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**Datasheet for the decision
of 17 December 2018**

Case Number: T 0029/15 - 3.2.07

Application Number: 07120020.8

Publication Number: 2055640

IPC: B65D5/74

Language of the proceedings: EN

Title of invention:

Reclosable opening device for packages of pourable food products

Patent Proprietor:

Tetra Laval Holdings & Finance S.A.

Opponent:

SIG Technology AG

Headword:

Relevant legal provisions:

EPC Art. 54(2), 56

Keyword:

Novelty - (yes)
Inventive step - (yes) - could-would approach

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 0029/15 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 17 December 2018

Appellant: SIG Technology AG
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 November 2014
rejecting the opposition filed against European
patent No. 2055640 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman K. Poalas
Members: V. Bevilacqua
R. Cramer

Summary of Facts and Submissions

- I. The appellant (opponent) filed in the prescribed form and within the prescribed time limit an appeal against the decision to reject the opposition against European patent No. 2 055 640.

- II. Oral proceedings before the Board were held on 17 December 2018.

The opponent requested

that the decision under appeal be set aside and that the European patent No. 2 055 640 be revoked.

The patent proprietor (respondent) requested:

that the appeal be dismissed and the patent be maintained as granted (main request), or alternatively, that the decision under appeal be set aside and the patent be maintained in amended form on the basis of one of the sets of claims filed as first and second auxiliary requests with the reply to the statement setting out the grounds of appeal.

For the further course of the oral proceedings, in particular the issues discussed with the parties, reference is made to the minutes.

The present decision was announced at the end of oral proceedings and is based on the following prior-art documents:

D1: EP 1 513 732 B1;

D2: EP 1 396 435 A1.

III. Independent **claim 1 of the main request**, corresponding to claim 1 of the patent as granted, reads as follows:

"A reclosable opening device (3, 3') for a sealed package (1) of a pourable food product, said opening device (3, 3') having an axis (A), and comprising:

- a frame (10) fitted about a pierceable portion (4) of said package (1), and defining a through pour opening (11) coaxial with said axis (A);
- a removable threaded cap (12) that screws onto said frame (10) to close said pour opening (11);
- a tubular cutter (15) engaging said pour opening (11) and having, at one axial end, cutting means (31) which cooperate with said pierceable portion (4) to unseal said package (1);
- first connecting means (13) connecting said cap (12) to said cutter (15), and which, in use, as the cap (12) is unscrewed off the frame (10), push the cutter (15) towards said pierceable portion (4); and
- second connecting means (14) connecting said frame (10) to said cutter (15), and which, in use, feed the cutter (15) along a predetermined piercing path (P) through said pierceable portion (4) in response to unscrewing of said cap (12); wherein said piercing path (P) of the cutter (15), during the unscrewing of said cap (12) off said frame (10), comprises a first portion (P1) of pure translation along said axis (A); said reclosable opening device (3,3') being characterized in that said first portion (P1) of said piercing path (P) of said cutter (15) is followed by a second portion (P2) having both an axial component of motion and a rotary component of motion about said axis (A)."

IV. The opponent argued in the appeal proceedings essentially as follows, whereby the party's arguments are dealt with in more detail in the reasons for this decision:

The subject-matter of claim 1 of the main request is not new over the content of the disclosure of document D1.

Even if the features of the characterizing portion were to be considered as new, still the subject-matter of claim 1 of the main request lacks inventive step, because these are taught by D1 alone or in combination with D2.

V. The patent proprietor argued in the appeal proceedings essentially as follows, whereby the party's arguments are dealt with in more detail in the reasons for this decision:

D1 fails to disclose the features of the characterising portion of claim 1 of the main request.

Starting from D1, these features are not obvious, because D1 explicitly teaches away from implementing this particular type of piercing path.

The combination of D1 with the teaching of D2 is also not leading to the claimed subject-matter, but rather to a piercing path deprived of any first portion of pure translation.

Reasons for the Decision

1. *Claim 1 of the main request - Novelty*

It is undisputed that D1 discloses all the features of the preamble of claim 1 of the main request, and in particular that during the unscrewing of the cap (1, see figure 2) off the frame (2, see figure 3), the cutter moves along a piercing path which comprises a first portion of pure translation (see column 11, lines 9-11).

It is also undisputed that D1 discloses a second portion of the piercing path having only a rotary component of motion (see column 12, lines 4-17).

1.1 The opponent argues that this second portion of the piercing path also comprised an axial component of motion, because claim 1 did not foresee the complete piercing path P to be limited to unscrewing the lid, as the phrase "when the lid (12) is unscrewed from the frame (10)" in the preamble thereof only referred to the first portion of the piercing path P1.

The characterizing part of claim 1, which related to the second portion P2, merely contained the determination that P2 followed P1, leaving thereby open whether P2 occurred during unscrewing or not.

The piercing path disclosed in D1 also did not stop in the condition of figure 8, when unscrewing was completed, but continued with the steps shown in figures 9 and 10, i.e. during re-closure, through

screwing, of the cap.

- 1.2 The Board disagrees, as claim 1 clearly defines the means acting on the cutter and moving it, and the conditions under which they operate.

There are first connecting means (see the preamble of claim 1) connecting the cap to the cutter in such a way that as the cap is **unscrewed** from the frame the cutter is pushed towards the pierceable portion.

There are also second connecting means, connecting the frame to the cutter, feeding the cutter along a predetermined piercing path (P) through said pierceable portion in response to the **unscrewing** of the cap.

As a consequence of that, a skilled reader would understand that the phrase "when the lid (12) is unscrewed from the frame (10)" refers to the complete path of the cutter, i.e. both portions of the piercing path of claim 1 are obtained in response to unscrewing of the cap.

In this context the board notes that both parties concur that the axial movement of the cutter shown in figures 9 and 10 of D1 is not achieved through unscrewing of the cap (see column 13, lines 8-10).

As a consequence of that, this axial movement during the first reclosure of the device (screwing, see the appealed decision, point II.2.2) cannot be considered as being identical with the second portion of the piercing path of claim 1.

- 1.3 The opponent also argues that claim 1 of the main request does not exclude that the second portion of the

piercing path may have an initial phase in which the rotary component of motion is zero, and a following phase in which the axial component is zero.

Based on this interpretation the opponent argues that such pure vertical movement followed by a pure rotary movement in D1 is novelty destroying.

This was because a first portion of the vertical movement shown in D1 would correspond to the claimed first portion of the piercing path, a second portion of the pure vertical movement would represent the initial phase of the claimed second portion of the piercing path, and the pure rotary movement of D1 would correspond to the following phase of the the second portion of the piercing path.

- 1.4 The Board disagrees. Claim 1, by stipulating that the second portion of the piercing path has **both** an axial component and a rotary component of motion excludes the situations, mentioned by the opponent and disclosed in D1, in which one of these components is not present.
- 1.5 D1 therefore fails to disclose that the second portion of the piercing path has an axial component of motion in addition to a rotary component motion.

As a consequence of that claim 1 of the main request is new over D1.

2. *Inventive step*

2.1 *Effect - problem to be solved*

The opponent argues that the above identified distinguishing features (see point 1.5) achieve the

technical effect that the cut-off portion is folded perpendicularly to the opening at the end of the piercing path.

The Board notes that this effect is mentioned at column 9, lines 24-28 of the patent in suit.

The problem to be solved is formulated by the opponent as how to reliably achieve that already at the end of the piercing path (i.e. when the device is opened for the first time) the cut-off portion does not interfere with pouring.

2.2 *Discussion of inventive step - D1 alone*

2.2.1 The opponent notes that D1 does not only disclose that the cutter is first axially inserted and then purely rotated to cut.

D1 also discloses that by means of further axial movements of the cutter, the cut part is pushed further into the container (see paragraph [0018] and figures 9 and 10) such that it does not interfere with pouring.

Based on that the opponent argues that D1 itself prompts the skilled person to push the cut part away from the opening already at the end of the first unscrewing of the cap. This would be easily achieved by inclining downwardly the ribs 19 shown in figure 3 of D1.

With only this straightforward modification the skilled person would come to a device having all the features of claim 1 without the exercise of an inventive activity.

2.2.2 The board disagrees.

It is true that D1 itself teaches that the downward movement of the cutter as depicted in figures 9 and 10 is done to push the cut part away from the opening, and that this teaching may attract the attention of a skilled person who looks for a solution to the above-mentioned problem.

However, D1 does not give any hint on how to add such an axial component of motion to the second portion of its piercing path, which is obtained in response to unscrewing of the cap, because in D1 this axial component is achieved through a screwing motion of the cap.

In other words D1 does not prompt the skilled person towards inclining downwardly the ribs 19 shown in figure 3.

In addition, even if the skilled person would recognize, on the basis of its general technical knowledge, that such a modification would add an axial component of motion to the second portion of the piercing path of D1, the Board considers that such a modification would not reliably fold the cut pierceable portion away from the opening.

This is because ribs 19 interact with ribs 21 (see figure 4) of the cutter to realize a rotation of nearly 360° (see column 12, lines 9-12). Inclining the ribs 19 would therefore add axial pressure to the cutter (pushing the pierceable portion away from the opening) only during an initial phase of this rotation. This would not guarantee that at the end of unscrewing the

cutted portion is reliably pushed away from the opening.

As a consequence of that the subject-matter of claim 1 of the main request is considered as being inventive over the disclosure of document D1.

2.3 *Discussion of inventive step - combination of D1 with D2*

2.3.1 The Board concurs with the opponent who puts forward that D2 also explicitly addresses the issue that the cut-off portion should not interfere with pouring (see column 7, lines 32-38).

Folding away said cut-off portion from the opening is achieved, according to the teaching of D2, by a piercing path having both an axial component and a rotary component, as claimed in the characterizing portion of claim 1 of the main request.

The axial component of the piercing path is made possible in a rather straightforward way, namely by connecting means comprising an inclined portion.

Thus, the skilled person **could, in principle,** solve the problem by a combination of D1 and D2.

According to the opponent, the skilled person **would** immediately recognise the advantages of this teaching and would have no practical difficulties in applying it to the device disclosed in D1. In this way he would arrive at the subject-matter of claim 1 of the main request without having to exercise any inventive activity.

2.3.2 The Board disagrees. The cap of D2 is screwed onto the frame, whilst the tubular cutter is screwed inside the frame. Based on this configuration, the piercing path of the cutter is in spiral form.

The skilled person would not apply this teaching to the device of D1 because this type of path is considered disadvantageous in D1 (see in particular paragraph 3).

On top of that, the application of the teaching of D2 to the device of D1, without hindsight of the claimed invention, would lead the person skilled in the art to replace the two distinct portions of the piercing path of the cutter of D1 with a single spiral movement (as in D2) and to adopt the profile of the cutting edge of the cutter shown in D2.

Such an alleged combination would therefore lead the skilled person away from the solution claimed in claim 1.

2.4 For the above-mentioned reasons the Board considers that the subject-matter of claim 1 involves an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

K. Poalas

Decision electronically authenticated