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**Datasheet for the decision  
of 2 May 2019**

**Case Number:** T 0893/15 - 3.2.03

**Application Number:** 04252257.3

**Publication Number:** 1468936

**IPC:** B65D75/58, B65D77/00

**Language of the proceedings:** EN

**Title of invention:**  
Resealable food container

**Applicant:**  
Intercontinental Great Brands LLC

**Headword:**

**Relevant legal provisions:**  
EPC Art. 56

**Keyword:**  
Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0893/15 - 3.2.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.03**  
**of 2 May 2019**

**Appellant:** Intercontinental Great Brands LLC  
(Applicant) 100 Deforest Avenue  
East Hanover, NJ 07936 (US)

**Representative:** Forrest, Stuart  
WP Thompson  
138 Fetter Lane  
London EC4A 1BT (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 12 November  
2014 refusing European patent application No.  
04252257.3 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** C. Donnelly  
**Members:** B. Miller  
D. Prietzel-Funk

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the examining division to refuse European Patent application No. 04252257.3. The applicant (hereinafter: the "appellant") filed an appeal against this decision.
- II. In its decision the examining division held that the subject-matter of claim 1 of the main request lacked an inventive step, the subject-matter of auxiliary request 1 lacked clarity and that of claim 1 of auxiliary request 2 did not comply with the requirements of Article 123(2) EPC.
- III. The appellant requested that the decision be set aside and that the case be remitted to the examining division with an instruction to issue a communication under Rule 71(3) EPC for the claims of the main request, alternatively for the claims of the first auxiliary request or second auxiliary request.
- IV. Claim 1 of the main request reads as follows:
- "A polygonal shaped food container (10) comprising:  
a frame having the polygonal shape; said container having a top (12), a bottom (13) and sides (14a, 14b) connecting the top and bottom;  
a wrapper (11) surrounding said frame (30), said wrapper forming the top (12), sides (14a, 14b) and bottom (13) of the container;  
characterized in that  
the frame forming the polygonal shape of the container which contains food products such as cookies and the like;

said top having an access opening (18) to provide hand access to food products contained within the frame (30) to enable the removal of individual food products contained within the container through the opening (18); and  
a sealing layer (20), adhesively sealed to said top (12) around said opening (18), said sealing layer (20) including a tab (22) which can be grasped by a user, said sealing layer (20) being releasable when said tab (22) is pulled in a direction away from said side to in turn pull and thereby release at least a portion of said sealing layer to provide the hand access to said top (12) access opening and reclosable against said top to seal said opening (18) when said sealing layer (20) is moved back against said top (12)."

Dependent claims 2 to 6 define preferred embodiments of the polygonal shaped food container of claim 1.

V. The following prior art is cited in the contested decision:

D1: US 3 740 238 A

D2: FR 1 327 914 A

D3: PATENT ABSTRACTS OF JAPAN, vol. 1997, no. 10,  
31 October 1997 & JP 09 156677 A

VI. The reasons for the decision under appeal, as far as relevant to the Board's decision, may be summarised as follows:

D1 discloses the preamble of claim 1 and represents the closest prior art. The skilled person was aware of packaging with a resealable cover, as illustrated for example by D3, and would have had no difficulty in

modifying the packaging known from D1 in order to comprise the resealable cover known from D3. Therefore the subject-matter of claim 1 of the main request was obvious.

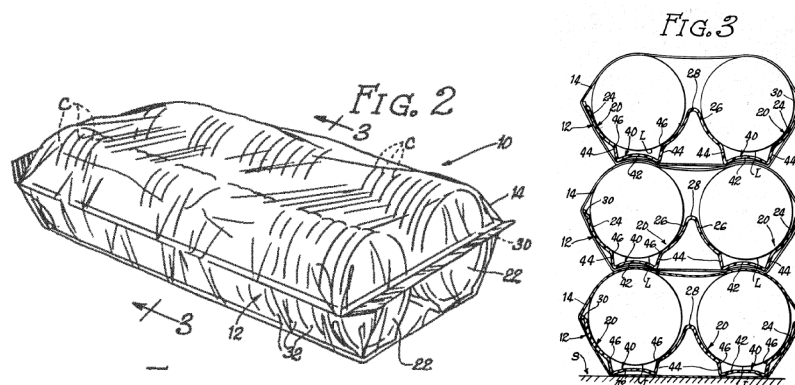
VII. The appellant's arguments may be summarised as follows.

The skilled person would not combine the teachings of D1 and D3, since the teaching of D3 could not be easily put into practice in a packaging disclosed by D1. Even if the skilled person did combine the teachings of D1 and D3, he would not arrive at the subject-matter of claim 1, since the combined teachings of D1 and D3 do not suggest that the food content is contained within the frame defining the shape of the container.

## **Reasons for the Decision**

Main request - Inventive Step (Article 56 EPC)

1. The Board agrees with the examining division and the appellant that D1 is a suitable starting point for assessing inventive step, since it also relates to a food packaging.
2. D1 discloses (column 2, line 58 - column 3, line 8) a food package (10) comprising a plastic tray (12) and a wrapper surrounding the tray and forming the top of the package, which contains cookies, see figures 2 and 3 below.



Figures 2 and 3 of D1

3. The subject-matter of claim 1 differs from D1 in that
- a) said top having an access opening to provide hand access to the food products to enable the removal of individual food products contained within the container through the opening; and
  - b) a sealing layer, adhesively sealed to said top around said opening,
  - c) said sealing layer including a tab which can be grasped by a user,
  - d) said sealing layer being releasable when said tab is pulled in a direction away from said side to in turn pull and thereby release at least a portion of said sealing layer to provide the hand access to said top access opening and reclosable against said top to seal said opening when said sealing layer is moved back against said top.
4. The distinguishing features a) to d) solve the problem of providing a container which can be opened and resealed.

The objective technical problem to be solved starting from D1 can therefore be regarded as to provide a food container which can be opened and resealed.

5. D3 (see abstract; figure 4 and 5) discloses a resealable container and therefore demonstrates that resealable containers with a sealing layer were known in the art at the priority date.

figure 4 of D3

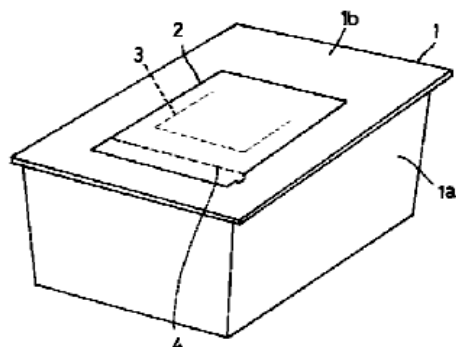
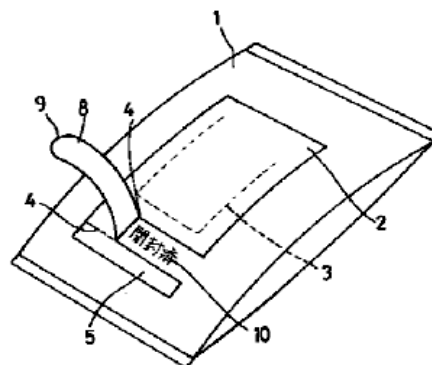


figure 5 of D3



6. According to the reasoning in point 10.1 of the contested decision, using a sealing layer as proposed in D3 for providing an opening to a packaging which can be easily closed and opened again, is an obvious modification of the packaging of D1, since the benefits are immediately evident for the skilled person and further minor adaptations to the packaging of D1 would be carried out by experimental routine once the skilled person had come to the obvious conclusion to use a sealable layer as described in D3 in a packaging as disclosed in D1 to solve the above problem.

7. However, the Board agrees with the reasoning of the appellant, that the use of a resealable layer on the top surface of the packaging of D1 is not obvious for the following reasons.

- 7.1 D1 concerns the design of a cookie tray. A tray is designed to present the cookies such that they are easily removed from the tray by the consumer. The



wrapping film is made from a loose layer of very thin flexible wrap (column 2, lines 46 to 49, column 3, lines 42 to 43) which is clearly intended to be simply removed and disposed of.

D3 on the other hand does not disclose that the container comprises a frame structure or a wrapped tray nor that the container is intended for packaging food products.

Therefore, the skilled person has no motivation to combine the teachings of documents D1 and D3, since they neither address the same type of packaging nor the same type of product to be packaged.

7.2 Even if the skilled person were to combine the teachings of D3 and D1 by placing a resealable layer known from D3 on the top surface of the packaging of D1, he would not arrive at the subject-matter of claim 1 of the main request.

According to D1 the cookies are not contained within a frame as explicitly required by claim 1, but sit on a tray. Therefore, the skilled person would also have to modify the tray by extending the height of the side walls to form a frame in order for the food content to be contained within the frame.

This modification of the packaging of D1 would go against the teaching of D1 to provide a space between the cookies of the stacked packages by using a tray comprising a specifically shaped bottom (see last lines of claim 1, figure 3) which receives nestingly the uppermost edge of a stack of cookies in an underlying package (col. 3, lines 39 to 42; figures 3, 4, 7 and 8). This teaching of D1 would be rendered superfluous

if the side walls of the tray were extended to form a frame containing the cookies as required by claim 1, since cookies contained within a frame would not be in direct contact with the bottom of the tray.

8. For these reasons, the Board concludes that the subject-matter of claim 1 of the main request is not obvious when starting from D1 and therefore fulfils the requirements of Article 56 EPC.

9. Further remarks

9.1 Claim 1 of the main request defines the wrapper as a "wrapper (11) surrounding said frame (30), said wrapper forming the top (12), sides (14a, 14b) and bottom (13) of the container". This feature seems to render the wording of claim 1 unclear, since it is evident from the figures of the application, that the sides and the bottom of the container are formed by the frame. The wording of claim 1 as originally filed seems to define the wrapper more accurately and clearly as:

"a wrapper surrounding said frame, said wrapper forming a top of the container".

9.2 Finally, some reference signs seem to be missing from claim 1.

**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 for further prosecution.

The Registrar:

The Chairman:



C. Spira

C. Donnelly

Decision electronically authenticated