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**Datasheet for the decision
of 12 November 2018**

Case Number: T 2270/18 - 3.2.07

Application Number: 14190892.1

Publication Number: 3015385

IPC: B65D5/06

Language of the proceedings: EN

Title of invention:

Sheet packaging material for producing sealed packages for pourable food products

Applicant:

Tetra Laval Holdings & Finance S.A.

Headword:

Relevant legal provisions:

EPC Art. 83, 111(1)
RPBA Art. 12(3)

Keyword:

Sufficiency of disclosure - (yes)

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 2270/18 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 12 November 2018

Appellant: Tetra Laval Holdings & Finance S.A.
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Representative: Müller Schupfner & Partner
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 15 March 2018
refusing European patent application No.
14190892.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Pieracci
K. Poalas

Summary of Facts and Submissions

- I. This appeal, which was filed within the prescribed period and in the prescribed form, is directed against the decision of the examining division refusing European patent application No. 14 190 892.1.
- II. In the course of examination proceedings the examining division had issued two communications maintaining objections under Articles 83 and 84 EPC already raised in the European search opinion and under Article 56 EPC with reference to document D1 (WO 02/48001 A1) in combination with the common general knowledge of the person skilled in the art. The matter was discussed with the appellant at oral proceedings, and the examining division finally took the decision to refuse the patent application for insufficient disclosure in the sense of Article 83 EPC.
- III. In the statement setting out the grounds of appeal, the appellant essentially requested:
- that the decision under appeal be set aside and
 - that a patent be granted on the basis of one of the sets of claims filed therewith as main request and as auxiliary requests 1 to 4, or,
 - in the alternative, that the case be remitted to the examining division for further prosecution.

Oral proceedings were requested in the event that the main request was not granted.

IV. The appellant filed the following documents with the statement of the grounds of appeal:

A1: "Orthotropic elastic constants of paper", G.A. Baum, D.C. Brennan, C.C. Habeger, Tappi, August 1981, Vol. 64, No. 8, pages 97-101.

A2: EP 3 000 584 A1

and cited apart from D1 the following document, likewise mentioned in the European search opinion:

D2: EP 1 332 969 A1

The appellant's line of argument contesting the decision of the examining division will be dealt with in detail in the reasons for the decision.

V. Independent claim 1 of the main request, corresponding to the main request in examination on which the appealed decision is based, reads as follow:

A sheet packaging material (M, M') for producing a sealed package (1) of a pourable food product, comprising:

- at least one first crease line (65; 66) and at least one second crease line (68; 69);

- at least one third crease line (63; 67) which intersects said first crease line (65; 66) in at least one first point (91; 94; 101; 104) and said second crease line (68; 69) in at least one second point (92; 93; 102; 103);

- at least one fourth crease line (61; 62) transverse to said first crease line (65; 66) and to said second crease line (68; 69);

- at least one first panel (151) bounded, at least in part, by said first crease line (65; 66), said second crease line (68, 69) and said third crease line (63; 67); said first panel (151) being adapted to define a lateral wall (9) of said finished package (1) once said sheet packaging material (M, M') has been folded;

- at least one fifth crease line (70, 73; 74, 77), which extends between said first point (91,94; 101,104) and said fourth crease line (61; 62);

- at least one sixth crease line (71,72; 75, 76), which extends between said second point (92, 93; 102,103) and said fourth crease line (61; 62); and

- at least one second panel (160, 161; 170,171) bounded by said fifth crease line (70, 73; 74, 77), said sixth crease line (71,72; 75, 76) and a portion of said third crease line (63; 67) interposed between said first point (91; 94; 101; 104) and said second point (92, 93; 102,103); said second panel (160,161; 170,171) being adapted to define at least part of a first folded flap (26; 32) of said finished package (1) once said sheet packaging material (M, M') has been folded; said first point (91; 94; 101; 104) and said fourth crease line (61; 62) being spaced by a first distance (H1); said second point (92, 93; 102,103) and said fourth crease line (61; 62) being spaced by a second distance (H2);

said first crease line (65; 66) and said second crease line (68; 69) being spaced by a third distance (B); characterized in that

$$H_1 + H_2 < B$$

where:

H₁ is said first distance, H₂ is said second distance and B is said third distance, wherein

$$H_1 = H_2 = H$$

where:

H is the distance between said third crease line (63; 67) and said fourth crease line (61; 62), and wherein

$$H \geq B/2,30.$$

Reasons for the Decision

1. The decision is issued in written proceedings.

According to Article 12(3) RPBA, the Board may, subject to Article 113(1) and 116(1) EPC, decide the case at any time after the filing of the statement of grounds of appeal.

With regard to the findings and the order of the decision, the appellant's auxiliary request for oral proceedings in the event that the Board were minded not to allow the main request, is no longer relevant.

The case is ready for decision on the basis of the extensive appellant's written submissions and of 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 Article 113(1) EPC.

2. In the appealed decision the examining division argues that, since in claim 1 the sum of the lengths H1 and H2 of the flaps is less than the width B of the produced package, the flaps cannot cover the whole top of the package and therefore it cannot be closed. The invention cannot be carried out if no other changes are made to the sheet packaging material, said changes remaining unknown.

The examining division further argues that the angle α does not have any effect on closing the package but affects only the length of the end flaps which are folded on the side of the package. There is no information in the application on how the factor Δ mentioned in the application, which takes into account the elasticity of the material, is to be determined and to which material it relates.

3. The appellant argues essentially that claim 1 refers to a packaging material and not to a sealed package and that the examining division has not shown that the invention as claimed in claim 1, which is directed to a sheet packaging material for producing a sealed package and not to a sealed package as such, cannot be put into practice by a person skilled in the art without undue burden. The appellant also argues that a generally shaped sealed package can always be obtained by using a sheet packaging material according to claim 1.

Furthermore, by taking into account the thickness and the elasticity of the packaging material also a package with a generally parallelepipedal shape can be obtained using a sheet packaging material according to claim 1.

4. An objection of lack of sufficient disclosure presupposes that there are serious doubts, substantiated by verifiable facts (see the Case Law of the Boards of Appeal, 8th edition, 2016, II.C.8). The Board considers that this is not the case for the objections raised by the examining division.

The main argument of the examining division is that due to the fact that the sum of the lengths of the flaps is less than the width of the package, this cannot be closed.

The Board notes that in claim 1 (see lines 31-35) only a "...second panel being adapted to define at least a part of a folded flap of said finished package once said sheet packaging material has been folded..." is mentioned, otherwise neither the flaps nor the width of the sealed package are defined in claim 1.

It is also noted that, as correctly outlined by the appellant, claim 1 is directed to a sheet packaging material for producing a sealed package and not to a sealed package as such. The sheet packaging material of claim 1 is provided with crease lines and comprises at least a first panel adapted to define a lateral wall of the finished package (see claim 1, lines 17-19) and a second panel adapted to define at least a part of a folded flap of the finished package (see claim 1, lines 31-34). There is however no other indication in claim 1 with regard to the elements and to the shape of the

sealed package that the sheet packaging material should be capable of producing.

The examining division apparently refers to a specific geometrical configuration of a sealed package, most probably the one shown in figures 6 and 7 of the application.

The claim is however not limited to that specific configuration and the examining division has not plausibly shown that the person skilled in the art, with the teaching of the application and making use of the common general knowledge, is not in the position of providing a sheet packaging material with the crease lines and panels as defined in claim 1 which is suitable for producing a sealed package in the most general sense of the term.

The arguments of the examining division in relation to the angle α and the factor Δ are not relevant and do not need to be addressed, since neither the angle α nor the factor Δ are present in claim 1.

The arguments of the examining division are thus not persuasive.

5. For sake of completeness the Board wishes to address the issue which apparently underlies the objection of the examining division, that is that by using a sheet packaging material as defined in claim 1 a sealed package of generally parallelepipedal form as shown in the application (see figures 6 and 7), cannot be obtained, since its top cannot be closed due to the fact that the sum of the length of the parts which should constitute the flaps is smaller than the width of the front panel which corresponds to the width of the top of the finished package.

As argued by the appellant, it is known to the person skilled in the art that the material used for manufacturing sealed packages is a material with a certain elasticity and deformability as well as a certain thickness, typically a laminated material with a multilayer structure (see paragraph [0003] of the application). When the sheet packaging material is folded and the parts forming the top sealing bands are sealed, the part of the packaging material forming the top of the container is constituted by the flaps and by the cross-section of the parts forming the sealing band which seals the flaps together (see the top portions 22 and 23 and the sealing band 21 in figure 6 of the application as well as the schematic drawings at page 15 and 16 of the appellant's statement of the grounds of appeal).

It is noted that material for forming the sealing band is implicitly present in the sheet packaging material according to claim 1, since the fourth crease line which define the distance H together with the third crease line (see the characterizing portion of claim 1) is in fact defined as being a crease line, which means that it has material on both sides.

Due to the thickness of the parts forming the sealing band, it is possible, up to a certain extent, to seal the top of the folded sheet packaging material and to form a sealed package even if the sum of the lengths of the flaps is smaller than the width of the top opening. Furthermore as the sheet packaging material has a certain deformability and elasticity, it can deform during the folding and sealing process for obtaining the sealed package. Such deformation will also cooperate to the closure of the top opening of the

folded sheet packaging material, since the rounding of the edges of the lateral walls will contribute to provide the necessary material as discussed by the appellant at pages 15 and 18 of its statement of the grounds of appeal with reference to the figures at these pages.

In this regard the application also mentions that as a result of folding and sealing the sheet packaging material under the condition that the sum of the lengths of the flaps is less than the width of the top opening, some walls of the finished package are in traction and other in compression and that the edge of the finished package is curved to a certain extent (see paragraphs [0148]-[0150]). Thus the effects of the elasticity and deformability of the material of the sealed package is also explicitly addressed in the application.

It appears therefore possible to obtain a sealed package of the type shown in figures 6 and 7 of the application by making use of a sheet packaging material according to claim 1.

6. The Board concludes that the person skilled in the art is in the position of carrying out the invention as claimed in claim 1 by using the teaching of the patent application and its common general knowledge and that therefore the requirements of Article 83 EPC are fulfilled.

7. Conclusions

The findings of the examining division and reasoning underlying the decision under appeal cannot be upheld

by the Board. Hence, the decision under appeal is to set aside.

However, since the decision under appeal only deals with the issue of insufficiency of disclosure without expressing any view on the patentability of the patent application and the invention claimed therein apart with regard to other aspects, the Board considers it appropriate to remit the case to the examining division for further prosecution in accordance with Article 111(1) EPC, as also requested by the appellant.

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 for further prosecution.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated