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

Case Number: T 0882/15 - 3.2.07

Application Number: 09168013.2

Publication Number: 2287082

IPC: B65D5/74, B65D5/06

Language of the proceedings: EN

Title of invention:

Multilayer sheet packaging material for producing sealed packages of pourable food products

Patent Proprietor:

Tetra Laval Holdings & Finance S.A.

Opponent:

SIG Technology AG

Headword:

Relevant legal provisions:

EPC Art. 52, 54, 56

Keyword:

Novelty - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 0882/15 - 3.2.07

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

Appellant: SIG Technology AG
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
16 March 2015 concerning maintenance of the
European Patent No. 2287082 in amended form.**

Composition of the Board:

Chairman G. Patton
Members: K. Poalas
G. Weiss

Summary of Facts and Submissions

- I. Appellant (opponent) lodged an appeal in the prescribed form and time limit against the interlocutory decision of the opposition division maintaining European patent No. 2 287 082 in amended form.
- II. Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step).
- III. The opposition division found that the set of claims filed as third auxiliary request during the oral proceedings meets the requirements of the EPC.
- IV. Oral proceedings took place before the Board on 17 September 2018. For the course of the oral proceedings, in particular for the requests and the matters discussed, reference is made to the minutes.

The appellant requested
that the decision under appeal be set aside and
that the European patent No. 2 287 082 be
revoked.

The respondent requested that the appeal be dismissed
and that the patent be maintained as upheld by the
opposition division (main request) or
alternatively, that the patent be maintained on the
basis of the set of claims filed as auxiliary
request with letter dated 4 December 2015.

- V. The independent claim 1 of the main request, i.e. as upheld by the opposition division, said claim corresponding to the combination of claims 1 and 27 of the patent as granted, i.e. to the combination of

claims 1 and 27 as originally filed reads as follows:

"1) A sealed package (1), for pourable food products, formed by folding and sealing a multilayer packaging material (M) comprising:

- at least one base layer (11) for imparting stiffness;
- a number of lamination layers (12) applied to and covering both sides of said base layer (11); and
- a removable portion (10, 10', 10'', 10''', 10''''', 10''''''') which, in use, can be detached partly from the rest of said packaging material (M) along at least one arc-shaped cutting line (20, 20''''''') and folded at a folding zone (21, 81) extending between the opposite ends of said cutting line (20, 20''''''') so as to free a pour opening (9) by which to pour the food product from said package (1);

said package (1) comprising a reclosable opening device (4) having an axis (A) and in turn comprising:

- a frame (40) fitted about said removable portion (10, 10', 10'', 10''', 10''''') and defining a pouring spout (41);
- a removable threaded cap (42) that screws onto said frame (40) to close said pouring spout (41);
- a tubular cutter (43) engaging said pouring spout (41) and having, at one axial end, cutting means (60) which cooperate with said removable portion (10, 10', 10'', 10''', 10''''') to partly detach it along said cutting line (20, 20''''''') from the rest of the packaging material to unseal said package (1) and define said pour opening (9);
- first connecting means (44) connecting said cap (42) to said cutter (43), and which, in use, as the cap (42) is unscrewed off the frame (40), exert rotational thrust on the cutter (43); and
- second connecting means (45) connecting said frame (40) to said cutter (43), and which, in use, feed the

cutter (43) along a predetermined cutting path through said removable portion (10, 10', 10'', 10''', 10''''') in response to unscrewing of said cap (42); characterized in that said removable portion (10, 10', 10'', 10''', 10''''', 10''''''') comprises:

- a central area (25) made of whole packaging material, and which, in use, in any case, remains attached to the rest of the packaging material (M) through a permanent bridge (26) defined by said folding zone (21, 81); and
- a peripheral area (27, 27', 27'', 27''', 27''''', 27''''''') interacting in use with said cutting means (60), extending around part of said central area (25), containing said cutting line (20, 20''''''') and including at least one pre-laminated opening (30, 30', 30'', 30''', 30a''''', 30b''''', 30c''''', 30'''''''), which is formed by a through slot (31, 31', 31'', 31''', 31a''''', 31b''''', 31c''''', 31''''''') provided at least in said base layer (1) and covered by one or more of said lamination layers (12)".

VI. The following documents referred to in the present decision have been filed during the opposition proceedings:

D2: EP 1 623 931 A1 and

D3: DE 38 08 303 A1.

VII. The appellant argued as follows:

Claim 1 of the main request - Novelty

Claim 1 is not new with respect to D2 as in addition to the other features of claim 1 being known from D2 also the term "central area made of whole packaging material" of claim 1 is reproduced by the peripheral protrusion 27 shown in D2, see claims 1 and 2,

paragraphs 35 and 36 and figures 2, 5, 6 and 7.

Claim 1 of the main request - Inventive step

A hint towards the characterising features of claim 1 is to be found in the embodiment depicted in figures 6a and 6b of D3. A combination of the sealed package known from D2 with the teaching derivable from the embodiment according to said figures renders the subject-matter of claim 1 not inventive.

VIII. The respondent argued as follows:

Claim 1 of the main request - Novelty

The sealed package known from D2 discloses a spout hole 10 and a protrusion 27 of paper material protruding into spout hole 10 and **located on the periphery thereof**.

Hence, the characterising part of claim 1 is not known from D2.

Claim 1 of the main request - Inventive step

Claim 1 differs from D2 in the features of the characterizing portion.

Neither D2 nor D3 contain any hint or suggestion to use the teachings of the embodiment of figures 6a, 6b of D3 in combination with D2. On the contrary, D3 discloses a solution which is incompatible with the content and the aims of D2, see column 2, lines 20-36 of D2.

Accordingly, the person skilled in the art would not combine the teaching of D2 with the teaching of D3.

Even admitting that the person skilled in the art starting from D2 would consider D3, the problem of which part of such document to select in order to do the combination with D2 would be raised. In order to arrive at the claimed solution, the person skilled in the art should select the peripheral area with pre-laminated openings of the embodiment of figures 6a and 6b of D3 and ignore that such peripheral area extends along the entire central area of whole packaging material and is completely severed in use during the first opening of the package. This would go against the teaching of D3 concerning said embodiment.

Reasons for the Decision

1. *Claim 1 of the main request - Novelty*
 - 1.1 The Board considers that a central area of the removable portion is an area covering the geometrical center of the removable portion and/or extending at the vicinity of the geometrical center of the removable portion. In any case, such an area is not located, i.e. does not extend only at the periphery of the removable portion.
 - 1.2 In D2 there is provided a cut and opened piece fall prevention mechanism 26, which is defined by a protrusion 27 of paper material protruding into the spout hole 10 and **located on the periphery thereof**, see claim 2 ("provided on a part of a periphery of the spout hole"), paragraph 32 ("formed ... on a part of the periphery of the spout hole"). Also none of the bridges 27 shown in figures 2, 5, 6 and 7 of D2 is depicted as extending into central area of the

removable portion.

- 1.3 Hence, in D2, the removable portion does not comprise a **central area** made of whole packaging material and a peripheral area for cutting interaction, extending around part of the **central area** and including one or more pre-laminated openings.
- 1.4 The appellant argues that the statement in paragraph 36 of D2 that "there is no particular limitations regarding the configuration of the protrusion 27" seen in the light of the information of paragraph 35 that the protrusion length of the embodiment of figure 5 as measured from the periphery of the spout hole is 5 mm implies that a protrusion length may extend into the central area of the removable portion.
- 1.5 The Board cannot accept this argument for the following reasons. Firstly, the statement in the first sentence of paragraph 36 that "there is no particular limitations regarding the configuration of the protrusion 27" is to be read in the context of the whole paragraph 36. The second sentence of said paragraph namely refers explicitly to the different shapes of the protrusions depicted in figures 6(a) to 6(d) of D2. Accordingly, the term "configuration" used in the first sentence of paragraph 36 refers to the shape of the corresponding protrusion and not to its length. Secondly, even if, for the sake of argument, it would be accepted that paragraph 36 refers also to the length of the protrusion, the absence of any (particular) limitation regarding said length cannot be considered as imposing that the protrusion extends from the periphery of the spout hole until the central area of the removable portion.

1.6 For the above-mentioned reasons D2 does not disclose the features of the characterizing portion of claim 1 and thus the subject-matter of claim 1 is novel over the disclosure of D2.

2. *Claim 1 of the main request - Inventive step*

2.1 The sealed package of claim 1 differs from the one known from D2 in the features of the characterizing portion of claim 1, see point 1.6 above.

2.2 The Board judges, in accordance with the argumentation of both parties, that the problem to be solved is the one explained in paragraph 27 of the patent in suit, namely how to provide a sealed package for pourable food products, having a removable portion and a reclosable opening device which interact mutually to consistently produce, in one user movement, a pour opening with a clean-cut edge.

2.3 It has therefore to be assessed whether the skilled person starting from the sealed package known from D2 and seeking to solve the above-mentioned problem would take D3 and especially the embodiment according to figures 6a and 6b into consideration at all. In case it would take D3 into consideration it would then have to be assessed whether it would be lead by the teaching of D3 concerning the embodiment according to figures 6a and 6b to the subject-matter of claim 1 without the exercise of an inventive activity.

2.4 Figures 6a and 6b of D3 relate to a sealed package for pourable food products disclosing a removable portion designed to interact in use with a **push-in opening device**, see claim 1 and column 6, lines 12-18.

- 2.5 The removable portion of said embodiment has a central area made of whole packaging material and an elliptical peripheral area for cutting interaction, extending around the entire central area and formed by five pre-laminated openings separated from one another by **five temporary bridges** of whole packaging material. Said bridges are **completely severed** during the first opening of the package by the **push-in opening device**. The whole removable portion is thereby completely removed from its place during the first opening of the package. There is therefore no bridge connection remaining between the removable portion and the rest of the package after the first opening of the package.
- 2.6 The main concern of the embodiment of figures 6a, 6b of D3 is the correct shaping of the packages and the integrity thereof at the inner coating, whereby the forming of air pockets between the inner layers is prevented, see column 3, lines 23-29. D3 is completely silent concerning the provision of a pour opening with a clean-cut edge.
- 2.7 Furthermore, **D2** is concerned with **rotary opening action**, whereas **D3** shows a **push-in action**. Neither D2 nor D3 contain any hint or suggestion to apply the teaching of the embodiment of figures 6a, 6b of D3 to the sealed package known from D2. On the contrary, D2 explicitly states that "a push-in type opening blade is regarded as inferior to the rotary type opening blade in terms of cutting property", see paragraphs 7 and 8 of D2.
- 2.8 Moreover, the adoption of a push-in opening device according to the embodiment of figures 6a and 6b of D3 entails a **complete cut** of the entire peripheral area of the removable portion. Such a solution is incompatible

with the content and the aims of D2.

2.9 In view of the above, the person skilled in the art would not combine the teachings of D2 and D3. For these reasons already inventive step of the subject-matter of claim 1 is acknowledged.

2.10 In case of following, for the sake of argument, the appellant's allegation, that the person skilled in the art would consider D3, the problem immediately arise, which embodiment of D3 to select in order to do the combination with the sealed package of D2. Furthermore, the adoption of a closed loop cutting line is an essential feature of the solution disclosed in D3, as it directly derives from the adoption of a push-in type opening cutter. Therefore, in order to arrive at the claimed solution, the person skilled in the art should select, without any pointer in this respect present in D3, the peripheral area with pre-laminated openings of the embodiment of figures 6a and 6b of D3 and **ignore** that such peripheral area extends along the entire central area of whole packaging material, said central area being connected to the rest of the package via five temporary bridges, whereby said entire central area and the bridge are **completely severed** in use during the first opening of the package. The skilled person would have then to modify the disclosure of D3 so as to render the oval removable portion circular so as to be suitable for a rotary type opening device. He would also have to reduce the teaching of D3 concerning five bridges to only one as disclosed in D2, to also render this temporary bridge as a non-severed bridge, i.e. select only a part of the teaching of D3 by abandoning the teaching of the retaining pin, and to finally extend this bridge so that it covers the whole central area, keeping at same time the rotary cutting

system known from D2. The Board is convinced that the skilled person would only do so on the basis of hindsight knowledge of the present invention.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated