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**Datasheet for the decision
of 22 November 2019**

Case Number: T 1690/17 - 3.2.07

Application Number: 10181886.2

Publication Number: 2298666

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. 54, 56

Keyword:
Novelty - after amendment
Inventive step - after amendment

Decisions cited:

Catchword:



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Case Number: T 1690/17 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 22 November 2019

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

Representative: Forrest, Stuart
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 14 February
2017 refusing European patent application No.
10181886.2 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman V. Bevilacqua
Members: A. Pieracci
R. Cramer

Summary of Facts and Submissions

I. This appeal, which was filed within the prescribed period and in the prescribed form, lies from the decision of the examining division to refuse European patent application No. 10 181 886.2.

II. The present decision is based on the following documents:

E1: Processing Equipment & Packaging Machinery Association: "Packaging News PPMA Preview", September 2001, (2001-09), page 40;

which was introduced by the Board into the proceedings with their communication pursuant to Article 15(1) RPBA, and

D1: US 3 740 238 A (GRAHAM S) 19 June 1973;

D2: JP H09 156677 A (FUJI SEAL IND CO LTD)
17 June 1997;

D3: EP 0 613 824 A2 (IACHETTI ANTON I ETTA CINZIA)
7 September 1994;

D4: EP 0 474 981 A (BARILLA F.LLI G & R)
18 March 1992;

D5: US 3 331 501 A (STEWART JR CHARLES R)
18 July 1967;

which were part of the examination proceedings before the examining division.

III. Oral proceedings before the Board took place on 22 November 2019.

At the oral proceedings the appellant requested that the decision under appeal be set aside and that a patent be granted in the following version:

- Claims 1 to 10 of the main request filed during the oral proceedings;
- Description pages 2, 2a, 3 and 4 as filed during the oral proceedings;
- Figures 1 to 13 of the application as filed.

The decision was given at the end of the oral proceedings.

The line of argument of the appellant will be dealt with in detail in the reasons for the decision.

IV. Independent claim 1 according to the main request reads as follows:

A polygonal shaped food container (10) comprising:
a frame (30) defining the polygonal shape of the container (10), said container (10), having a top (12), a bottom (13) and sides (14a, 14b, 15a, 15b) connecting the top (12) and bottom (13), the frame (30) containing food products such as cookies and the like;
a wrapper (11) surrounding said frame (30), said wrapper (11) forming the top (12), sides (14a, 14b, 15a, 15b) and a bottom (13) of the container;
said top (12) having an access opening (18) so as to provide hand access to food contents of the container (10);

a sealing layer (20), adhesively sealed to said top (12) around said opening (18), said sealing layer (20) being releasable and reclosable at said top (12) to seal said access opening (18) when the container is reclosed;

a tamper-evident structure (42, 52, 62, 72, 82);
wherein said sealing layer includes a tab (22), said sealing layer (20) being releasable when said tab (22) is pulled back and reclosable against said top (12) to seal said opening (18) when said sealing layer (20) is moved back to a flat position on said top (12); and

characterized in that said tab (22) projects past a corner of said top (12) and one side of the container (10), and said tab (22) is accessible beyond the corner to be grasped.

Reasons for the Decision

1. The Board sees no reason to question whether the requirements of Article 84, 76(1) and 123(2) EPC are satisfied.
2. Novelty of the subject-matter of claim 1 (Article 54 EPC)

The Board concurs with the appellant that the characterizing features of the claim, i.e. that the container comprises a tab which projects past a corner of said top and one side of the container, and said tab is accessible beyond the corner to be grasped, cannot be derived from any of the documents D1-D5 cited in examination proceedings by the examining division and from document E1 introduced by the Board.
This is evident from the drawings of these documents.

In particular the Board agrees with the appellant that, contrary to what was asserted by the examining division in paragraph 4.4 of the European search opinion, a tab as claimed in claim 1 is not shown in document D4, neither in the passages indicated in the European search opinion (column 2, line 22 - column 4, line 55; figures 1-3) nor in any other part of this document.

The Board is therefore of the opinion that the subject-matter of claim 1 is new within the meaning of Article 54 EPC.

3. Inventive step of the subject-matter of claim 1
(Article 56 EPC)

The Board concurs with the appellant that document E1, on which the preamble of claim 1 is based, can be considered as the most appropriate starting point for evaluating the inventiveness of the subject-matter of this claim due to the high number of structural features shown in this document in common with the claimed subject-matter.

As indicated in paragraph [0015] and [0028] of the application as originally filed and published, the technical effect provided by the distinguishing features of the claim, i.e. that the container comprises a tab which projects past a corner of said top and one side of the container, and said tab is accessible beyond the corner to be grasped, is that of making the tab easily accessible for being grasped and for withdrawing the sealing layer from the container thereby easing the opening and closing of the access opening of the container.

The objective technical problem can thus be seen as how to modify the container of document E1 so that the opening and closing of its access opening is made easier.

The Board shares the view of the appellant that no indication to solve the above problem in the way claimed is suggested in the cited prior art, in particular since, as indicated above, a tab according to the characterizing features of the claim is not shown in any of these documents.

The Board therefore concurs with the appellant that the subject-matter of claim 1 is based upon an inventive step within the meaning of Article 56 EPC.

4. Other issues

The description having been adapted to the claims, the Board does not see any further issue which would prevent granting the patent application in suit.

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 10 of the main request filed during the oral proceedings;
 - Description pages 2, 2a, 3 and 4 as filed during the oral proceedings;
 - Figures 1 to 13 of the application as filed.

The Registrar:

The Chairman:



G. Nachtigall

V. Bevilacqua

Decision electronically authenticated