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**Datasheet for the decision  
of 25 May 2020**

**Case Number:** T 0869/17 - 3.2.07

**Application Number:** 11166232.6

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**IPC:** B65F1/06, B32B27/08, B32B27/32

**Language of the proceedings:** EN

**Title of invention:**  
Waste packaging device

**Applicant:**  
Flexopack S.A.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 56, 83, 84, 123(2), 113(1), 116(1)  
RPBA 2020 Art. 12(8), 17(1)

**Keyword:**  
Inventive step - (yes)  
Sufficiency of disclosure - (yes)  
Claims - clarity (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0869/17 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 25 May 2020**

**Appellant:** Flexopack S.A.  
(Applicant) Thessi Tzima  
194 00 Koropi (GR)

**Representative:** Isarpatent  
Patent- und Rechtsanwälte Behnisch Barth Charles  
Hassa Peckmann & Partner mbB  
Friedrichstrasse 31  
80801 München (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 18 October 2016  
refusing European patent application No.  
11166232.6 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** A. Beckman  
V. Bevilacqua

## **Summary of Facts and Submissions**

- I. The appellant (applicant) lodged an appeal within the prescribed period and in the prescribed form against the decision of the examining division refusing European patent application No. 11 166 232.6.
- II. The examining division held that the subject-matter of claims 1 and 7 of the main request and the subject-matter of claim 1 of the first and second auxiliary requests were lacking inventive step starting from D5 (US 6 516 588 B2) as closest prior art, acknowledged in the application as filed, page 2, in combination with the teaching of D4 (EP 2 085 216 A1).

In an *obiter dictum*, the examining division, referring to the same prior art, noted that the subject-matter of dependent claims 2 and 4 to 6 of the main request was considered not to involve an inventive step. Further, the examining division additionally remarked that the subject-matter of claim 1 of the main, first and second auxiliary request seemed not to fulfill the requirements of either Article 84 or 83 EPC.

- III. The appeal is primarily directed to the grant of a patent on the basis of the main request, which corresponds to the main request underlying the impugned decision.
- IV. In its communication pursuant to Article 17(1) RPBA 2020 the Board provided a preliminary non-binding opinion on the appeal case according to which the set of claims of the main request appeared to meet the requirements of the EPC but the description needed to be adapted.

V. In response thereon, with its submission dated 21 April 2020 the appellant filed an amended description (in a marked-up version and in clean copy) adapted to the set of claims of the main request and requested finally

that the decision under appeal be set aside and that the case be remitted to the examining division with the order to grant a patent based on the claims of the main request as re-filed with the statement setting out the grounds of appeal dated 28 February 2017 and the amended description pages 1 to 23 (marked-up version), as filed enclosed with letter dated 21 April 2020, and pending drawing sheets 1 to 3 including Figures 1 to 3,

wherein amended description pages 1 to 23 of the marked-up version correspond to amended description pages 1 to 22 in clean copy, filed together with letter dated 21 April 2020.

VI. Independent **claim 1 of the main request** reads as follows:

"A waste packaging device comprising  
a. a dispensing apparatus where a plastic film, comprising at least a layer of at least 50% per weight polyethylene homopolymer and/or copolymer, wherein the weight/surface ratio is less than 20 grams per square meter, is stored  
b. a bin wherein a fusion seal apparatus is located, wherein  
c. the fusion seal apparatus comprises a battery with a maximum voltage of equal or less than 20V."

Independent **claim 7 of the main request** reads as follows:

"A method for storing waste by using the device according to one or more of claims 1-6 comprising

- a. pulling out plastic film, comprising at least a layer of at least 50% per weight polyethylene homopolymer and/or copolymer, wherein the weight/surface ratio is less than 20 grams per square meter, from a dispensing apparatus
- b. putting a waste item in a suitable length of the film
- c. closing hermetically the plastic film with the use of a fusion seal where the seal is between a part of the film and another part of the same or other film, where the sealed parts are put sequentially in a bin."

VII. The appellant submits that the subject-matter of the main request overcomes the objections raised under Article 56, 84 and 83 EPC. The appellant's arguments form part of the reasons for the decision as discussed below.

## **Reasons for the Decision**

1. The decision is issued in written proceedings without holding oral proceedings.

According to Article 12(8) RPBA 2020, the Board may, subject to Article 113 and 116 EPC, decide the case at any time after filing of the statement of grounds of appeal.

Given the findings and the order of the decision, the appellant's auxiliary request for oral proceedings if the Board was minded not to allow the main request that the case be remitted to the examining division with the order to grant a patent based on the claims of the main request, is no longer relevant.

The case is ready for decision on the basis of the appellant's written submissions and the decision under appeal. For this reason, the issuing of the decision in written procedure without oral proceedings is in compliance with the requirements of Articles 113(1) and 116(1) EPC. The oral proceedings arranged for 8 September 2020 are cancelled.

2. *Amendments - Article 123(2) EPC*
  - 2.1 Claim 1 of the main request is based on claims 1 and 8, as originally filed, whereas claim 7 of the main request is based on claims 7 and 8, as originally filed. Claims 2 to 6 are based on claims 2 to 6, as originally filed.

Therefore, the set of claims according to the main request fulfils the requirements of Article 123(2) EPC.

2.2 The amendments made to adapt the description to the set of claims of the main request do also not contravene the requirements of Article 123(2) EPC.

3. *Inventive step - Article 56 EPC*

3.1 *Content of the disclosure of D5*

D5 discloses a waste packaging device (40) comprising  
a. a dispensing apparatus (63) where a plastic film (62) is stored (column 4, lines 29 to 31)  
b. a bin (44) wherein a fusion seal apparatus is located, wherein  
c. the fusion seal apparatus (50, 76, 78) comprises a battery (column 5, lines 32 to 33).

Contrary to the impugned decision, point 14.1, and following the appellant's view, D5 does not disclose directly and unambiguously, neither explicitly nor implicitly to use a battery with a maximum voltage of equal or less than 20V.

3.2 *Distinguishing features*

The subject-matter of claim 1 differs from the disclosure of D5 in that

- the plastic film comprises at least a layer of at least 50% per weight polyethylene homopolymer and/or copolymer, wherein the weight/surface ratio is less than 20 grams per square meter,
- a battery with a maximum voltage of equal or less than 20V is provided.



### 3.3 *Technical effect*

The technical effect associated with these distinguishing features is that the plastic film exhibits odour barrier properties, sufficient mechanical and proper deadfold properties, but, at the same time, can be sufficiently sealed with a low voltage battery (page 14, last paragraph to page 15, second paragraph, of the application as filed).

### 3.4 *Problem to be solved*

The problem to be solved can therefore be seen in modifying the known waste packaging device in order to overcome the safety concerns linked to the use of high voltage electrical power in the proximity of babies (page 2, fifth to sixth paragraph, of the application as filed).

### 3.5 *Inventiveness*

The Board disagrees with the finding in the impugned decision, point 14.1, that D4 discloses a film for use in a waste disposal device which solves the above problem whereby heat sealability is not explicitly mentioned but it is obvious for the skilled person that such a film comprising an ethylene copolymer can be heat sealed.

The Board concurs with the appellant as follows.

D4 relates to a polymeric film comprising odour barrier material and being able to pack malodorous waste (paragraph [0001]). However, contrary to the impugned decision, point 14.1, D4 does not disclose or suggest a heat sealable film neither in general nor specifically

a plastic film which is heat sealable using a low voltage battery.

Therefore, the skilled person, seeking for a heat sealable plastic film which exhibits sufficient sealing properties with a low voltage battery, would not be motivated to apply the teaching of D4 to solve the above mentioned problem.

As the claimed solution is neither disclosed in the available prior art nor belongs to the skilled person's common general knowledge, inventive step of the subject-matter of claim 1 of the main request is acknowledged.

3.6 Since independent claim 7 comprises the device of claim 1, the above reasoning and conclusions regarding inventive step apply *mutatis mutandis* to the subject-matter of claim 7.

3.7 As a consequence, the Board considers that the subject-matter of claims 1 and 7 of the main request involves an inventive step over D5 taken in combination with the teaching of D4.

3.8 Dependent claims 2 to 6 define further embodiments of the invention according to independent claim 1 and, therefore, likewise meet the requirements of Article 56 EPC.

#### 4. *Sufficiency of disclosure - Article 83 EPC*

The Board is not convinced by the argumentation of the examining division in the *obiter dictum* of the impugned decision that the invention is not sufficiently disclosed since claim 1 refers to a battery voltage of

20V or less for the fusion seal apparatus, which means that the fusion seal apparatus should also work with very low voltages (around zero) and that, therefore, the disclosure is insufficient in order to enable the skilled person to operate over the entire voltage range.

It is established case law of the Boards of Appeal that the skilled person, when considering a claim, should rule out interpretations which are illogical or which do not make technical sense. The patent must be construed by a mind willing to understand, and not a mind desirous of misunderstanding (see Case law of the Boards of Appeal, 9th edition 2019, II.A.6.1.).

The Board follows the appellant's view that it is clear that a battery with a voltage of zero makes no technical sense, in particular, it is even questionable whether a battery with a voltage of zero could still be considered as a battery.

In line with the established case law mentioned above, the skilled person should rule out interpretations which are illogical or which do not make technical sense.

Therefore, for a skilled person considering the subject-matter of the application as a whole with a mind willing to understand, the subject-matter of claim 1 of the main request is disclosed in a manner sufficiently clear and complete to be carried out (Article 83 EPC).

5. *Clarity - Article 84 EPC*

The Board is further not convinced by the examining division's argumentation in the *obiter dictum* of the impugned decision that essential features seem to be missing in claim 1, because it is not apparent how sealing can be achieved with a battery having a voltage close to zero.

Since the objection of lack of clarity refers to the same expression at stake as the objection of insufficiency of disclosure discussed above, the subject-matter of claim 1 is clear to a skilled person for the same reasons as those given under point 4 above for sufficiency of disclosure.

The Board therefore considers that the finding in the *obiter dictum* of the impugned decision with regard to the non-fulfilment of the requirements of clarity no longer holds and claim 1 of the main request is clear (Article 84 EPC).

6. *Conclusions*

It follows from the above that the appellant has convincingly demonstrated the incorrectness of the decision under appeal in respect of inventive step of the subject-matters of the claims of the main request. In addition, the Board does not follow the examining division's *obiter dictum* that claim 1 of the main request does not fulfil the requirements of Articles 83 and 84 EPC.

Since no other objections to the patentability of the main request are obvious and because the description has been sufficiently adapted to the claimed subject-

matter according to the main request, the appellant's appeal directed to the grant of a patent on the basis of the main request together with pages 1 to 22 (clean version) of the amended description and pending drawing sheets 1 to 3 including Figures 1 to 3 is allowed.

## 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:
  - Claims 1 to 7 of the main request, re-filed with the statement setting out the grounds of appeal dated 28 February 2017;
  - Description pages 1 to 22 (clean copy) filed with letter dated 21 April 2020;
  - Figures 1 to 3 of the application as originally filed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated