

Veröffentlichung im Amtsblatt	J/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non

Aktenzeichen / Case Number / N^o du recours : T 212/87 - 3.2.1

Anmeldenummer / Filing No / N^o de la demande : 83 306 961.0

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 120 161

Bezeichnung der Erfindung: Pouches

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : B65D 33/20
A61J 1/00

ENTSCHEIDUNG / DECISION

vom / of / du 18 September 1990

Anmelder / Applicant / Demandeur : LMG Smith Brothers Limited

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Articles 123(2) and 56

Schlagwort / Keyword / Mot clé : "Use of only one of the two values of a
described range to restrict the scope of
the claims (allowed)"
"Inventive step (yes)"

Leitsatz / Headnote / Sommaire



Case Number : T 212/87 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal
of 18 September 1990

Appellant : LMG Smith Brothers Limited
Ivy Mill, Hensingham
Whitehaven, Cumbria (GB)

Representative : Stuart Martin Cardwell
Roystons
531 Tower Building, Water Street
Liverpool L3 1BA (GB)

Decision under appeal : Decision of the Examining Division 2.3.08.081
of the European Patent Office dated
23 January 1987 refusing European patent
application No. 83 306 961.0 pursuant to
Article 97(1) EPC

Composition of the Board :

Chairman : F. Gumbel
Members : M. Liscourt
F. Benussi

Summary of Facts and Submissions

- I. The Appellant's European patent application No. 83 306 961.0, filed on 15 November 1983, claiming priority from a previous application GB-8 308 303 of 25 March 1983, was refused by a decision of the Examining Division dated 23 January 1987. The decision was based on Claim 1 filed with a letter received on 22 March 1986 and on Claims 2 to 9 as initially filed.

- II. The reason given for the refusal was that the subject-matter of the claims did not involve an inventive step within the meaning of Articles 52(1) and 56 EPC having regard to the following documents:

US-A-4 276 982
BE-A-548 923.

- III. On 27 March 1987 the Appellant filed a notice of appeal against that decision. The appeal fee was paid on 25 March 1987 and the Statement of Grounds of Appeal was filed on 21 May 1987.

- IV. In reply to a communication of the Board dated 9 May 1989 the Appellant filed with a letter received on 3 August 1989 his observations together with a new Claim 1 as well as evidence in favour of commercial success.

In response to a further communication of the Board dated 8 December 1989, the Appellant filed further observations and an amended Claim 1 with his letter received on 1 March 1990. He requested oral proceedings and produced further evidence for commercial success.

- V. During oral proceedings which took place on 18 September 1990, a new description as well as a new set of Claims 1 to 6 were filed and evidence was given in favour of inventive step with the help of comparative tests, for which samples were produced, which have been incorporated into the file.

Grant of a patent was requested on the basis of these documents together with the original drawings.

- VI. Current Claim 1 is worded as follows (after replacement of "adhesive tape" by "adhesive strip (28)" under Rule 88 EPC):

"A pouch for the sterilisation of articles sealed therein, the said pouch comprising first (12) and second (14) opposed webs having respective side and bottom portions (16, 18 and 20) sealed together thereby leaving an unsealed end whereat the first of said opposed webs extends beyond the free edge (24) of the second of said opposed webs to form a flap (26) foldable over onto an edge portion of the second web (14), the flap (26) having disposed thereon a strip (28) of adhesive means spaced from said free edge (24) and extending continuously across the flap, characterised in that a fold line (32) which is a perforated line of weakness extends through the strip (28) so that the flap (26) is foldable along the said fold line within the area covered by the strip (28) to bring successive portions of the said strip into direct sealing contact in turn (a) with an adjacent portion of the said strip, (b) with a strip of the web of the flap (26) and (c) with a strip of the second web (14) in sealing of the pouch with the flap (26), the said sequence of contacts providing "tell-tale" indication if the seal has been broken, wherein the fold line (32) is spaced from the

edge (38) of the adhesive strip (28) adjacent to the edge (24) of the other (14) of the said opposed webs by a distance of at least 2 mm."

This claim is followed by five appendant claims of the same category numbered 2 to 6 (in Claim 6 "tape" is replaced by "strip" under Rule 88 EPC).

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. All the features specified in the current Claim 1 are essentially disclosed in original Claims 1 to 3, 8, 10 and partly 9. They are also described in the originally filed description.

A discussion took place during the oral proceedings in respect of the fact that one of the features introduced into Claim 1, i.e. "at least 2 mm" had only been disclosed in the application as originally filed in combination with another value in the following form: "the relatively readily rupturable portion is preferably spaced from the edge of the adhesive tape adjacent to the edge of the other of said opposed webs by a distance varying between 2 mm and 4 mm" so that values over 4 mm for said distance between the edges were not contained in the application as filed.

The Appellant argued that the scope of Claim 1 as originally filed was not restricted to any width of said area so that it would be very inequitable to delimit the upper value of said width to 4 mm. Moreover, any skilled

person would have been aware on reading the original disclosure that the upper limit is not critical and depends solely on the size of the pouch.

This reasoning is accepted by the Board.

It is, therefore, considered that Article 123(2) EPC is satisfied.

3. Concerning novelty, it is agreed with the impugned decision that the document which contains the nearest state of the art is US-A-4 276 982. This document describes a pouch having all the features contained in the precharacterising part of Claim 1.

The pouch which is the subject-matter of Claim 1 differs from the one described in the above document by all the features contained in the characterising part.

The product described in the other document, i.e. BE-A-548 933, is an envelope which is not adapted for the sterilisation of articles sealed therein.

The subject-matter of Claim 1 is, therefore, novel.

4. Inventive step.

- 4.1 It has been observed by the Appellant that, in practice, pouches like those described in document US-A-4 276 982 show the drawback that, even when closed by sealing them carefully, their content after sterilisation could be contaminated later on before the pouches were opened.

- 4.2 According to the Appellant, who has developed a new test for detecting through which part of the pouch the contaminants spoil the content, the origin of the

drawbacks of the prior art has to be attributed to the insufficient sealing in the area of the fold line. During treatment in an autoclave there occurred small air gaps and creases forming microchannels through which contaminating particles could intrude during shipment and storage of the pouches.

This new test consisted in filling the pouch with coloured water containing a wetting agent and submitting the closed pouch to mechanical shocks and observing afterwards where the liquid with the dye has found a way towards the outside of the pouch.

4.3 It was, therefore, the object of the present invention to avoid such microchannels and to provide a sterilisable pouch with a minimum risk of contamination.

4.4 According to the Appellant, the perception of the problem existing with the known pouches and the setting of this object should be considered as inventive per se as in the decision T 225/84 (Boeing) of 16 July 1986 (not published) of the same Board.

However, since it could easily be noticed in practice that with the known pouches there was occurrence of contamination and since it must be expected from a practitioner to find out by suitable tests where the leakage might occur, the Board does not see the same situation in the present case as in that of the earlier decision. Moreover, in the present case, we are not faced with a problem invention wherein the solution would appear obvious to a person skilled in the art to which said problem would be posed.

4.5 The solution given to said problem, consisting essentially in choosing a perforated rupturable fold line of weakness

and locating it in the adhesive area at a certain distance from the edge of the adhesive strip adjacent to the free edge of the other web, was not suggested by any document cited in the proceedings. It is true that BE-A-548 933 shows per se the measure of providing a fold line within an area covered with adhesive means, however, this document deals with an envelope for postal purposes where the problem of a contamination proof seal does not play any role. Hence, it is, in the Board's view, totally unlikely that the skilled person trying to find a solution to that problem would derive any suggestion from this document apart from the fact that this document does not disclose the specific position of the fold line and the succession of contacts specified in Claim 1, nor does it recommend a perforated fold line in order to achieve a fold free of stresses which could lead to creases.

Furthermore, disposing perforations - instead of a simple fold line - and at a certain place which provides for a tight seal, cannot be considered as belonging to the normal skills of an expert in the field of manufacture of sterilisable pouches.

- 4.6 The subject-matter of Claim 1 is, therefore, not obvious and satisfies the requirements of Article 56 EPC.
- 4.7 Once the lower limit of two millimeters has been introduced in Claim 1, the reasoning of the Examining Division, that the pouch of the previous Claim 1 would be obtained by selecting one of two obvious alternative positions to the position of the fold line shown in US-A-4 276 982 - wherein the fold line is right at the edge of the adhesive strip - cannot be maintained.

4.8 Appendant Claims 2 to 6 deal with particular embodiments of the pouch according to Claim 1, their subject-matter, therefore, also satisfies the requirements of Article 56 EPC.

5. The only amendments made to the description are for the purpose of adapting it to the current claims and removing inconsistencies.

Therefore, the current version of the application does not contravene Article 123(2) EPC and also satisfies the requirements of Rule 27 EPC.

Under Rule 88 EPC the Board has carried out the following amendments:

On pages 3, line 6 and 4, line 4 "tape" was replaced by "strip" and on page 3, line 24 and page 4, lines 3 and 5 "rupturable portion" was replaced by "fold line".

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent on the basis of Claims 1 to 6 and description as submitted at the oral proceedings and

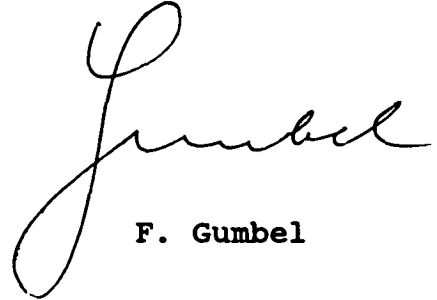
drawing sheet 1/1 as originally filed, with the amendments set out under points VI and 5 above.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel