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**Datasheet for the decision  
of 2 April 2020**

**Case Number:** T 0502/16 - 3.2.07

**Application Number:** 10732423.8

**Publication Number:** 2435314

**IPC:** B65B11/32, B65B19/22, B65B51/10

**Language of the proceedings:** EN

**Title of invention:**

WRAPPING METHOD AND UNIT FOR FOLDING A SHEET OF WRAPPING  
MATERIAL ABOUT A GROUP OF CIGARETTES

**Patent Proprietor:**

G.D Societa' per Azioni

**Opponent:**

Focke & Co. (GmbH & Co. KG)

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(1), 116(1), 54, 56  
RPBA 2020 Art. 12(1), 12(2), 12(8), 15(3)

**Keyword:**

Decision in written proceedings after cancellation of oral proceedings

Main request - Novelty (yes)

Main request - Inventive step (yes)

**Decisions cited:**

T 0003/90

**Catchword:**



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Case Number: T 0502/16 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 2 April 2020**

**Appellant:** G.D Societa' per Azioni  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
22 December 2015 concerning maintenance of the  
European Patent No. 2435314 in amended form.**

**Composition of the Board:**

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

## **Summary of Facts and Submissions**

I. The patent proprietor (appellant) lodged an appeal in the prescribed form and within the prescribed time limits against the interlocutory decision of the opposition division which found that European patent EP 2 435 314 as amended by the then auxiliary request 2 met the requirements of the EPC.

The grounds for opposition invoked were those according to Article 100(a) EPC, *i.e.* lack of novelty and lack of inventive step.

II. The appellant requested

that the decision under appeal be set aside and that the patent be maintained as granted (main request),  
or, in the alternative,  
that the patent be maintained in amended form on the basis of one of the sets of claims being filed as auxiliary requests 1-5 with its statement setting out the grounds of appeal.

The opponent (respondent) requested

that the appeal be dismissed.

III. Upon both parties' corresponding auxiliary requests, they were summoned to oral proceedings to be held on the 11 May 2020.

The respondent announced, with letter dated 26 March 2020, their intention not to attend the scheduled oral proceedings.

IV. Independent claim 1 of the patent as granted) provides:

"A method of folding a sheet of wrapping material about a group of cigarettes, the method comprising the steps of:

feeding the group (2) of cigarettes and the sheet (5) of wrapping material into a pocket (14) of a wrapping conveyor (12),

so the sheet (5) of wrapping material folds into a U inside the pocket (14) and has an outer portion (8) projecting from the pocket (14), and an inner portion (9) resting on a lateral wall (6a) of the group (2) of cigarettes;

folding the inner portion (9) 90° with respect to the lateral wall (6a) of the group (2) of cigarettes, so the inner portion (9) is perpendicular to the lateral wall (6a);

folding the outer portion (8) into an L onto the lateral wall (6a) of the group (2) of cigarettes and onto the inner portion (9) perpendicular to the lateral wall (6a), so as to superimpose the outer portion (8) and the inner portion (9) and impart a tubular shape to the sheet (5) of wrapping material; and

heat sealing the outer portion (8) and inner portion (9) to each other."

Independent claim 13 of the patent as granted provides:

"A wrapping unit for folding a sheet of wrapping material about a group of cigarettes, the unit (11) comprising:

a wrapping conveyor (12) having at least one pocket (14);  
an input station (15) for feeding the group (2) of cigarettes and the sheet (5) of wrapping material into the pocket (14),  
so the sheet (5) of wrapping material folds into a U inside the pocket (14) and has an outer portion (8) projecting from the pocket (14), and an inner portion (9) resting on a lateral wall (6a) of the group (2) of cigarettes;  
a first folding device for folding the inner portion (9) 90° with respect to the perpendicular to the lateral wall (6a);  
a second folding device (21) for folding the outer portion (8) onto the lateral wall (6a) of the group (2) of cigarettes and onto the inner portion (9) perpendicular to the lateral wall (6a), so as to superimpose the outer portion (8) and the inner portion (9) and impart a tubular shape to the sheet (5) of wrapping material; and  
a sealing device (24) for heat sealing the outer portion (8) and inner portion (9) to each other."

In view of the final conclusion taken by the Board in this decision, there is no need to reproduce the independent claims according to the auxiliary requests.

- V. According to the opposition division the main request, corresponding to the patent as granted, was not allowable because the subject-matter of its independent claim 13 lacked novelty over the disclosure of document WO/2007/132330 (D16) (point 12.3 of the grounds for the decision under appeal), and because the subject-matter of its independent claim 1 was not inventive, starting from D16 and taking into account the common general technical knowledge of the person skilled in the art

(point 12.4 of the grounds for the decision under appeal).

As far as novelty objections based on WO 2009/098297 (D8) were raised and discussed during oral proceedings (see point 1. of the minutes), the opposition division held the the subject-matters of claims 1 and 13 were novel of the disclosure of D8 (point 12.5 of the grounds for the decision under appeal).

VI. The appellant contests the conclusions of the appealed decision. Their submissions can be summarised as follows and are discussed in more detail in the Reasons for the Decisions.

The wrapping unit of document D16, made to wrap single solid objects such as confectionery items, was not suitable to wrap a plurality of cigarettes. Wrapping single confectionery items was substantially different from wrapping a group of cigarettes not only because of the different dimensions, but mainly because the constraint of holding the cigarettes together before they are wrapped was not present when dealing with a single object. D16 could therefore neither deprive the subject-matter of granted claim 13 of novelty, nor cast doubts, when combined with the knowledge of a skilled person, on inventive step of granted claim 1.

D8 was also not novelty destroying because it did not disclose that the short flap 23a initially rested on the lateral wall of group 4 of cigarettes and is then successively folded 90° with respect to the lateral wall of the group of cigarettes. The short flap 23a was rather positioned perpendicular to the lateral wall of group 4 of cigarettes from the beginning.

VII. The respondent submits that the claimed subject-matter of the main request lacks novelty and inventive step. Their submissions can be summarised as follows and are discussed in more detail in the Reasons for the Decisions.

The wrapping unit of D16 was suitable for packing groups of cigarettes, because confectionery items often had a soft, pressure-sensitive consistency (chocolates). The independent claims of the patent in suit did not specify that the cigarettes were to be processed as a loose bundle, and also encompassed embodiments where the inner portion of the wrapping material did not completely rest against the cigarettes. In addition, claim 1 did not specify the sequence of the folding steps. As a consequence, the opposition division correctly identified D16 as a document depriving the subject-matter of claim 1 of inventive step and the subject-matter of claim 13 of novelty.

Likewise, the subject-matter of claim 1 of the main request lacked novelty over the content of the disclosure of D8 by arguing that the lack of disclosure in D8 of a structural feature (the pocket) could not establish novelty of a method claim, such as granted claim 1, mentioning said feature. The subject-matter of granted claim 1 also lacked novelty over the content of the disclosure of D8 because a skilled reader would have understood that in the second embodiment of the shorter folding tabs 23a initially rest on a lateral wall of the cigarette group, as in the first embodiment, and are folded 90° with respect to the lateral wall only in a subsequent step. Thus, all method steps mentioned in claim 1 were performed in the method known from D8.



## **Reasons for the Decision**

### *Procedural aspects*

1. The present decision is taken in written proceedings without holding oral proceedings in accordance with Article 12(8) RPBA 2020. 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. By explicitly declaring their intention not to attend the scheduled oral proceedings (see the respondent's letter dated 26 March 2020), to which both parties were duly summoned, the respondent gave up that opportunity, and said declaration is considered equivalent to a withdrawal of the request for oral proceedings under Article 116(1) EPC, whereby the respondent is to be treated as relying only on its written case (see Case Law of the Boards of Appeal, 9<sup>th</sup> edition 2019, III.B.2.7.3 and III.C.4.3.2, in particular with reference to T 3/90, OJ EPO 1992, 737).

In view of the above declaration of the respondent and of the fact that the case is ready for decision on the basis of the extensive parties' written submissions and the decision under appeal, the Board, while cancelling the oral proceedings, issues the present decision in written proceedings in accordance with Article 12(8) RPBA and Article 15(3) RPBA 2020.

*Review of the decision under appeal*

2. Granted claim 13 - Novelty over D16

2.1 After reviewing the decision under appeal on the basis of the parties' submissions, the Board finds that the appellant convincingly demonstrated that the subject-matter of granted claim 13 is new over the disclosure of D16.

2.2 This finding is mainly based on the appellant's argument that the wrapping unit disclosed in document D16, being made to wrap confectionery items, was not at all suitable to wrap a plurality of cigarettes. Wrapping single objects was substantially different from wrapping a loose bundle of cigarettes not only in reason of the different dimensions, but also due to the fact that the constraint of holding the cigarettes together before they are wrapped was not present when dealing with a single object.

2.3 The Board agrees with the appellant. Having regard to the established jurisprudence (see the Case Law of the Boards of Appeal, *supra*, I.C.8.1.5), the formulation "wrapping unit for folding a sheet of wrapping material about a group of cigarettes" implies physical limitations on the claimed unit without which the wrapping unit could not be used for that purpose.

As a consequence of the above, only prior art apparatuses which, in addition to features expressly mentioned in the claim, also possess these implicit physical features and can thus reasonably be used for folding a sheet of wrapping material about a group of cigarettes can take away novelty of the claimed apparatus.

In the present case the Board considers that a skilled person would not be able to directly derive from D16 that the shape and size of the pocket (13) receiving the article (1) to be wrapped (see figure 4a) can hold, without modifications, a group of cigarettes, or that the input station of D16 (pusher 21) can feed, without modifications, a group of cigarettes and the sheet into the pocket.

The wrapping unit of D16 is therefore not suitable for folding a sheet of wrapping material about a group of cigarettes.

2.4 The Board therefore concludes that the subject-matter of claim 13 of the patent as granted is novel over the content of the disclosure of D16.

3. Granted claim 1 - Inventive step starting from D16

3.1 The only inventive step objection raised by the respondent corresponds with the only inventive step objection discussed in the appealed decision, namely that the subject-matter of claim 1 of the main request lacks inventive step over the combination of the teaching of document D16, taken as a starting point, with the knowledge of a skilled person.

Inventive step was denied (see the last paragraph at page 6 of the appealed decision) because the apparatus of D16 clearly was to be considered by a skilled person as a suitable device to be used for the wrapping of a group of cigarettes.

3.2 The review of the decision under appeal on the basis of the parties' submissions has led to Board to the

finding that the appellant convincingly demonstrated that the above objection does not prejudice the maintenance of the patent as granted.

- 3.3 As already discussed (see point 2.3 above) the wrapping unit disclosed in D16 is not taught as being suitable for folding a sheet of wrapping material about a group of cigarettes.

Thus, D16 neither relates to the technical field of cigarette packaging, nor does it teach an apparatus that has the necessary technical features for such a purpose. Indeed, there is no disclosure whatsoever in D16 to suggest that it is either suitable for wrapping a group of cigarettes, or might usefully be modified for such use.

Therefore, the Board concurs with the appellant in considering that D16 is not a realistic starting point for the consideration of inventive step based upon the problem and solution approach and that accordingly it does not represent the closest prior art.

The reasoning on the basis of the only inventive step objection raised in the appealed decision therefore cannot be followed.

*Further issues relied upon by the parties*

4. Granted claim 1 - Novelty over D8
- 4.1 According to the appealed decision D8 was not novelty destroying because it did not mention a pocket of a wrapping conveyor.

4.2 The respondent argues that the subject-matter of claim 1 of the main request lacks novelty over the disclosure of D8 since the lack of disclosure in D8 of a structural feature (the pocket) cannot establish novelty for the method claim 1 of the patent as granted, mentioning said feature.

4.3 The Board does not agree with this argument. Method claims are technical processes, and as such they are not abstract, but are carried out with or on certain objects.

In the first step of claim 1 a group of cigarettes and a sheet of wrapping material are fed into a **pocket**.

As acknowledged by the respondent, no pocket is mentioned in D8, and, as a consequence of the above, D8 cannot disclose the claimed step of feeding the group of cigarettes and the sheet of wrapping material into a pocket of a wrapping conveyer.

4.4 The respondent also refers to figures 10-12 as well as to the passage at page 8, lines 7-25, of D8 and argues that a skilled reader would have understood that in this embodiment the shorter folding tab 23a initially rests on a lateral wall of the cigarette group, as in the first embodiment (figures 7-9), and are folded 90° with respect to the lateral wall only in a subsequent step.

4.5 The Board disagrees again. No information is given in D8 concerning the tab 23a being folded at 90° with respect to the adjacent portion of the wrapper, *i.e.* the portion which rests on the lateral wall of the group of cigarettes.

4.6 Hence, the Board finds against the respondent's novelty objection.

5. Further issues

The Board notes that no objections to the patent as granted other than those discussed above have been made either in the decision under appeal or by the respondent in their reply to the appellant's statement setting out the grounds of appeal, all forming the basis of the appeal proceedings pursuant to Article 12(1) and (2) RPBA 2020. The Board notes further that the appellant in their statement setting out the grounds of appeal submitted additional arguments in favour of inventive step with reference to further documents mentioned during opposition (D9-D15), which have not been contested by the respondent.

Against this background, there are no obvious and conclusive objections to the patentability of the patent as granted.

6. As a consequence, the appellant has demonstrated in a convincing manner the incorrectness of the decision under appeal in respect of the main request (patent as granted) and, while taking into account the respondent's submissions, that the patent could be maintained as granted.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated