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**Datasheet for the decision
of 5 March 2019**

Case Number: T 1626/14 - 3.2.07

Application Number: 07798987.9

Publication Number: 2032463

IPC: B65D71/00

Language of the proceedings: EN

Title of invention:
CARTON HAVING DISPENSING CONFIGURATIONS

Applicant:
Graphic Packaging International, LLC

Headword:

Relevant legal provisions:
EPC Art. 54, 56, 84, 123(2)

Keyword:
Amendments - allowable (yes)
Claims - clarity (yes)
Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1626/14 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 5 March 2019

Appellant: Graphic Packaging International, LLC
(Applicant) Law department - 9th floor
1500 Riveredge Parkway, Suite 100
Atlanta, GA 30328 (US)

Representative: Möhring, Friedrich
Grättinger - Möhring - von Poschinger
Patentanwälte Partnerschaft
Postfach 16 55
82306 Starnberg (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 18 March 2014
refusing European patent application No.
07798987.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal within the prescribed period and in the prescribed form against the decision of the examining division refusing European patent application 07 798 987.9.
- II. In its decision, the Examining Division held that the subject-matters of claim 1 filed with the submission dated 19 March 2010 and of claim 7 filed with the submission dated 15 November 2010 do not involve an inventive step over the combination of the teaching of D2 (US 3 002 613 A) with the teaching of D1 (WO 2005/110866 A) and that further claim 1 is not clear.
- III. With its notice of appeal the appellant filed the following requests:
- that the decision under appeal be set aside
and
that a patent be granted on the basis of claims 1 to 10 according to the "main request", filed with letter dated 19 March 2010,
or, in the alternative,
that a patent be granted on the basis of claims 1 to 10 according to the "main request'", filed with letter dated 26 May 2014,
or, in the alternative,
that a patent be granted on the basis of claims 1 to 10, filed as auxiliary request with letter dated 26 May 2014.
- IV. In its communication pursuant to Article 15(1) RPBA annexed to the summons for oral proceedings set for 5 March 2019 the Board gave its provisional opinion

concerning the above-mentioned appellant's requests.

- V. Oral proceedings before the Board took place as scheduled on 5 March 2019.

During the oral proceedings the appellant, while withdrawing all other requests, requested finally

that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 10 according to the new auxiliary request 5, filed during the oral proceedings, and a description to be adapted thereto.

For further details from the oral proceedings, in particular the matters discussed with the appellant and the appellant's statements on procedural matters, reference is made to the minutes thereof.

The decision was given at the end of the oral proceedings.

- VI. The independent claims 1 and 7 of the **new auxiliary request 5**, read as follows:

"1. A method of dispensing articles (C) from a carton (150), comprising:
providing a substantially parallelepipedal carton having four sides comprising a first pair of side panels (10), a second pair of side panels (20), a third pair of side panels (30), and a fourth pair of side panels (40), each first side panel being foldably connected to a second side panel at a first transverse fold line, each third side panel being foldably connected to a second side panel at a second transverse

fold line, each fourth side panel being foldably connected to a third side panel at a third transverse fold line,

the carton further comprising a first end (160), a second end (160), and a first dispenser section (102) defined in part by at least one breachable line of disruption (104, 106, 108, 110), the carton comprising a tear feature extending across at least the first side panels, the second side panels, and the fourth side panels and a hinge (68) extending across at least the third side panels, the tear feature comprising a first tear feature (70) extending across the first and second side panels, and a second tear feature (80) extending across the fourth side panels, the hinge extending from respective ends of the first and second tear features; providing at least eight articles accommodated in the carton in at least two rows and at least two columns, the articles being generally cylindrical containers; separating the carton at at least three of the sides into a first carton section (162) and a second carton section (162) so that the first and second carton sections remain hingedly attached at one side of the carton, the separating the carton into first and second carton sections comprises tearing the tear feature (70, 80) along three sides of the carton;

pivoting the first and second carton sections at the hinge (68) to place the first and second carton sections in a side-by-side configuration,

wherein

the first carton section accommodates a first half of the at least eight articles and has a first open top (164) through which the first half of the articles can be dispensed, the first open top being at a top end of the first carton section opposite to the first end of the carton,

the first dispenser section (102) is located in the

first carton section (162) adjacent to the first end (160) of the carton and is defined in part by at least one breachable line of disruption, and the second carton section accommodates a second half of the at least eight articles and has a second open top (164) through which the second half of the articles can be dispensed, the second open top being at a second top end of the second carton section opposite to the second end of the carton, opening the first dispenser section; and removing at least one article of the first half of the articles through the opened first dispenser section".

"7. A carton (150) and a plurality of articles (C) accommodated therein, the carton comprising:
a pair of first side panels (10);
a pair of second side panels (20);
a pair of third side panels (30);
a pair of fourth side panels (40);
a first end panel (160);
a second end panel (160);
each first side panel being foldably connected to a second side panel at a first transverse fold line, each third side panel being foldably connected to a second side panel at a second transverse fold line, each fourth side panel being foldably connected to a third side panel at a third transverse fold line,
a first dispenser section (102) defined in part by at least one breachable line of disruption (104, 106, 108, 110);
a tear feature (70, 80) extending around at least a part of a perimeter of the carton and separating the panels in the pair of first side panels, the pair of second side panels, and the pair of fourth side panels into a respective first carton section (162) and a second carton section (162), the tear feature

comprising a first tear feature (70) extending between the pair of first side panels and the pair of second side panels, and a second tear feature (80) extending between the pair of fourth side panels;
a hinge (68) between the pair of third side panels, the hinge and the tear feature dividing the carton into the first carton section and the second carton section that can be placed in a side-by-side configuration, the hinge extending from respective ends of the first and second tear features, wherein
the articles comprising at least eight generally cylindrical containers that are arranged in at least two rows and at least two columns, the first carton section accommodates a first half of the at least eight articles and has a first open top (164) through which the first half of articles can be dispensed, the first open top being at a top end of the first carton section opposite the first end panel of the carton,
the first dispenser section is located in the first carton section adjacent to the first end panel of the carton, the second carton section has a second open top (164) through which the second half of the articles can be dispensed, the second open top being at a second top end of the second carton section opposite the second end panel of the carton".

Reasons for the Decision

1. *Admissibility*

- 1.1 The Board considered that the filing of the new auxiliary request 5 was sufficiently justified by the appellant and admitted that request into the proceedings (Articles 12(4), 13(1) and (3) RPBA).

2. *Amendments, Article 123(2) EPC*

The Board follows the appellant's arguments that basis for claims 1 and 7 of the new auxiliary request 5 is to be found in the originally filed claims 1, 5, 11, 15, 17 and 21, in paragraphs 16, 18 and 28 of the originally filed description and in figures 1 and 6 of the application as originally filed.

3. *Clarity, Article 84 EPC*

- 3.1 The examining division stated in the impugned decision that due to the absence in claim 1 of "the features referring to the mutual position of the containers and the first dispenser section", said claim does not contain all the technical features essential for defining the invention and thus it does not meet the requirements of Article 84 EPC (see point II.2.4 of the impugned decision).

- 3.2 The Board, following the appellant's arguments, cannot see why putting into practice the method of claim 1 should be impossible in case the cylindrical containers accommodated in the carton are arranged with their axes oriented perpendicularly to the end panels instead of parallel thereto, as the objection raised by the

examining division applies only to the preferred embodiment illustrated in figures 6 and 7. In contrast to the examining division's unsubstantiated allegation, arranging cylindrical containers accommodated in the carton with another orientation than that illustrated in the figures 6 and 7 would clearly as such not prevent withdrawal of said containers through a first dispenser section located adjacent the first end panel of the carton. The method according to claim 1 obviously works well with cylindrical containers (e.g. flat cylindrical containers as they are well known as tins containing tuna) arranged with their axes in vertical position, i.e. perpendicularly to the end panels. It is self-evident that there is, as to the size and format, some relation between and dependency of the containers on the one hand and the dispenser section on the other hand, which, of course, is trivial. Evidently, the dispenser section must be big enough to allow removal of the containers.

3.3 Consequently, claim 1 recites all structural features required to achieve the object, namely to provide for a stable and reliable carton accommodating a large number of cylindrical containers (i.e. at least eight such containers), which carton allows for easy handling of the containers packed in the carton by the end consumer not only in terms of purchase and transporting home but also in terms of easy dispensing of the containers one-by-one at home.

3.4 Therefore, the lack of clarity objection of the examining division is incorrect.

3.5 The Board is further satisfied that due to the amendments made in the independent claims 1 and 7 the lack of clarity objections raised in its communication

pursuant to Article 15(1) RPBA, in particular points 4.2 and 4.4 thereof, are no longer valid.

3.6 For the above-mentioned reasons, the Board concludes that the requirements of Article 84 EPC.

4. *Novelty - Article 54 EPC*

Claim 7

4.1 The carton according to claim 7 differs from the carton known from D1 or from D2 in that by the carton's panels each first side panel is foldably connected to a second side panel at a first transverse fold line, each third side panel is foldably connected to a second side panel at a second transverse fold line, each fourth side panel is foldably connected to a third side panel at a third transverse fold line, and in that the carton comprises a tear feature extending around at least a part of a perimeter of the carton and separating the panels in the pair of first side panels, the pair of second side panels, and the pair of fourth side panels into a respective first carton section and a second carton section, the tear feature comprising thereby a first tear feature extending between the pair of first side panels and the pair of second side panels, and a second tear feature extending between the pair of fourth side panels, the carton further comprising a hinge between the pair of third side panels, the hinge and the tear feature dividing the carton into the first carton section and the second carton section that can be placed in a side-by-side configuration, the hinge extending from respective ends of the first and second tear features.

4.2 Accordingly, the subject-matter of claim 7 is novel over the disclosure of D1 or of D2.

Claim 1

4.3 The method according to claim 1 differs from the method known from D1 or from D2 in that it provides a substantially parallelepipedal carton having each first side panel being foldably connected to a second side panel at a first transverse fold line, each third side panel being foldably connected to a second side panel at a second transverse fold line, each fourth side panel being foldably connected to a third side panel at a third transverse fold line, the carton further comprising a tear feature extending across at least the first side panels, the second side panels, and the fourth side panels and a hinge extending across at least the third side panels, the tear feature comprising a first tear feature extending across the first and second side panels, and a second tear feature extending across the fourth side panels, the hinge extending from respective ends of the first and second tear features.

4.4 Accordingly, the subject-matter of claim 1 is novel over the disclosure of D1 or of D2.

5. *Inventive step - Articles 56 EPC*

Claim 7

5.1 D2 (see figures 2 and 6) discloses a "six-pack" carton 11 with one row of cans 12 or bottles 101 on top of and

in end-to-end relationship with another row of cans 12 or bottles 101. The carton 11 includes a tear strip 24 across side walls 18, 20, 19, and a web 30 in the side wall 21 that connects the halves of the carton 11 remaining after the tear strip 24 is removed. The borders of the web 30 are spaced apart fold lines 27, 28, which extend from an end line 25 of the tear strip 24 to a fold line 37.

- 5.2 The carton according to claim 7 distinguishes over the carton known from D2 *inter alia* through the features mentioned under point 4.1 above.
- 5.3 From the above follows that there is a significant difference between the arrangement of the hinge and the first and second tear features according to claim 7 and the arrangement of the hinge and the single tear feature known from D2. Whereas D2 teaches to have the tear line and the hinge line meet at the (glued) joint of the first and the fourth side panels, there is no such function at said (glued) joint of the first and fourth side panels of the carton according to claim 7.
- 5.4 The first tear feature and the second tear feature according to claim 7 meet at said (glued) joint to provide for a tear feature that extends, across said (glued) joint, from the fourth over the first to the second side panels. Consequently, there is a change in the function of the (glued) joint by providing a hinge feature more centrally in the blank, i.e. at the fold lines connecting the third side panel to the second and fourth side panels, respectively. As a matter of fact, the (glued) joint according to claim 7, which is weaker than the first, second and third transverse fold lines between the side panels, is provided between the side panels 20 and 40 in figures 1 and 6 of the present

application, i.e. away from the hinge line 68 where the shear stresses are the highest when the carton is manipulated, as explained by the appellant. This is contrary to the disclosure of D2 for which the (glued) joint would be provided between the side panels 30 and 20 in figures 1 and 6 of the present application, i.e. close to the hinge line 68. Consequently the claimed configuration provides for a significantly more stable and reliable carton structure.

- 5.5 The problem to be solved can therefore be seen in the improvement of the stability and reliability of the carton known from D2.
- 5.6 The above-mentioned problem is solved according to the present invention through the provision of the arrangement of the hinge and the first and second tear features according to claim 7.
- 5.7 As stated under point 5.1 above D2 teaches one unitary continuous tear feature extending across the first, the second, and the third side panels while a handle panel follows-up said tear feature and extends across the fourth side panel. The subject-matter of claim 7 distinguishes therefore over D2 at least in that the tear feature is apportioned into a first tear feature and a second tear feature with the hinge arranged there between. D2 does not disclose or suggest a hinge between a first carton section and a second carton section demarcated by the first and the second tear features.
- 5.8 Since D1, apart from the replacement of the web 30 of D2 with a hinge, teaches a similar tear concept as in D2, i.e. having one unitary continuous tear feature 850 extending across the second, the third and the fourth

side panels and a hinge extending across the first side panel (see figure 8), even a combination of the teachings of D2 and D1 fails to suggest the apportionment of the tear feature into a first tear feature and a second tear feature with the hinge arranged there between according to claim 7.

5.9 Given that an apportionment of the tear feature into a first tear feature and a second tear feature with the hinge arranged there between according to claim 7 is not known from D1 (see 4.1 above), also a combination of the teaching of D1, considered as closest prior art, with the teaching of D2 cannot lead the skilled person to the subject-matter of claim 7.

5.10 Consequently, in absence of any suggestion in D2 and D1 for an apportionment of the tear feature into a first tear feature and a second tear feature with the hinge arranged there between according to claim 7, the subject-matter of claim 7 involves an inventive step in accordance with Article 56 EPC.

Claim 1

5.11 The carton provided in the method of claim 1 distinguishes over the carton known from D2 *inter alia* through the features mentioned under point 4.3 above.

5.12 Accordingly, the considerations presented under points 5.3 to 5.9 above for claim 7 are also valid *mutatis mutandis* for claim 1.

5.13 Therefore, the subject-matter of claim 1 involves an inventive step in accordance with Article 56 EPC.

6. *Adaptation of the description*

- 6.1 Independent claims 1 and 7 of new auxiliary request 5 filed at a late stage of the oral proceedings before the Board (see minutes of the oral proceedings) disclose several additional features over the independent claims 1 and 21 of the application as originally filed.
- 6.2 Given that said claims were filed and admitted into the proceedings at a late stage of the oral proceedings before the Board, the appellant needed time in order to thoroughly consider the adaptations in the description required in view of the amendments made in the independent claims 1 and 7.
- 6.3 For this reason the appellant requested to file an adapted description before the examining division in order to have the time needed for a thorough consideration of the adaptation of the description.
- 6.4 The Board, recognising that time is needed for a thorough consideration of the adaptation of the description in accordance with the several amendments made in independent claims 1 and 7, saw no reason speaking against granting the above-mentioned appellant's request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent on the basis of claims 1 to 10, filed as new auxiliary request 5 during the oral proceedings, and a description to be adapted thereto.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated