

**Internal distribution code:**

- (A) [ ] Publication in OJ  
(B) [X] To Chairmen and Members  
(C) [ ] To Chairmen

**D E C I S I O N**  
**of 19 June 1997**

**Case Number:** T 0855/95 - 3.2.4

**Application Number:** 89304738.1

**Publication Number:** 0342854

**IPC:** B65C 3/16

**Language of the proceedings:** EN

**Title of invention:**

Heat shrink labelling machine with extended chuck

**Patentee:**

B & H MANUFACTURING COMPANY

**Opponent:**

KRONES AG HERMANN KRONSEDER MASCHINENFABRIK

**Headword:**

Labelling machine/B & H

**Relevant legal provisions:**

EPC Art. 54, 56, 100(a), 104

**Keyword:**

"Inventive step (yes) - determination of the closest prior art  
- incompatibility between disclosures"

"Apportionment of costs (no)"

"Objection of lack of novelty in view of a new document - fresh  
ground for opposition"

**Decisions cited:**

G 0010/91, G 0007/95, T 0439/92, T 0570/91

**Catchword:**

-



Case Number: T 0855/95 - 3.2.4

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.4  
of 19 June 1997

**Appellant:**  
(Opponent) KRONES AG HERMANN KRONSEDER  
MASCHINENFABRIK  
Böhmerwaldstr. 5  
D-93073 Neutraubling (DE)

**Representative:** Grünecker, Kinkeldey,  
Stockmair & Schwanhäusser  
Anwaltssozietät  
Maximilianstrasse 58  
80538 München (DE)

**Respondent:**  
(Proprietor of the patent) B & H MANUFACTURING COMPANY  
3461 Roeding Road  
Ceres  
California 94307 (US)

**Representative:** Senior, Alan Murray  
J.A. KEMP & CO.  
14 South Square  
Gray's Inn  
London WC1R 5LX (GB)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 7 August 1995  
rejecting the opposition filed against European  
patent No. 0 342 854 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** P. Petti  
M. Lewenton

## Summary of Facts and Submissions

- I. An opposition based upon Article 100(a) EPC and referring to Article 56 EPC was filed against the European patent No. 342 854. This opposition was rejected by the decision of the opposition division dispatched on 7 August 1995.
- II. On 11 October 1995 the appellant (opponent) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 13 December 1995.
- III. During the appeal proceedings the appellant based its arguments essentially upon the documents EP-A-95 882 (D1), which corresponds to US-A-4 406 721 (D'1), and US-A-4 447 280 (D3), both filed during the opposition proceedings, as well as upon document US-A-3 235 433 (D7), filed with the statement setting out the grounds of appeal.

Moreover the appellant filed during the opposition proceedings documents relating to a machine of the type "Seniormatic" of the firm Alfa Costruzioni Meccaniche SpA (Enclosure 1) and documents concerning a machine of the type "Supermatic" of the firm Kronos AG (Enclosures 2A to 2G).

- IV. Oral proceedings were held on 19 June 1997.

The appellant essentially argued that the subject-matter of Claim 1 according to the main request of the respondent was not novel having regard to document D7 and that the subject-matter of Claims 1 and 2 of this request did not involve an inventive step having regard to documents D1 and D3.

The respondent (proprietor) contested the arguments of the appellant.

V. The appellant requested that the decision under appeal be set aside and that the patent be revoked.

VI. As a main request the respondent requested that the appeal be dismissed. The respondent also submitted three subsidiary requests according to which it requested that the decision under appeal be set aside and the patent be maintained in amended versions.

The respondent furthermore requested the refusal of the introduction of document D7 into the proceedings, an apportionment of costs and, if document D7 were to be considered as being relevant, the remittal of the case to the first instance.

VII. The independent Claims 1 and 2 of the patent as granted (respondent's main request) read as follows:

"1. A machine for applying a label or other sheet or film material (15) having a leading and a trailing end to the body surface of a container (10) or other article having a body portion (4) and two end portions, at least one of said end portions (14) sloping inwardly from the surface of the body portion, said machine including a pair of chucks (16,27) arranged in axial alignment whereby they can clamp such article (10) between them with the ends of the article in contact with the chucks, said chucks being mounted for orbital movement about the central axis of the machine and for spinning about their individual axes, means for imparting such orbital and spinning motion to the chucks (16,27) with such an article (10) clamped between them, and an extension (19) associated with at least one (16) of said chucks adapted to overlies a respective end portion (14) of the article to provide a

continuation of part of the body surface of the article, whereby when a heat shrinkable label or sheet (15) is wrapped around the article (10) with at least one edge (15a) thereof detached from the article, such chuck extension provides a surface to bearingly support an edge of the overlapping leading and trailing ends, characterised in that the extension is a cylindrical member (19) which is an integral part of the chuck (17) providing a 360° continuation of the cylindrical surface (4) of the article (10)."

"2. A method of applying a heat shrinkable label or sheet to an article (10) such as a container which has a body portion (4) presenting a body surface and two end portions (14) at least one (14) of which slopes inwardly from the body surface, said method comprising:

- (a) providing a pair of rotatable chucks (16,27) in axial alignment, such chucks being provided with means to rotate them orbitally about a central axis and, while so rotating to cause the chucks to spin about their individual axes, whereby a container (10) or other article clamped at its ends between the chucks (16,27) is caused to undergo similar orbital and spinning movement to wrap a label or other sheet material (15) about the container;
- (b) continuously so-operating the chucks (16,27);
- (c) continuously supplying such articles (10) to the chucks (16,27) to rotate and spin them;
- (d) continuously supplying heat shrinkable label or sheet material (15) to the bodies of the articles (10) as they rotate and spinning each pair of chucks (16,27) and the respective articles (10) to wrap the sheet (15) about it while leaving one or

both edges of the sheet unattached and overlapping an extension (19) associated with the or each chuck and overlapping the aforesaid inwardly sloping end portion (14) or portions of the article (10); and

- (e) then applying heat to shrink the aforesaid edge portion (15a) or portions onto the inwardly sloping end portion (14) or portions of the article.

characterised in that the or each extension comprises a cylindrical integral portion (19) of the or each chuck (17) forming a 360° continuation of the body surface (4) overlapping the aforesaid inwardly sloping end portion (14) or portions."

### Reasons for the Decision

- 1. The appeal is admissible.
- 2. *The subject-matter of Claims 1 and 2 of the patent as granted*
  - 2.1 The term "cylindrical member" in Claims 1 and 2 has to be construed as defining a member extending from the chuck and having an outer cylindrical surface.

According to the characterising portion of Claims 1 and 2 the extension 19 is a cylindrical member integral with at least one of the chucks. According to the pre-characterising portion of each of the claims the chucks can clamp an article between them with the ends of the article in contact with the chucks and the extension is

adapted to overlie an end portion of the article. Therefore, the extension has to be interpreted as a cylindrical member extending beyond the surface of the chuck which is in contact with the end of the article.

The expressions "integral part of the chuck" or "integral portion of the chuck" indicate that the chuck and the extension constitute a single piece. This also implies that there is no relative motion between the extension and the remaining part of the chuck.

2.2 Claim 2, which is directed to a method of applying a heat shrinkable label to an article, does not contain any reference to the machine according to Claim 1. However, Claim 2 contains not only features defining method steps but also features relating to structural elements of a labelling machine, e.g. the features relating to the chucks and their extensions. In the context of the method claim 2, these features are to be construed as defining the use of these structural elements.

2.3 The indication in the apparatus claim 1 that the cylindrical member, ie the extension 19, "provides 360° continuation of the cylindrical surface of the article" has to be construed as defining a cylindrical member **suitable for** providing a 360° continuation of the container surface, ie as defining a chuck provided with a full cylindrical extension. This feature, in the context of the method claim 2, means that the extension provides a supporting surface not only for the portions of the upper (or lower) edge of the label corresponding to the overlapping leading and trailing ends of the label but also for the whole (360°) upper (or lower) edge of the label.

2.4 According to Claim 2, heat is applied to shrink an edge portion of the label onto an inwardly sloping end portion of the article. According to the description of the patent the article is removed from the labelling machine and then passed through a heating chamber to shrink the edge of the label (see column 3, lines 44 to 47).

The description of the patent as granted also relates to an alternative solution according to which the article may be heated without leaving the labelling machine: "Alternatively the container may be left on the machine and heated as shown in Figure 5 of US Patent 4,406,721" (see column 3, lines 49 to 51). However, since there is no relative motion between the extension defined in Claims 1 and 2 of the patent as granted and the remaining part of the chuck (see section 2.1 above), the shrinking (onto the container wall) of the edge of the label which is supported by the extension cannot occur without removing the article from the machine (ie from the chucks).

Therefore - as stated by the respondent during the oral proceedings - the sentence mentioned above (column 3, lines 49 to 51) has to be considered as being erroneous.

2.5 Claim 2 does not explicitly recite the feature that the leading and trailing ends of the label overlap each other in order to form a seam. However, having regard to the fact that the problem to be solved - as described in the patent specification - only arises when a seam between the leading and trailing edge has to be formed and that Claim 2 clearly defines a cylindrical integral portion of the chuck providing a



360° continuation of the cylindrical surface of the article around which the label is wrapped, Claim 2 has to be construed as implicitly defining a method in which support for the edge of the overlapping leading and trailing ends of the label is provided.

- 2.5.1 During the oral proceedings, the respondent - in order to make it clear that the overlapping of the ends of the label represents an essential feature - proposed the introduction of the expression "to overlap leading and trailing ends of the sheet" between the words "it" and "while" in Claim 2 (column 6, line 6), if the board were to consider this amendment as being necessary.

According to the board, since the claims under discussion are still those of the patent as granted, this amendment is neither necessary nor appropriate in so far as it relates to the clarity of the claims (see also the comments in section 2.5 above).

- 2.6 The feature in Claim 1 according to which "when a heat shrinking label ... is wrapped around the article (10) with at least one edge (15a) thereof detached from the article, such chuck extension provided a surface to bearingly support an edge of the overlapping leading edge and trailing ends" defines in a functional way a feature of the machine, namely that the chuck is suitable for providing this supporting surface.

As pointed out by both parties during the oral proceedings, the chucks of rotating labelling machines of the type defined in the pre-characterising portion of Claim 1 are specifically designed for and adapted to the containers to which labels are to be applied. Therefore, this feature represents a technical teaching, namely how to design the chuck for providing a support surface for the edge of the overlapping leading and trailing ends of the label.

3. *The requests of the respondent relating to the introduction of document D7*

3.1 Document D7 was submitted by the appellant with the statement setting out the grounds of appeal in order to challenge the subject-matter of Claims 1 and 2 with regard to inventive step.

With its reply dated 24 June 1996, the respondent requested the refusal of the introduction of this document into the proceedings, an apportionment of costs and the remittal of the case to the first instance, if document D7 were to be allowed into the proceedings.

In an annex to the summons to attend oral proceedings (see sections 5.1 to 5.3, pages 6 and 7), the board expressed its provisional opinion with respect to these requests of the respondent, namely

- that document D7 has been introduced by the appellant as a reaction to a finding in the decision under appeal,
- that, according to the board, it is logical that a losing party (in the opposition proceedings) tries, rightly, during the appeal proceedings, to fill a presumed missing link referred to in the decision under appeal in order to improve its position with respect to the assessment of inventive step,
- that such an approach cannot be considered by the board as a clear abuse of the proceedings, particularly since, in the present case, the introduction of document D7 took place at the earliest possible moment, namely at the beginning of the appeal,

- that the respondent had sufficient time to carefully study document D7 whose content has to be considered as rather simple and straightforward,
- that an apportionment of costs for reasons of equity, according to Article 104(1) EPC, did not seem to be likely,
- that the introduction of document D7 had not produced a "fresh case" in the meaning of the jurisprudence of the boards of appeal, which had allowed a direct remittal of the case to the first instance according to Article 111(1) EPC,
- that the introduction of document D7 cannot be considered by the board as the introduction of a new ground for opposition (cf. G 10/91, OJ EPO, 1993, 420), since both the opposition and the decision under appeal are based on the same ground for opposition for which the new document has been filed, namely the ground according to Article 100(a) EPC in relation to Articles 52(1) and 56 EPC.

Since during the subsequent proceedings the respondent did not bring forward any new arguments relating to these issues, the board does not see any reason for changing its opinion with respect to these requests of the respondent.

- 3.2 During the oral proceedings before the board the appellant referred to document D7 for attacking Claim 1 of the patent as granted for lack of novelty of its subject-matter.

The appellant asserted that document D7 disclosed a labelling machine having all the features specified in Claim 1 except the feature referred to in section 2.6 above. The appellant considered that this feature - due to the word "when" - had an optional character in so far as it does not define the machine but its use and thus argued that document D7 deprived the subject-matter of Claim 1 of novelty.

Replying to this argument of the appellant, the respondent pointed out that - additional to the fact that for each specific container specific chucks are provided - Claim 1 clearly defined the technical teaching that the extension is not only "adapted to overlie a respective end portion of the article" but also adapted to provide a surface to bearingly support an edge of the overlapping leading and trailing ends of the label. The respondent argued that document D7 did not provide the skilled reader with this technical teaching.

The respondent also argued that the objection of lack of novelty raised by the appellant represented - having regard to the decision of the Enlarged Board G 7/95 (OJ EPO 1996, 626) - a fresh ground for opposition, in so far as the issue of lack of novelty was not dealt with in the opposition proceedings.

- 3.2.1 According to the decision G 7/95, when "a patent has been opposed ... on the ground that the claims lack an inventive step **in view of documents cited in the notice of opposition**, the ground of lack of novelty ... is a fresh ground for opposition and accordingly may not be introduced into the appeal proceedings without the agreement of the patentee" (see Order, first sentence; emphasis added).

However, the Enlarged Board in this decision expressly stated that "it is not necessary ... to answer the referred question insofar as it relates to a new allegation that the claims lack novelty **in view of any other document** than the previously cited closest prior art document" (see section 7.3; emphasis added).

Since the appellant has opposed Claim 1 of the patent in suit on the ground of lack of novelty in view of a **new** document, introduced during the appeal proceedings, the present case is substantially different from the case decided in the decision G 7/95.

In any case, according to this decision, "the allegation that the claims lack novelty in view of the closest prior art document may be considered in the context of deciding upon the ground of lack of inventive step" (see Order, second sentence).

- 3.2.2 In the present case, however, it is clear - on the basis of a *prima facie* analysis of document D7 and having regard to the arguments of the parties - that the content of this document does not deprive the subject-matter of Claim 1 of novelty. The objection of lack of novelty raised by the appellant essentially relies upon an interpretation of Claim 1 according to which a feature specified in the claim is considered as optional. Having regard to the comments in section 2.6 above the board cannot accept this argument.

Moreover, although Figure 9 of document D7 shows a supporting knob 34I having an extension with a possibly substantially cylindrical outer surface, the information that this surface provides continuation of part of the body of the article and is suitable for supporting the label cannot be derived, let alone in an unequivocal way, from this document.

Therefore, according to the board, document D7 is not relevant with regard to the novelty of the subject-matter of Claim 1.

- 3.3 Having regard to the comments above, the respondent's requests to refuse the introduction of document D7 into the proceedings and to remit the case to the first instance as well as the request for an apportionment of costs have to be rejected.

4. *Novelty (respondent's main request)*

Novelty was disputed only in view of Figure 9 of document D7 with respect to Claim 1. Having regard to the comments in section 3.2.2 above, the subject-matter of Claim 1 of the patent as granted is novel within the meaning of Article 54 EPC.

5. *Closest prior art (respondent's main request)*

- 5.1 According to the board, document D1 is the closest prior art.

This document corresponds to document D'1 which is mentioned in the description not only of the patent as granted (column 1, lines 5 to 34) but also of the application as originally filed (page 1, line 3 to page 2, line 8) and which relates to a rotating labelling machine which provides "a solution to the problem of seam formation at the projecting edge or edges of the label before heat shrinking takes place" (see column 1, lines 32 to 34 of the patent specification or page 2, lines 6 to 8 of the application as filed).

Document D1 (see Figures 7 to 10) discloses a machine and a method according to the pre-characterising portions of Claims 1 and 2. A machine of this type comprises at least a pair of chucks which clamp the articles between them and are arranged to move orbitally about a central axis. During the orbital movement, the chucks (and therefore the article clamped between them) are caused to spin about their axes such that a label can be applied continuously to the body of the article. The chucks co-operate to firmly hold the articles, to confine them to an orbital path and impart to them a spinning motion.

At least one of the chucks is provided with an extension embodied as an extensible and retractable tongue 119/119a having a (partially) cylindrical surface and, thus, providing continuation of the container body only in the region of the seam between leading and trailing ends of the label. Having regard to section 2.1 above, the tongue can be considered as a cylindrical member.

- 5.2 The board does not share the appellant's opinion according to which document D3 should be considered as being the closest prior art with respect to the question of whether the claimed subject-matter involves an inventive step.

In the present case the problem to be solved has been described both in the patent as granted (column 1, lines 39 to 43) and in the application as filed (page 2, lines 13 to 15) in the context of a rotating labelling machine as disclosed in document D'1 or D1. That problem relates to the extensible-retractable tongue mechanism which is associated to the chucks of the rotating labelling machine. The solution to this problem - as defined in Claims 1 and 2 of the patent as granted - also relates to a rotating labelling machine.

However, document D3 discloses a linear labelling machine whose platens have no extensible-retractable tongue mechanism associated therewith. Since this document has no relationship to the problem to be solved as described in the patent as granted or in the application as filed (in so far this problem relates to an extensible-retractable tongue mechanism), it would not represent the best starting point from which a skilled person could try to arrive at the claimed subject-matter. Moreover, it is rather unlikely that the skilled person who, on the priority date of the patent in suit, already knew of rotating labelling machines and linear labelling machines would start from a linear labelling machine providing a solution to the problem of seam formation at the projecting edges of the label and then arrive at a rotating labelling machine (cf. in this respect the unpublished decisions T 439/92, section 6.2.4 and T 570/91, section 4).

6. *Problem and solution (respondent's main request)*

6.1 The subject-matter of Claim 1 differs from the machine according to document D1 in that the extension, i.e. the cylindrical member,

- (a) is an integral part of the chuck, and
- (b) is suitable for providing a 360° continuation of the cylindrical surface of the article.

The subject-matter of Claim 2 differs from the method described in document D1 in that the extension, i.e. the cylindrical member,

- (a') comprises an integral portion of the or each chuck, and



(b') forms a 360° continuation of the body surface overlapping the inwardly sloping end portion or portions.

6.2 The distinguishing feature b) or b') results in that no control orientation of the chucks and/or the container is required. The distinguishing feature a) or a') results in avoiding a mechanism for controlling the movement of the extension.

Therefore, the problem to be solved can be seen as simplifying the labelling machine according to document D1 with respect to the formation of a seam between the leading and trailing ends of the label.

7. *Inventive step (respondent's main request)*

7.1 Starting from document D1, it must be determined whether the skilled person reading document D3 would apply the teaching of this document to the prior art known from document D1.

7.1.1 Document D3 relates to a linear labelling machine provided with platens 37 which are rotatable along their own axes 330 (Figure 1A) and which are arranged to move linearly. The platens 37 co-operate with a belt 128 and a reaction pad 132 to firmly hold the articles, to confine them to a linear path and impart to them a spinning motion. The combination of the linear and spinning motions of the article makes it possible for labels to be applied continuously.

According to the embodiment shown in Figures 1, 1a and 2 of document D3 each platen 37, whose flat supporting surface is in contact with the bottom end of the article, comprises a cylindrical surface suitable for providing a 360° continuation of the cylindrical surface of the article. According to the passage on

column 8, lines 3 to 6, this cylindrical surface "provides a support for the lower edge of the label enabling the seam in the label to be pressed down as it is rolled" (see column 8, lines 1 to 6). It is clear from Figures 1a and 9 that the label extends beyond the base of the article 50. The above mentioned passage is followed by the sentence: "In the event that the skirt [ie the label] does not extend fully to the base of the bottle, the platen 37 may be formed with an upstanding edge so as to provide the desired support for the label" (column 8, lines 6 to 9).

- 7.1.2 The appellant interpreted this last sentence (column 8, lines 6 to 9) as implicitly disclosing a cylindrical member which is an integral part of the platen providing a 360° continuation of the cylindrical surface of the article to which the label has to be applied.

According to the appellant this interpretation is consistent with Claims 1, 5 and 8 of document D3 according to which the platen has a periphery providing support for the label or for a skirt overlying the tapered portion of the container.

According to the board, there is no doubt that document D3 refers in the above mentioned sentence (column 8, lines 6 to 9) to a similar solution as an alternative to the flat platens shown in Figure 1A. However, since there is no drawing allowing an unequivocal interpretation of this passage, it may be that the interpretation of the term "upstanding edge" made by the appellant is the consequence of a *ex post facto* analysis.

In any case, the board - for the following considerations - will assume that the above mentioned sentence clearly defines "a cylindrical member which is an integral part of the platen providing a 360° continuation of the cylindrical surface of the article".

- 7.1.3 Starting from the prior art according to document D1, the skilled person - concerned with the problem of simplifying the machine - has to realize firstly that the feature known from document D3 and concerning the "upstanding edge" permits this problem to be solved. Indeed, document D3 does not contain any explicit reference to the fact that this feature may result in the suppression of the control orientation of the chucks (which are not present) and of a mechanism for controlling the movement of the tongues (which are not present), so that the possibility that this feature results in the suppression of the control orientation of the chucks and of the mechanism for controlling the movement of the tongues must be recognised by the skilled person.

Furthermore, according to document D3 the containers are supported by the platens 37 and held by belt 128 and reaction pad 132 while being transported by the conveyor 41 and the belt 128. Then the containers are transferred onto a further conveyor 43 and pass over the heat chamber 39. At the transfer station between conveyors 41 and 43, the platen 37 is removed (going downwards) from the container to be transferred (see column 8, lines 34 to 36) and a platen 342 of the conveyor 43 is brought into engagement (going upwards) with the container. Therefore - as pointed out by the appellant - the presence of an upstanding edge formed onto the platen does not interfere with the removal of the container from the platen 37, due to the particular structure of the linear conveyor 41. In other words,

there is a link between, on the one hand, this particular structure of the conveyor 41 and, on the other hand, the possibility of forming the platen 37 with an "upstanding edge". Thus, a second step is required in order to "isolate" the feature concerning the upstanding edge from the specific context of the linear conveyor 41.

Moreover, starting from the prior art according to document D1, the skilled person turning to document D3 - as interpreted by the appellant - has to verify whether there is compatibility between the features of the machine according to document D3 and those of the machine according to document D1.

In the present case, it is clear from document D1 (see page 17, lines 7 to 13 and Figure 5) that the tongues 119 and 119a associated with the chuck of the machine according to this document must be retracted before shrinking the label at the heating station, which (shrinking) occurs when the containers are transported on the rotating turret 60. Therefore, the skilled person, after having realized that the feature of the upstanding edge known from document D3 could permit his problem to be solved, has to realize additionally that the shrinking of the label may not occur when the container is held by the chucks of the rotating turret. In other words, if the skilled person were to apply this feature to the machine according to document D1, he would have been obliged to further modify this machine with respect to the position of the heating station in such a way that the container may not be left during the shrinking operation on the rotating turret but has to be removed from the turret before shrinking.

Having regard to the structural differences between the means ensuring the transport of the containers respectively in the machines disclosed in documents D1 and D3, ie between the rotating turret 60 provided with chucks described in document D1 and the linear conveyor 41 provided with supporting platens 37 according to document D3, it is clear that, if the chucks associated to the rotating turret were to be formed with an "upstanding edge", the machine would have to be modified not only with respect to the position of the heating station but also with respect to the removal of the container from the rotating turret. This represents a clear incompatibility between the disclosures of documents D1 and D3.

Because of this inherent incompatibility the board considers that these disclosures cannot be readily combined.

The skilled person - when confronted with the technical problem to be solved - would therefore not consider the teaching of document D3.

7.2 In the annex to the summons to attend oral proceedings (see section 4.3), the board expressed the provisional opinion that the machines "Seniormatic" and "Supermatic" referred to in the Enclosures 1 and 2A to 2G were less relevant than document D3 with regard to inventive step. Since the appellant during the oral proceedings no longer based its arguments upon this prior art, the board does not see any reason for changing its opinion.

7.3 The appellant also argued that starting from document D3 the claimed subject-matter did not involve an inventive step with regard to the teaching of document D1. Having regard to the comments in the above section 5.2, this attempt of the appellant to apply the

problem-solution approach appears to be rather artificial. This approach seems to be even more artificial if it is considered that the appellant in its argumentation refers (as closest prior art) to a machine which is even not described in document D3 in an exact way, ie a machine which is not disclosed in detail (ie referring to drawings) but which is only presented briefly and very generally by a single sentence as an alternative solution (see above section 7.1.2).

According to the appellant, the subject-matter of Claims 1 and 2 substantially differs from the machine according to document D3 in that the machine includes a pair of chucks arranged in axial alignment, said chucks being mounted for orbital movement about the central axis of the machine, the chucks being suitable for clamping an article between them, and means being provided for imparting the orbital movement to the chucks. The appellant argued that these distinguishing features did not involve an inventive step, since they were known from document D1.

According to the board, even if the skilled person were to start from the machine according to document D3, he would not combine documents D3 and D1 because of the inherent incompatibility of their disclosures (see section 7.1.3). Moreover, such a combination would imply a general and radical modification of the machine structure according to document D3 with respect not only to the transport mode of the containers during application of the labels but also to the supply and removal of the containers. This also would deter the skilled person from making the combination.

7.3.1 The appellant asserted that Claims 1 and 2 defined the orbital movement of the chuck, which orbital movement. - having regard to the description of the patent - can be also elliptical, and argued that this rendered the linear movement of the platens 37 of the conveyor 41 according to document D3 similar to the orbital movement of the chucks.

According to the board, when containers move orbitally as defined in document D1 and in Claims 1 and 2 of the patent, they have to be held firmly by the chucks in order to take into account the existing centrifugal force. Therefore, an orbital conveyor cannot be compared with a linear conveyor having platens which only support the containers without there being any centrifugal force. Therefore, this appellant's argument is not considered as being relevant.

7.4 Having regard to the comments in above sections 7.1 to 7.3, the subject-matter of Claims 1 and 2 would not be obvious for a skilled person, so that it meets the requirements of Article 56 EPC.

8. The patent can therefore be maintained on the basis of the main request of the respondent, so that the respondent's subsidiary requests do not need to be considered.

**Order**

**For these reasons it is decided that:**

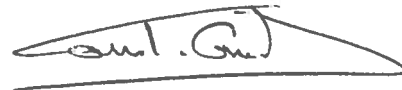
1. The appeal is dismissed.
2. The request for apportionment of costs is refused.

The Registrar:



N. Maslin

The Chairman:



C. Andries