinion that this feature cannot be regarded as a distinguishing feature over D3.

4.7 In view of the above, the Board cannot preliminarily find fault in the reasoning and the conclusion in point II.9 of the impugned decision and, hence, the subject-matter of claim 1 of the main request seems to lack novelty over D3.

5. Auxiliary request

5.1 Claim 1 of the auxiliary request is essentially based on claim 1 of the fourth auxiliary request underlying the impugned decision, further including the feature of "for canned-food" discussed under points 4.2 and 4.3 above. Hence it is referred in this respect to point II.7 of the impugned decision, in which inventive step of the subject-matter of claim 1 is denied in view of D3 and the skilled person's common general knowledge.

5.2 The appellant contests that D3 could be selected as the closest prior art.

In view of the discussion under point 4 above for the main request, the Board cannot preliminarily find fault in the selection of D3 as a plausible closest prior art for assessing inventive step of the subject-matter of claim 1 of the auxiliary request.

5.3 The appellant further argues that in view of the technical effects associated with the following distinguishing features of claim 1 vis-à-vis D3:

- the peripheral lip forms a single body with the can body; and

- the lip is obtained from the body of the can by curling its opening,

the problem to be solved should be defined as to improve the security and obtain a better stability enabling an easier detachment of the lid in the closure of D3.

Since none of the available prior art document hints towards the problem and the solution, the skilled person would not be prompted to modify the closure of D3 in the manner claimed so that inventive step should be acknowledged.

5.4 The Board cannot preliminarily share this appellant's view for the reasons given in point II.7 of the impugned decision. In this respect it is emphasized that there does not appear to be a basis in the contested patent taken as a whole relating the above mentioned distinguishing features with the alleged effects put forward by the appellant.

Further, even in case of following the appellant's argument, that the problem to be solved is to be seen in the improvement of security and stability, enabling thereby an easier detachment of the lid, the skilled person faced with said problem will immediately come to the claimed solution which is known in the present technical field, as acknowledged for instance in the contested patent itself, paragraph 11 (see ES 2 029 432)".

V. With its submission dated 19 May 2017 respondent 1 informed the board that it will not be attending the oral proceedings set for 22 May 2017.

VI. Oral proceedings before the board took place as scheduled on 22 May 2017. They were held in the absence of the duly summoned appellant and respondent 1 pursuant to Rule 115(2) EPC and Article 15(3) RPBA.

Reasons for the Decision

1. Although the appellant and respondent 1 did not attend the oral proceedings, the principle of the right to be heard pursuant to Article 113(1) EPC is observed since that Article only affords the opportunity to be heard and, by absenting itself from the oral proceedings, a party gives up that opportunity (see the explanatory note to Article 15(3) RPBA cited in T 1704/06, not published in OJ EPO, see also the Case Law of the Boards of Appeal, 8th edition 2016, section IV.E.4.2.6.d)).
2. Under sections 4 and 5 of its communication pursuant to Article 15(1) RPBA annexed to the summons to oral proceedings the board gave the reasons why it considers that the subject-matter of claim 1 of the main request lacks novelty and why the subject-matter of claim 1 of the auxiliary request lacks inventive step, see point IV above.
3. The above-mentioned preliminary finding of the board has not been commented on nor has it been contested by the appellant during the appeal proceedings.
4. As the board sees no reason to reverse its preliminary finding, the board considers that the subject-matter of claim 1 of the main request lacks novelty and the subject-matter of claim 1 of the auxiliary request lacks inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



B. Atienza Vivancos

K. Poalas

Decision electronically authenticated