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**Datasheet for the decision
of 3 June 2020**

Case Number: T 1684/15 - 3.2.07

Application Number: 12738200.0

Publication Number: 2714548

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Language of the proceedings: EN

Title of invention:
METHOD AND PACKAGE FOR FLAT ARTICLES

Applicant:
Nuova Sima S.p.A.

Headword:

Relevant legal provisions:
EPC Art. 56, 84, 113(1), 116(1), 123(2)
EPC R. 43(1)
RPBA 2020 Art. 12(8)

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

Decisions cited:

Catchword:



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Case Number: T 1684/15 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 3 June 2020

Appellant: Nuova Sima S.p.A.
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Representative: Dall'Olio, Christian
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 10 March 2015
refusing European patent application No.
12738200.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: K. Poalas
V. Bevilacqua

Summary of Facts and Submissions

- I. The applicant's appeal lies against the decision of the examining division refusing European patent application 12 738 200.0 being published as international publication WO-A-2012/172485.
- II. In its decision, the examining division held that the subject-matters of method claim 1 and of product claim 7 of the applicant's sole request do not involve an inventive step over the teaching of D1 (EP 1 323 645 A2), said last representing the closest prior art, in combination with the teaching of D2 (FR 2 621 895 A1).
- III. At the outset of the proceedings the applicant sought the grant of a patent on the basis of the main request or of the auxiliary request, both filed with the statement setting out the grounds of appeal. The applicant also requested that the appeal fee be reimbursed.
- IV. In a telephone conversation between the applicant's representative and the rapporteur on 13 January 2020 the applicant was informed that the Board could not establish a substantial procedural violation as argued by the applicant and that it intended therefore to not allow the applicant's request for reimbursement of the appeal fee. Clarity objections concerning the wording of independent claims 1 and 7 were discussed with the applicant. The applicant was further informed about the Board's provisional positive opinion regarding the inventive step of the independent claims 1 and 7 of the main request. The eventual filing of amended claims and of an adapted description was also discussed with the

applicant.

- V. With its letter dated 31 March 2020 the applicant withdrew its request for reimbursement of the appeal fee and requested as its main request

that the decision under appeal be set aside and that a patent be granted on the basis of the description and claims filed with said letter and of the drawings as originally filed.

- VI. The applicant's arguments contesting the decision of the examining division are dealt with in detail in the reasons for the decision.

- VII. Claims 1 and 7 of the main request read as follows:

"1. A method for packing at least a flat article, the article comprising two opposite surfaces, upper and lower, having a quadrangular geometry and a plurality of lateral flanks, the method comprising the following steps:

- supplying a pair of blanks (3, 4) made of a packing material, each comprising a central region (5); an upper flap (6) connected to a first side of the central region (5) by means of a first crease line; a lower flap (7) connected to a second side, opposite the first side, of the central region (5) by means of a second crease line; a first lateral flap (8), connected to a third side of the central region (5) by means of a third crease line, identifying a free end (8a) opposite the third crease line; a pair of first folds, an upper fold (80) and a lower fold (81), connected by crease lines to two sides of the first lateral flap (8) which folds (80, 81) are opposite one another and perpendicular to the third crease line; a second

lateral flap (9) connected to a fourth side, opposite the third side, of the central region (5) by means of a fourth crease line, identifying a free end (9a)

opposite the fourth crease line;

- covering two opposite lateral flanks of the article (2) with the central region (5) of each blank (3, 4);

- partial covering of the opposite surfaces of the article (2) with the upper flap (6) and lower flap (7) of each blank (3, 4);

- covering the remaining lateral flanks of the article (2) with the first and second lateral flaps (8, 9) of each blank (3, 4) such as to superpose the free ends (8a, 9a) of the lateral flaps (8, 9) of a blank (3) with corresponding free ends (8a, 9a) of the lateral flaps (8, 9) of the other blank (4), such as to identify two zones (L₁) of first lateral superposing;

- stabilising of the superposing zones (L₁, L₂, A) by stabilising means (10, 11);

characterized in that:

- each supplied blank additionally comprises a pair of second folds, an upper fold (90) and a lower fold (91), connected by crease lines to two sides of the second lateral flap (9), which folds (90, 91) are opposite one another and perpendicular to the fourth crease line;

- the method provides partial covering of the opposite surfaces of the article (2) with the first folds (80, 81) and the second folds (90, 91) of each blank (3, 4), such as to define, for each surface of the article (2), four zones (A) of corner superposing in which one of the flaps, upper (6) and lower (7), is arranged superiorly or inferiorly of one of the first folds (80, 81) or the second folds (90, 91), and two zones (L₂) of a second lateral superposing, adjacent to the zones (L₁) of first lateral superposing, in which the first folds (80, 81) and the second folds (90, 91) of a blank (3) are arranged superiorly or inferiorly of the

corresponding first folds (80, 81) and second folds (90, 91) of the other blank (4)."

"7. A pack, comprising:

at least a flat article (2) identifying two opposite surfaces, upper and lower, having a quadrangular geometry and a plurality of lateral flanks;
a pair of blanks (3,4) made of a packing material, each comprising a central region (5); an upper flap (6) connected to a first side of the central region (5) by means of a first crease line; a lower flap (7) connected to a second side, opposite the first side, of the central region (5) by means of a second crease line; a first lateral flap (8), connected to a third side of the central region (5) by means of a third crease line, identifying a free end (8a) opposite the third crease line; a pair of first folds, an upper fold (80) and a lower fold (81), connected by crease lines to two sides of the first lateral flap (8) which are opposite one another and perpendicular to the third crease line; a second lateral flap (9) connected to a fourth side, opposite the third side, of the central region (5) by means of a fourth crease line, identifying a free end (9a) opposite the fourth crease line;

with two opposite lateral flanks of the article (2) covered by the central region (5) of each blank (3, 4);
with the opposite surfaces of the article (2) partially covered by the upper and lower flaps (6, 7) of each blank (3, 4);

with the remaining opposite lateral flanks of the article (2) covered by a first (8) and a second (9) lateral flaps, of each blank (3, 4) such as to superpose the free ends (8a, 9a) of the lateral flaps (8, 9) of a blank (3) with the corresponding free ends (8a, 9a) of the lateral flaps (8, 9) of the other blank

(4), such as to define two zones (L_1) of a first lateral superposing;
stabilising means (10, 11) of the superposing zones (A, L_1 , L_2);
characterized in that:
- each blank additionally comprises a pair of second folds, an upper fold (90) and a lower fold (91), connected by crease lines to two sides of the second lateral flap (9), which are opposite one another and perpendicular to the fourth crease line;
- the opposite surfaces of the article (2) are partially covered by the first folds (80, 81) and the second folds (90, 91) of each blank (3, 4) such as to define, for each surface of the article (2), four zones (A) of corner superposing in which one of the upper (6) and lower (7) flaps is arranged superiorly or inferiorly of one of the first folds (80, 81) or second folds (90, 91), and two zones (L_2) of second lateral superposing, adjacent to the zones (L_1) of first lateral superposing, in which the first folds (80, 81) and the second folds (90, 91) of a blank (3) are arranged superiorly or inferiorly of the corresponding first folds (80, 81) and second folds (90, 91) of the other blank (4)."

Reasons for the Decision

1. *Procedural aspects*

1.1 The present case is ready for decision without the need of holding oral proceedings in accordance with Article 12(8) RPBA 2020.

- 1.2 The principle of the right to be heard pursuant to Article 113(1) EPC is observed since that provision only affords the opportunity to be heard and the appellant's submissions are fully taken into account.
 - 1.3 The appellant's request for oral proceedings pursuant to Article 116(1) EPC is auxiliary to its main request that the decision under appeal be set aside, that the case be remitted to the examining division and that the examining division be ordered to grant a patent on the basis of the appellant's main request. Thus, since the appellant's main request is allowed by the Board, the aforementioned auxiliary request does not need to be dealt with.
2. *Amendments - Articles 123(2) and 84 EPC*
- 2.1 Independent claims 1 and 7 have been amended in order to comply with Rule 43(1) EPC in the light of D3 (EP 0 994 043), said last being considered by the applicant as representing the closest prior art.
 - 2.2 References to the disclosures of the prior art documents D1, D2 and D3 has been introduced on page 4 of the description. On page 5 of the description the method steps of the independent claim 1 have been erased and only a reference to this claim has been introduced. On page 7 of the description the features of the independent claim 7 have been erased and only a reference to this claim has been introduced.
 - 2.3 The Board considers that the above-mentioned amendments are in compliance with the requirements of Articles 123(2) and 84 EPC.

3. *Inventive step - Article 56 EPC*

3.1 In the impugned decision, the examining division considered that D1 represents the closest prior art and that the skilled person starting from the blank depicted in figures 1b and 5 of D1 used for packing and protecting stacked flat articles and seeking to solve the problem of protecting all edges of said stacked flat article would be led by the teaching of D2 to the subject-matter of claims 1 and 7 without the need to exercise an inventive activity.

3.2 It has therefore to be assessed whether the above-mentioned examining division's finding was based on a correct application of the "problem-solution-approach".

3.3 D1 discloses a method for packing stacked flat articles, *i.e.* tiles, said method comprising the step of supplying a **single blank** having **three central panels** 2, 2', each of said central panels being connected via crease lines 4 to corresponding upper and lower pairs of panels 5. When said panels are folded along their crease lines 3, 4 then said single blank builds a **single U-shaped protective element**. Said single element then fully covers three edges of the stacked flat articles, wherein the superposing upper and lower pairs of panels are "stabilised" by means of adhesive and/or straps, see paragraphs 11 and 13 and figures 1b and 5 of D1. At least a large part of the fourth edges of the tiles remains thereby uncovered, *i.e.* unprotected, see figures 2, 3, 5 and 6.

Claim 1

3.4 The method of claim 1 differs from the method known from D1 in that a **second, identical U-shaped single**

blank is supplied and placed along the edges of the stacked flat articles, wherein the ends of the **two** U-shaped single blanks overlap having their ends "stabilised".

- 3.5 In this way all four edges of the stacked flat articles, *i.e.* of the tiles are protected.
- 3.6 The problem to be solved may therefore be regarded as how to protect the remaining, unprotected (part of) edges of the stacked flat articles, *i.e.* of the tiles packaged according to the method known from D1.
- 3.7 The Board follows therefore, for the sake of argument, the examining division in so far considering that D1 represents the closest prior art, that the problem to be solved may be regarded as how to protect the remaining, unprotected (part of) edges of the stacked flat articles, *i.e.* of the tiles when using the blank disclosed in D1 and that the skilled person starting from the method known from D1 and seeking to solve the above-mentioned problem would take into consideration the teaching of D2.
- 3.8 D2 teaches thereby the complete covering of all edges of stacked flat articles by using **four blanks**, *i.e.* one blank per article's corner, **each** one of said four blanks having thereby **two central panels 6**, whereby each of said central panels is connected via crease lines 8, 9 to corresponding upper and lower pairs of panels 7, 7', see figures 2, 3a and 3b of D2. When said panels are folded along their crease lines 8, 9, 20 then each single blank builds an **L-shaped protective element**.

- 3.9 Under point II.11.7 of the impugned decision the examining division argues that due to the fact that a plurality of U-shaped blanks as described in D1 are known to the person skilled in the art, it would "consider it as obvious to solve the problem of unprotected edges by covering them with another U-shaped blank, and to do that in an overlapping relationship **as taught in document D2**. The skilled person would thereby arrive at the subject-matter of the method of claim 1 without the exercise of inventive skill" (emphasis added by the Board).
- 3.10 The Board, following the corresponding applicant's arguments, does not agree with the examining division's finding for the following reasons.
- 3.11 Contrary to the above-mentioned argumentation of the examining division, D2 does not teach the skilled person to cover all the edges of the flat articles by using any kind of blanks at hand, namely for example the blank according to the embodiment depicted in figures 1b and 15 of D1. D2 discloses the specific teaching of using the specific **four blanks, each** one of those having **two central panels** 6, each of said central panels being connected via crease lines 8, 9 to corresponding upper and lower pairs of panels 7, 7', as depicted in figures 2, 3a and 3b of D2. Accordingly, the person skilled in the art taking into consideration the teaching of D2 would be prompted by it to use the four blanks disclosed therein and not to combine with each other two of the blanks known from D1.
- 3.12 Moreover, as neither D1, nor D2 teaches or suggests packing of stacked flat articles by using **two blanks, each** one of those having **three central panels**, there is no obvious way by applying the teaching of D2 to the

packing method known from D1, to end up with a packing method supplying **a pair of blanks** having the above-mentioned configuration, *i.e.* as claimed in claim 1.

3.13 The Board notes further that also when starting from D2 as representing the closest prior art and seeking to find an alternative solution for protecting the stacked flat elements, the skilled person would be led by the teaching of the embodiment depicted in figures 1b and 15 of D1 to the use of a **single blank** having **three central panels** and not to a **pair of blanks, each** having **three** central panels, as claimed in claim 1.

3.14 Accordingly, the combination of the teachings of D1 and D2, irrespective of the chosen starting point, does not deprive the subject-matter of claim 1 of inventive step.

3.15 Furthermore, the Board notes that D3 teaches the complete covering of the four edges of stacked flat articles by using **two blanks, each** one of those having **two central panels** 40 and each of said central panels being connected via crease lines to corresponding upper and lower pairs of panels 42, see figures 1 and 2. When said panels are folded along their crease lines then each single blank builds an **L-shaped protective element**. The Board considers that starting from D3 and seeking to find an alternative solution the skilled person would be led by the teaching of D1 to the application of a **single blank** having **three central panels** and by the teaching of D2 to the application of **four blanks, each** one of those having **two central panels** 6, but not to a **pair of blanks, each** having **three central panels**, as required in claim 1.

3.16 For the above-mentioned reasons, the method of claim 1 involves an inventive step over the combination of D1, D2 and D3.

Claim 7

3.17 The above-mentioned considerations apply *mutatis mutandis* to the subject-matter of claim 7. Accordingly, also the the subject-matter of claim 7 involves an inventive step

4. No further objections have been presented by the examining division in the reasons for the decision which would prejudice the granting of the present application.

4.1 The Board sees no reason to raise any further objections.

4.2 As a consequence, the applicant has demonstrated in a convincing manner the incorrectness of the decision under appeal in respect of the main request, so that the patent may be granted in accordance with the main 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 in the following version:

Description, pages

1 - 11 filed as main request with
letter dated 31 March 2020,

Claims

1 - 12 filed as main request with
letter dated 31 March 2020,

Drawings

Figures 1 - 6B as originally filed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated