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Datasheet for the decision of 24 September 2019

Case Number: T 1686/16 - 3.2.01

Application Number: 10765447.7

Publication Number: 2490914

IPC: B60K15/04

Language of the proceedings: EN

Title of invention:
IMPROVED FILLING SYSTEM FOR VEHICULAR FLUID CONTAINER

Patent Proprietor:
Plastic Omnium Advanced Innovation and Research

Opponent:
Kautex Textron GmbH & Co. KG

Headword:

Relevant legal provisions:
RPBA Art. 12
EPC Art. 123(2), 83, 56

Keyword:
Admissibility of main request (yes)
Added subject-matter (no)
Sufficiency of disclosure (yes)
Inventive step (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1686/16 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 24 September 2019

Appellant II: (Patent Proprietor)	Plastic Omnium Advanced Innovation and Research Rue de la Fusée, 98-100 1130 Bruxelles (BE)
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Appellant I: (Opponent)	Kautex Textron GmbH & Co. KG Kautexstr. 52 53229 Bonn (DE)
Representative:	Richly & Ritschel Patentanwälte PartG mbB Postfach 100411 51404 Bergisch Gladbach (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 9 May 2016 concerning maintenance of the European Patent No. 2490914 in amended form.**

Composition of the Board:

Chairman	G. Pricolo
Members:	C. Narcisi
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The European patent No. 2 490 914 was maintained in amended form by the decision of the Opposition Division posted on 9 May 2016. Against this decision an appeal was lodged by the Patentee and by the Opponent in due form and in due time pursuant to Article 108 EPC.

II. Oral proceedings were held on 24 September 2019. Appellant I (Opponent) requested that the impugned decision be set aside and that the patent be revoked. Appellant II (Patentee) requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the main (and sole) request filed during oral proceedings on 24 September 2019. All previous requests filed during the written proceedings were withdrawn.

III. Claim 1 reads as follows:

"A fitting (300) for the filling opening of a fluid tank, comprising a tubular main body (301) having a first end (302) for connection with said tank and a second end (303) adapted to receive a spout, said main body being adapted to be equipped with a magnet (304) substantially spanning the circumference of said main body for authorizing a flow in said spout, and a tubular coupling section (305) at said second end, characterized in that said tubular coupling section (305) is adapted to detachably couple to a bottle (312) having a fluid outlet and an air intake, in that said fitting comprises a chamber (307) between said second end and said magnet, in that, when in use, an end of a first ventilation conduit (306) is present in said chamber (307), said fist ventilation conduit (306) being in fluid communication with a volume of gas

present at the tank side of said fitting, such that in the coupled position of said bottle (312) said air intake is located in said chamber (307) and said fluid outlet flows out in the direction of said first end, and in that, when in use, an end of a second ventilation conduit (309) is present in said tubular main body on the tank side of said magnet (304), said second ventilation conduit (309) being in fluid communication with said volume of gas present at said tank side of said fitting, wherein one of the first and second ventilation conduit (306, 309) passes on the outside of the tubular main body; wherein the fitting comprises a funnel shaped section at said first end (302); wherein the other one of said first ventilation conduit and said second ventilation conduit (309) is formed by a central cavity of the tubular main body (301), said central cavity receiving a part of the bottle (312) in the coupled position, wherein the central cavity is dimensioned with a radius that exceeds a radius of the received part of the bottle in an amount sufficient to provide fluid communication between the chamber and the tank side of the main body; wherein said bottle is a screw-on bottle; wherein said tubular coupling section (305) has a thread for detachably coupling to said bottle (312).”

Claim 2 reads as follows:

“A fitting (300) for the filling opening of a fluid tank, comprising a tubular main body (301) having a first end (302) for connection with said tank and a second end (303) adapted to receive a spout, said main body being adapted to be equipped with a magnet (304) substantially spanning the circumference of said main body for authorizing a flow in said spout, and a tubular coupling section (305) at said second end,

characterized in that said tubular coupling section (305) is adapted to detachably couple to a bottle (312) having a fluid outlet and an air intake, in that said fitting comprises a chamber (307) between said second end and said magnet, in that, when in use, an end of a first ventilation conduit (306) is present in said chamber (307), said fist ventilation conduit (306) being in fluid communication with a volume of gas present at the tank side of said fitting, such that in the coupled position of said bottle (312) said air intake is located in said chamber (307) and said fluid outlet flows out in the direction of said first end, and in that, when in use, an end of a second ventilation conduit (309) is present in said tubular main body on the tank side of said magnet (304), said second ventilation conduit (309) being in fluid communication with said volume of gas present at said tank side of said fitting, wherein one of the first and second ventilation conduit (306, 309) passes on the outside of the tubular main body; wherein the fitting comprises a funnel shaped section at said first end (302); wherein said tubular main body (301) comprises a peripheral groove for holding said magnet (304) and the other one of said first ventilation conduit (306) and said second ventilation conduit (309) extends substantially axially through said groove; wherein said bottle is a screw-on bottle; wherein said tubular coupling section (305) has a thread for detachably coupling to said bottle (312)".

IV. The Opponent's arguments may be summarized as follows:

The Patentee's main request should not be admitted into the appeal proceedings, for it is identical with previously submitted auxiliary request VI' (filed on 16 January 2017), and implies the deletion of some

dependent claims in auxiliary request VI, if the Board would find that they do not to comply with the requirements of the EPC, thus representing an impermissible conditional request. Moreover, the text of this request (belonging to a set of auxiliary requests 0' and I to XVI') was not included as a separate claim set, its subject-matter was not convergent in relation to the independent claims previously discussed in opposition proceedings and it was never discussed in opposition proceedings. Therefore, a remittal to the first instance department is likewise requested if this request is admitted by the Board.

The subject-matter of claim 1 and 2 extends beyond the content of the application as filed, as the feature "wherein one of the first and second ventilation conduit (306, 309) passes on the outside of the tubular main body" (hereinafter designated as feature B3) was not originally disclosed. The introductory portion of the description of the application as filed (see published application WO-A1-2011/048016, hereinafter designated as WO-A1) does not implicitly or explicitly disclose a "second ventilation conduit passing" on the outside of the tubular main body and the same holds for the portion illustrating the specific embodiments. In particular, the paragraph describing the embodiment of claim 2 (WO-A1, figure 3 and page 6 line 22 to page 7, line 19) merely states that "the second ventilation conduit 309 is in fluid communication with a volume of gas present at the tank side of the fitting" (page 7, lines 9-11) and that "it is possible to achieve a similar result" (as in figure 3) with a configuration including "the first ventilation conduit passing on the outside of the main body 301, and in which the second ventilation conduit is embedded in a ridge passing

through the constricted zone 311 holding the magnet 304" (page 7, lines 13-18).

Moreover, feature B3 was extracted in isolation from the description, leading to a generalization of the content of WO-A1 (see e.g. omission of the feature "the tubular coupling 305 is adapted to detachably couple to a bottle such that a protruding part of this bottle substantially seals the fitting both near the tubular coupling section 305 and near the magnet 304, thus creating a closed chamber 307 between the tubular coupling section 305 and the magnet 304").

Similar arguments hold for claim 1 and the corresponding embodiment of figure 6, wherein the description never mentions "a second ventilation conduit" passing on the outside of the main body and wherein the inclusion of feature B3 leads to a generalization of the disclosure of WO-A1 (see e.g. omission of the feature "the first ventilation conduit 306 is in fluid communication with the volume of gas at the tank side via the second ventilation conduit 309").

The subject-matter of claim 1 (and 2) is not disclosed in a manner sufficiently clear and complete for the skilled person to be able to put it into effect. The feature reading "said first ventilation conduit (306) being in fluid communication with a volume of gas present at the tank side of said fitting (300), such that in the coupled position of said bottle (312) said air intake is located in said chamber (307) and said fluid outlet flows out in the direction of said first end (302)" (hereinafter designated as feature H) is in disagreement with the embodiment of figure 6, for in figure 6 the air intake of bottle 311 is not located in said chamber 307. The specific configuration of the

bottle, designated as “Kruse” bottle and described in paragraph [0006] of the patent specification (hereinafter designated as EP-B), is not clearly illustrated in EP-B and moreover it appears that after mounting or coupling the bottle (as described in [0006] of EP-B) to the fitting’s second end (as illustrated by the drawing submitted by the Opponent during oral proceedings) its air intake would not be located in said chamber 307 as defined by claim 1 (and 2).

The features of dependent claim 3 are similarly not sufficiently clearly and completely disclosed for the skilled person to carry it out, as EP-B does not describe and detail the configuration of an “axial ridge”, let alone define such an “axial ridge”.

The subject-matter of claim 1 does not involve an inventive step in view of E3 and the skilled person’s common general knowledge, as exemplified inter alia by figure 2 of EP-B, depicting a fitting according to the prior art “Kruse” filling system.
First, the features reading “wherein said bottle is a screw-on bottle; wherein said tubular coupling section (305) has a thread for detachably coupling to said bottle (312)” (hereinafter designated as feature B1) cannot contribute to inventive step (as also acknowledged by the Opposition Division in the appealed decision) since these features are commonly known to the skilled person, as also demonstrated by e.g. figure 2 of EP-B (see also E4 and E9).
The further features reading “wherein the fitting comprises a funnel shaped section at said first end (302)” (hereinafter designated as feature B2) analogously do not contribute to inventive step, it being e.g. well known and obvious for the skilled person to couple together conduits having different

diameters by means of a funnel shaped portion (see also figure 2 in EP-B).
The remaining features reading "wherein one of the first and second ventilation conduit (306, 309) passes on the outside of the tubular main body" (feature B3) and "wherein the other one of said first ventilation conduit and said second ventilation conduit (309) is formed by a central cavity of the tubular main body (301), said central cavity receiving a part of the bottle (312) in the coupled position, wherein the central cavity is dimensioned with a radius that exceeds a radius of the received part of the bottle in an amount sufficient to provide fluid communication between the chamber and the tank side of the main body" (hereinafter designated as feature B4) form part of the skilled person's common general knowledge (as shown by figure 2 of EP-B) and cannot justify an inventive step. In particular, it is well known to the skilled person that by providing a separate ventilation conduit passing outside the main body of the fitting, thus separating the flow of air and fluid, the filling process of the liquid into the tank is facilitated (see e.g. E21, column 2, lines 22-27).

Similarly, the subject-matter of claim 1 is rendered obvious by the combination of E3 with E13, E6, or E21, likewise taking due account of the skilled person's common general knowledge where needed. In effect, E13 discloses all of the aforementioned features supposedly distinguishing the invention of claim 1 from E3 (see figured 1 to 5) and E6 and E21 disclose at least features B3 and B4, features B1 and B2 being generally known to the skilled person (see above).

For analogous reasons as for claim 1, the subject-matter of claim 2 is not inventive over E3 and the

skilled person's common general knowledge as exemplified e.g. by figure 2 of EP-B, and further over the obvious combination of E3 with E13, or E6 or E21. As to distinguishing features B1, B2, B3 the same arguments apply as hereinabove, whilst the feature reading "wherein said tubular main body (301) comprises a peripheral groove for holding said magnet (304) and the other one of said first ventilation conduit (306) and said second ventilation conduit (309) extends substantially axially through said groove" (hereinafter designated as feature B4') is replacing in claim 2 previously mentioned feature B4 of claim 1. However, similarly to feature B4, feature B4' does not contribute to inventive step, being derivable from general knowledge and from the customary practice of the skilled person.

V. The Patentee' arguments may be summarized as follows:

The main request (equivalent to former auxiliary request VI') is admissible since it was filed with the statement of grounds of appeal in view of Articles 12(1), (2) RPBA (Rules of Procedure of the Boards of Appeal) and since auxiliary requests 0' and I' to XVI' were already filed in opposition proceedings on 4 March 2016. A remittal to the first instance department is not necessary.

The subject-matter of claim 1 and 2 does not extend beyond the content of the application as filed, the introduced amendments (originating from granted claims 2, 4, 8, 10) overcoming the Opponent's objections related to feature B3 representing a generalization of the original disclosure in WO-A.

The subject-matter of claim 1 discloses the invention in a manner sufficiently clear and complete for the skilled person to be able to carry it out. The description of a "Kruse" bottle in paragraph [0006] of EP-B and the illustration of a "Kruse" fitting in figure 2 of EP-B would enable the skilled person to perform the invention, no contradiction arising in particular between claim 1 and figure 6.

The subject-matter of claim 1 and 2 involves an inventive step over E3 and the further cited prior art, for the skilled person starting from E3 would have no sufficient incentive to modify the known fitting such as to arrive at feature B3.

Reasons for the Decision

1. The appeals are admissible.

2. The Patentee's main request is admissible, for several reasons.
First, this request was filed by the Patentee with its statement of grounds of appeal and pursuant to Article 12(1), (2) RPBA it was timely filed, the statement of grounds of appeal constituting the basis of the appeal proceedings and a part of the party's complete case. Therefore, as the request was not late filed, the criterion of convergence invoked by the Opponent and other criteria pursuant to Article 13(1) RPBA do not apply.
Moreover, the Board has no discretionary power not to admit this request pursuant to Article 12(4) RPBA, for it was already filed in opposition proceedings as auxiliary request VI'.
Further, this request is not be regarded as a conditional request, as it was originally intended to

be dealt with in sequential order after auxiliary request VI, just as any request with a prime sign (') was intended for discussion after the corresponding request with same number and without a prime sign. Finally, even if the main request was not previously submitted as a separate set of claims, nevertheless this was not necessary since it was clear that it solely differed from the previous corresponding un-primed request VI by the deletion of dependent claim 3.

The Board decided not to remit the case to the department of first instance (Article 111(1) EPC), given that in its view the discussion of the subject-matter of claims 1 and 2 did not entail issues considerably deviating and differing from the previous discussion held in opposition proceedings. This, in fact, was not contested by the Appellant.

3. The subject-matter of claim 1 (and 2) does not extend beyond the content of the application (WO-A1) as filed (Article 123(2) EPC).
Contested feature B3 (i.e. "wherein one of the first and second ventilation conduit (306, 309) passes on the outside of the tubular main body") is not literally disclosed in WO-A1 (i.e. at least not for the second ventilation conduit), it is nonetheless clearly derivable from figure 3 (or figure 6) in conjunction with the corresponding parts of the description of the specific embodiments.
In effect, WO-A1 referring to figure 3 first indicates that "the main body is also ventilated at the tank side, outside the chamber 307. A second ventilation conduit 309 is provided for this purpose" (page 7, lines 8-14) and figure 3 shows that being "ventilated at the tank side" is implemented by said second ventilation conduit 309 going through an aperture in

the main body of the fitting for externally connecting to the tank, thereby passing at least partly on the outside of the main body. In this embodiment, "the first ventilation conduit 306 is in fluid communication with that volume of gas (at the tank side) via the second ventilation circuit 309".

Subsequently, just the opposite situation is described in WO-A1 always in relation to figure 3 (page 7, lines 15-19), "the first ventilation conduit passing on the outside of the main body 301" (literal disclosure) and in which "the second ventilation 306 is in fluid communication with the volume of gas at the tank side via the second ventilation circuit 309".

In other words, WO-A1 discloses two embodiments both based on figure 3 (embodiment corresponding to claim 2), wherein the specific structure of the first and second ventilation conduits is such that in each embodiment one of ventilation conduits passes on the outside of the main body and fulfils feature B3.

The same arguments apply in an analogous way to figure 6 (embodiment corresponding to claim 1), on which two distinct embodiments are based, one embodiment explicitly including "the first ventilation conduit passing on the outside of the main body 301" (see EP-B, [0041] or corresponding passages in WO-A1) and in which "the second ventilation conduit is formed by a central cavity" [see EP-B, [0041]), the other embodiment disclosing the inverted or opposed situation (see EP-B, [0040] or corresponding passages in WO-A1).

In conclusion, the specific structure and configuration of the ventilation conduits as implied by feature B3 is disclosed in WO-A1.

Finally, introducing feature B3 in claims 1 and 2 does not result in a(n) (intermediate) generalization of the disclosure in WO-A1, since feature B3 is supplemented by further feature B4 (corresponding to granted claim 8 (originally filed claim 8)) in claim 1 and B4' (corresponding to granted claim 4 (originally filed claim 4)) in claim 2. These features are functionally and structurally directly linked to feature B3 and provide an indication about the structure and configuration of the respective other one of said first and second ventilation conduit, i.e. the respective one not passing on the outside of the tubular main body. Thus feature B3 in claim 1 and 2 combines with respective features B4 and B4' to sufficiently define and characterize the specific embodiments according to figure 3 and 6.
As to the supposedly or allegedly omitted features the Board considers that no features were omitted being directly and indissolubly linked to features B3 and B4 or B4', claims 1 and 2 defining a fitting whose functions and structure are sufficiently clear and complete.

4. The subject-matter of claim 1 is disclosed in a manner sufficiently clear and complete for the skilled person to put it into effect (Article 83 EPC).
Contrary to the Opponent's view no contradiction arises between the subject-matter of claim 1 and the embodiment of figure 6 in EP-B.
Indeed, feature H (i.e. "said first ventilation conduit (306) being in fluid communication with a volume of gas present at the tank side of said fitting (300), such that in the coupled position of said bottle (312) said air intake is located in said chamber (307) and said fluid outlet flows out in the direction of said first

end (302)") is not at odds with figure 6. First, as emphasized by the Opponent itself, the figures in EP-B are merely schematic and they do not allow to determine the exact position of said air intake (of feature H) on the bottle portion 312 depicted in figure 6, let alone the precise length of said bottle portion in relation to the length of the chamber 307 and to the tubular main body 301 according to feature H. Further, the air intake does by no means necessarily designate the outermost extreme part of the air inlet passage but can also designate a major (or the entire) portion of the air inlet passage as well (thus being clearly located in chamber 307 according to figure 6, given the longitudinal extension of bottle portion 312).
Finally and more importantly, whilst the bottle used by the invention is a bottle of the "Kruse"-type, thus adopting the general constructional features and functioning as disclosed in paragraph [0006] of EP-B, nonetheless its overall dimensions (and of its specific portions) may of course vary depending on the intended use, i.e. the dimensions of the fitting and of the tank. Obviously, for the skilled person it would be no more than a matter of customary practice to choose the appropriate dimensions in order to fulfil feature H.

Finally, the skilled person would be able to implement the features of dependent claim 3, for these merely require that one of said ventilation conduits is embedded in an "axial ridge", i.e. a raised portion or an elevation formed in the wall of the tubular main body.

5. The subject-matter of claim 1 and 2 fulfils the requirements of Article 56 EPC in view of prior art E3 in conjunction with the skilled person's common general

knowledge (as illustrated inter alia by figure 2 in EP-B), or in conjunction with E13, E6 or E21.
In the Board's view at least feature B3 is not rendered obvious for the skilled person starting from E3, in view of the above mentioned documents or common general knowledge.
E3 discloses a fitting having a compact structure consisting essentially of a cylindrical outer portion 13 and an inner generally cylindrical portion 16 inserted therein, first and second ventilation conduits 26, 39 being defined within these two portions and located in the outer circumferential portion of outer cylindrical portion 13.
Thus, these ventilation passages are disposed at a distance and clearly distinct and separate from central fluid passage 23 (see E3, figures). In addition, the total cross section of the ventilation conduits (resulting from multiple conduits 26 or 39, see figure 1 and 3) approximately corresponds (as seen in relation to the cross section of the fluid inlet conduit 23) e.g. to that of ventilation conduit 11 in E21 (or correspondingly in E13) and was undoubtedly and obviously chosen such that fluid flows essentially unhindered into the tank through the main central passage 23, while vapours and air can escape from the tank through the outer circumferential passages without major obstructions.
Besides, it would be always possible for the skilled person to modify the relative cross sections of the fluid inlet conduit and of the ventilation conduits or to increase the overall cross section of the tubular main body (cylindrical outer portion), if needed, depending on the different situations, to improve the tank filling process without deviating substantially from the design and configuration of E3.

Further, there is absolutely no clear evidence or indication in the prior art that merely disposing outside said main tubular body (as shown e.g. in E13, E21 or E6) ventilation conduits being structurally and functionally clearly well separated and distinct (as for instance disclosed in E3, the ventilation conduits being already arranged contiguously to the peripheral walls of the fitting) from the fluid inlet conduit (whilst leaving said total cross section of said ventilation conduits unchanged in relation to the fluid inlet cross section) would improve and speed up the filling process (compare e.g. with the location of the ventilation conduit 11 in E21).

Consequently, the Opponent's arguments could not convince the Board that the skilled person would have a necessity, let alone a clear incentive, to change the design of E3 to a design as shown in E13, E21 or E6, as this would moreover imply a major design modification. This design modification would lead to a loss of some of the major advantages offered by the fitting of E3, i.e. a compact configuration and design including and enclosing all components within its main tubular body, having few components and involving ease of manufacturing (E3, [0003]), due to its simple structure.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the department of first instance with the order to maintain the patent with the claims according to auxiliary request VI' (now main

request) as filed during oral proceedings before the Board and a description to be adapted thereto.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated