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Case Number: T 1450/13 - 3.2.07

Application Number: 05740261.2

Publication Number: 1748942

IPC: B65G29/00, B65G47/31, B65B19/22

Language of the proceedings: EN

Title of invention:
WRAPPING METHOD AND DRUM FOR PRODUCTS IN A PACKING MACHINE

Patent Proprietor:
G.D Societa' per Azioni

Opponent:
Focke & Co. (GmbH & Co. KG)

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (yes)

Decisions cited:

Catchword:

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Case Number: T 1450/13 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 13 July 2017

Appellant: (Opponent)	Focke & Co. (GmbH & Co. KG) Siemensstrasse 10 27283 Verden (DE)
Representative:	Meissner Bolte Partnerschaft mbB Hollerallee 73 28209 Bremen (DE)
Respondent: (Patent Proprietor)	G.D Societa' per Azioni Via Battindarno, 91 40133 Bologna (IT)
Representative:	Bergadano, Mirko Studio Torta S.p.A. Via Viotti, 9 10121 Torino (IT)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 16 April 2013 rejecting the opposition filed against European patent No. 1748942 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	K. Poalas
Members:	G. Patton
	R. Cramer

Summary of Facts and Submissions

I. The opponent (appellant) lodged an appeal against the decision of the opposition division rejecting the opposition against European patent No. 1 748 942.

The opposition had been filed against the patent as a whole and was based on Article 100(a) EPC (lack of inventive step).

The opposition division held that this ground did not prejudice the maintenance of the patent as granted.

II. The board provided the parties with its preliminary non-binding opinion annexed to the summons to oral proceedings that the claimed subject-matter of the patent as granted (main request) appeared to involve an inventive step, and so the appeal would have to be dismissed.

III. Oral proceedings before the board took place on 13 July 2017. Since the duly summoned appellant did not attend, as announced with its submission dated 10 June 2017, the oral proceedings were continued in its absence pursuant to Rule 115(2) EPC and Article 15(3) RPBA.

In its written submissions the appellant requested that the decision under appeal be set aside and that the patent be revoked.

The respondent requested that the appeal be dismissed and that the patent be maintained as granted.

IV. Claim 1 of the main request (patent as granted) reads as follows:

"A wrapping method for products (A), the method comprising the steps of:
inserting the products (A) and respective wrapping material (C) inside respective pockets (8a, 8b) equally spaced along a given wrapping path (P) extending through a number of operating stations (19-22); and
feeding the pockets (8a, 8b) in steps along the wrapping path (P);
the method is characterized in that comprising the further steps of:
dividing the pockets (8a, 8b) into at least two separate successions of first and second pockets (8a, 8b) respectively, with the first pockets (8a) alternating with the second pockets (8b), the pockets (8a; 8b) in each succession being integral with one another, and the pockets (8a; 8b) in each succession being independent of the pockets (8b; 8a) in the other succession; and
feeding the pockets (8a, 8b) in the two successions along said wrapping path (P) in respective periodic movements, which have the same period, and are out of phase, so that, when the pockets (8a; 8b) in one of the two successions are stopped, the pockets (8b; 8a) in the other succession are moving."

Claim 7 of the main request (patent as granted) reads as follows:

"A wrapping drum for products (A); the drum (1) having an axis (3) of rotation, and comprising a first ring of peripheral radial first pockets (8a) integral with one another, equally spaced about said axis (3) of rotation, and for housing respective products (A) and respective wrapping material (C);
the drum (1) is characterized in comprising:
at least a second ring of peripheral radial second

pockets (8b), which are integral with one another, are designed for housing respective products (A) and respective wrapping material (C), are equally spaced about said axis (3) with the same spacing as the first pockets (8a), and are alternating with the first pockets (8a);
first actuating means (4, 5, 6) for moving the first pockets (8a) about said axis (3) in a first periodic movement, a period of which comprises a stop phase and a travel phase of the first pockets (8a) in a given direction along a circular path (P) coaxial with said axis (3) and extending through a number of operating stations (19-22); and
second actuating means (13, 14, 15) for moving the second pockets (8b) about said axis (3) in a second periodic movement, which is identical with the first periodic movement but out of phase with respect to the first periodic movement, so that, when the pockets (8a; 8b) in one of the two rings are stopped, the pockets (8b; 8a) in the other ring are moving."

V. The documents of the opposition proceedings which are of relevance to the present decision are the following:

D1: US-B-6 612 094; and
D5: EP-A-0 003 573.

VI. The appellant argued essentially as follows:

D1, which can be considered as plausible closest prior art for claim 1, does not disclose the features of the characterising portion of claim 1.

In view of the technical effect associated with the distinguishing features the problem to be solved can be

seen in the reduction of the stress applied to the drum structure.

The claimed solution is disclosed in D5 in connection with an increased productivity of a transfer apparatus. In view of the above-mentioned advantage and the fact that in claim 1 no wrapping step is claimed, the skilled person would apply the solution disclosed in D5 in connection with a transfer apparatus to the wrapping drum disclosed in D1 and would arrive at the subject-matter of claim 1 without the exercise of any inventive activity.

In addition, as a solution to the problem of reducing the severe stresses present at the transfer apparatus 13, D5 discloses the method steps claimed in the characterising portion of claim 1.

Hence, the problem to be solved may be defined as merely finding a new application for a known measure.

The skilled person using his common general knowledge would apply the teaching of D5 to any drum structure, including wrapping drums. He would then apply it to the wrapping drum known from D1 and would arrive at the subject-matter of claim 1 without the exercise of any inventive activity.

Hence, inventive step should not be recognised for the subject-matter of claim 1.

The above applies *mutatis mutandis* to claim 7.

D5, which can also be considered as plausible closest prior art for claim 1, does not disclose that the wrapping material is provided to the transfer drum 13.

This belongs however to the skilled person's common general knowledge and is known from D1.

Hence, for this reason as well inventive step should not be recognised for the subject-matter of claim 1.

VII. The respondent argued essentially as follows:

D1, which is to be considered the closest prior art for claim 1, does not disclose the features of the characterising portion of claim 1.

The problem to be solved can be seen as increasing the capacity of the wrapping process and at the same time reducing the inertial stress caused by step-feeding.

The skilled person would not consider the disclosure of D5 for its implementation in a packaging machine for packaging products since D5 relates to a transfer apparatus. D5 clearly teaches away from applying the claimed solution to a wrapping drum and is further silent on the problem of reducing stress.

The combination of the disclosures of D1 and D5 would not lead to the claimed method as D5 teaches a common drive for the two successions, i.e. the pockets of said successions being not independent as claimed in claim 1.

Further, the transfer apparatus of D5 and the wrapping drum of D1 exhibit two completely different motions, reflecting the difference in functions of the two devices. Hence, the skilled person would not think of applying the teaching on structural features linked to the kinematics of one device, i.e. the transfer apparatus, to the other device, i.e. the wrapping drum.

Finally, applying two successions as disclosed for the transfer apparatus 13 of D5 to the wrapping drum 6 would require a complete redesign of said drum in an undisclosed and unknown manner.

D5 cannot be regarded as the closest prior art since it concerns only bringing articles together, which is not the same or similar purpose as that of claim 1, i.e. of wrapping products.

Fundamental changes would have to be performed to the apparatus known from D5 to arrive at the claimed invention, as the transfer apparatus 13 of D5 does not comprise any wrapping operations.

Hence, inventive step should be recognised for the subject-matter of claim 1.

The above applies *mutatis mutandis* to the apparatus claim 7.

Reasons for the Decision

1. *Right to be heard*

Although the appellant did not attend the oral proceedings, the principle of the right to be heard pursuant to Article 113(1) EPC is respected, 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 Case Law of the Boards of Appeal, 8th edition 2016, section IV.E.4.2.6 d).

2. *Inventive step*

The appellant has contested that the subject-matter of claims 1 and 7 involves an inventive step:

- starting from D1 as closest prior art in combination with the teaching of D5, possibly also in view of the skilled person's common general knowledge; or

- starting from D5 as closest prior art in combination with the skilled person's common general knowledge as illustrated by D1.

Claim 1 - starting from D1

2.1 D1 discloses a wrapping method for products such as groups of cigarettes, the method comprising the steps of:

inserting the products (groups of cigarettes) and respective wrapping material (foil 14) inside respective pockets equally spaced along a given wrapping path (the circular drum path, see figure 1) extending through a number of operating stations (1 to 10 of drum 6, see figures 1 and 2); and

feeding the pockets in steps along the wrapping path.

2.2 Accordingly, D1 relates to a wrapping method disclosing the method steps of the preamble of claim 1, but not those of the characterising portion of said claim, see also statement setting out the grounds of appeal, point II, and reply to said statement, point A.2.1, second paragraph.

2.3 The problem to be solved in view of the technical effects associated with the distinguishing, i.e. characterising features of claim 1 is to be seen in the modification of the wrapping method of D1 so as to reduce the stress on the drum structure for a given production speed, see patent in suit, paragraphs 1 to 4, 7 and 29.

2.4 The board considers that the skilled person looking for a solution to the above-mentioned problem will come across document D5, since D5 is in the same technical field as that of D1 and of the contested patent, namely the technical field of packing and wrapping methods and apparatuses, in particular for producing packets of cigarettes, see D1, column 1, lines 3 to 10, and D5, page 1, lines 1 to 10.

2.5 In the transfer apparatus ("Übergabevorrichtung") 13 of D5 the two groups of conveyor arms ("Förderarme") 65, 66 are driven by a common drive ("Welle" and "Trieborgan") 69, 70. Since claim 1 does not specify the number of drives, however, such a configuration is not excluded from claim 1. In particular, contrary to the respondent's view, the board is of the opinion that in D5 the pockets ("Mitnehmertaschen") 61 in each succession ("Förderarme") 65, 66 are **independent** within the meaning of claim 1, i.e. that they have the same period and are out of phase and that one of the two successions 65, 66 is moving when the other one is stopped, see D5, page 9, line 17, to page 10, line 2 and figures 1, 2 and 5.

2.6 On the other hand, claim 1 is directed to a "**wrapping method**", i.e. there is at least a wrapping step leading to wrapped articles, the claimed method also comprising a "**wrapping material**", a "**wrapping path**" and "**operating**

stations". The pockets mentioned in the characterising portion of claim 1 concern said wrapping path and said operating stations, i.e. are located on a wrapping drum. Claim 1 must be construed by a mind willing to understand, such that it does not merely concern a transport method as argued by the appellant.

2.7 Accordingly, the board considers that D5 discloses the method steps mentioned in the characterising portion of claim 1 only in relationship with the transfer apparatus 13 but **not** in relationship with the wrapping path, i.e. with a wrapping drum as claimed, see page 8, line 31, to page 10, line 28 and figures 2, 3, 5 and 6.

2.8 Therefore, the issue at stake is whether the skilled person would consider applying the teaching of D5 concerning the functioning steps of the transfer apparatus 13 to the wrapping drum 6 of D1.

2.9 In this respect, the board concurs with the finding under point 9.5 of the impugned decision that if the skilled person were to consider applying the disclosure of D5 to the apparatus of D1 it would position the transfer apparatus **upstream of the wrapping drum 6** of D1. More particularly, it would position it at the transferring station ("conveyor") 4, said last being located between the "hopper system" 2, where the groups of cigarettes are formed, and the wrapping drum 6. The board cannot find any reason or hint in D5 prompting the skilled person to apply the disclosure of D5 concerning the transfer apparatus 13 to the wrapping drum 6 known from D1.

2.10 The appellant argues further that the problem of severe stress on a drum structure mentioned in paragraph 4 of

the patent in suit is independent of whether or not it concerns a wrapping drum.

2.10.1 A solution to the above-mentioned problem is known from D5 for a transfer apparatus, said last also experiencing severe stress at a given production speed.

2.10.2 Hence, the problem to be solved should be defined as merely finding a new application for a known measure.

2.10.3 The skilled person using his common general knowledge would recognise the technical effect(s)/advantage(s) of the method steps of the transfer apparatus of D5 and would apply said method steps to any drum structure, including wrapping drums, since this is a problem which occurs with any kind of drum.

2.10.4 Accordingly, the skilled person would arrive at the claimed subject-matter without the exercise of any inventive activity.

2.11 The board cannot share this view for the reasons put forward under point 2.9 above alone.

2.11.1 In addition, the skilled person would have no incentive to apply the method steps disclosed in D5 in connection with the transfer apparatus to the wrapping drum known from D1, since no stress reduction at all is mentioned in D5, contrary to what the appellant alleges.

2.11.2 Further, the transfer apparatus 13 of D5 and the wrapping drum 6 of D1 exhibit two completely different motions. As already discussed under point 2.5 above, the transfer apparatus 13 of D5 comprises two separate successions, with one of the two successions moving when the other one is stopped. This is in contradiction

with the wrapping drum 6 of D1, which is to run continuously, see column 4, line 11. The difference in motions reflects the difference in functions of the two devices, such that the skilled person would not think of applying the teaching on structural features linked to the kinematics of one device, i.e. the transfer apparatus, to the other device, i.e. the wrapping drum.

2.11.3 Finally, applying two successions as disclosed for the transfer apparatus 13 of D5 to the wrapping drum 6 would require a complete redesign of said drum in an undisclosed and unknown manner.

Claim 1 - starting from D5

2.12 As already mentioned above, D5 lies in the same technical field as that of claim 1, and so the board is of the opinion that D5 also represents plausible closest prior art.

2.13 The board notes in this respect that, given that the characterising portion of claim 1 is known neither from D5, see point 2.7 above, nor from D1, see point 2.2 above, even a combination of the teachings of said documents cannot lead the skilled person to the subject-matter of claim 1.

2.14 The board notes further that providing the wrapping material to the transfer apparatus 13 of D5, as suggested by the appellant, instead of to the wrapping drum 10, as disclosed in D5, would require a complete redesign of the apparatus of D5. For such a redesign no hint can be found in D5 or D1 or in the general common knowledge of the skilled person.

2.15 Further, the reasons presented under point 2.11.2 above are also applicable here.

Claim 7 - starting from D1 or D5

2.16 The same reasoning as presented above for claim 1 applies *mutatis mutandis* to claim 7, see hereto also the statement setting out the grounds of appeal, point III.2.

2.17 In view of the above, the subject-matter of claims 1 and 7 involves an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Hampe K. Poalas

Decision electronically authenticated