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D E C I S I O N
of 13 January 2000

Case Number: T 0664/98 - 3.2.1
Application Number: 93870020.0
Publication Number: 0609644
IPC: B65D 23/10, B65D 23/00

Language of the proceedings: EN

Title of invention:

Lightweight, composite container and method for making the same

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

Henkel KGaA

Headword:

-

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step (yes)"

Decisions cited:

-

Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T 0664/98 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 13 January 2000

Appellant: Henkel KGaA
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Representative: -

Respondent: THE PROCTER & GAMBLE COMPANY
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Representative: O'Connell, Maura
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 28 April 1998
rejecting the opposition filed against European
patent No. 0 609 644 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: F. Gumbel
Members: S. Crane
J. van Moer

Summary of Facts and Submissions

- I. European patent No. 0 609 644 was granted on 14 August 1996 on the basis of European patent application No. 93 870 020.0.

Independent claims 1 and 8 of the granted patent read as follows:

- "1. A composite package comprising an inner plastic container (10) and an outer sleeve (20), said sleeve having an inner surface and an outer surface and having at least two sides which intersect at an edge (22,23), a substantial part of said inner surface being in contact with the plastic container, characterised in that a predetermined area of the sleeve is cut away in the region of an edge of the sleeve to form an aperture (21) which defines an upper edge section (22) and a lower edge section (23), said aperture corresponds to a handle (11) which is integrally formed into the plastic container, said handle being defined by two openings which are located on either side of one of the edges (12) of the plastic container."
- "8. A method for making a composite package according to any of the previous claims which comprises the steps of:
- a) making an inner thermoplastic container (10) by extruding a parison into a two piece mold, said mold when closed pinches said parison over an area which is fused together forming an interconnecting web;

- b) removing the interconnecting web to define a handle (11);
- c) cutting an aperture (31) into a carton blank (30);
- d) erecting the carton blank to form an outer sleeve (20), wherein said sleeve comprises at least two flat sides which intersect at an edge, said aperture (21) being located such that it divides the edge into an upper edge section (22) and a lower edge section (23);
- e) positioning outer sleeve over inner container such that the aperture (21) of the sleeve (20) is positioned over the handle (11) of the container (10)."

Dependent claims 2 to 7 and dependent claim 9 relate to preferred embodiments of the package according to claim 1 and the method according to claim 8 respectively.

II. The granted patent was opposed by the present appellants on the grounds that its subject-matter lacked novelty and/or inventive step (Article 100(a) EPC).

Of the prior art documents cited in the opposition proceedings the following have been relied upon in the main on appeal:

(D1) DE-A-4 030 851

(D2) DE-A-3 028 554.

III. With its decision posted on 28 April 1998 the

Opposition Division rejected the opposition.

- IV. On 27 June 1998 a notice of appeal against this decision was filed and the fee for appeal paid. The notice of appeal was also accompanied by a statement of grounds.

The appellants requested that the decision under appeal be set aside and the patent revoked in its entirety. They also requested reimbursement of the appeal fee.

- V. Oral proceedings before the Board were held on 13 January 2000.

The main request of the respondents (proprietors of the patent) was that the appeal be dismissed and the patent maintained as granted. In the alternative they requested maintenance of the patent in amended form on the basis of sets of claims according to first to fifth auxiliary requests filed with their letter dated 6 December 1999.

- VI. The main arguments of the appellants in support of their requests can be summarised as follows:

Document D1 disclosed a composite package according to the preamble of claim 1 wherein furthermore, in accordance with the characterising clause of the claim, the plastics container had a handle defined by two openings located on respective sides of one of its edges and the sleeve was provided in the region of one of its edges with apertures which corresponded to the handle. In contrast thereto an area of the edge region of the sleeve of the claimed composite package was cut

away to expose the handle formed in the plastics container. This was supposed to facilitate handling of the composite package since the user could now grasp the handle directly.

The idea of cutting away part of an outer sleeve of a composite package to provide full access to the handle of an inner plastics container to facilitate handling was however clearly taught by document D2 and it required no inventive insight on the part of the person skilled in the art to apply this idea to the composite package of document D1 for the same end.

Insofar as the respondents based their counterarguments on the facts that the composite package of document D1 was designed to be used in an upside-down position whereas theirs was not and that the inner plastics container of document D2 was not lightweight, these were besides the point, since claim 1 did not include any such corresponding limitations.

The method set out in claim 8 comprised merely conventional steps for assembling a composite package as defined in claim 1 and was devoid of any independent inventive significance.

The request for reimbursement of the appeal fee was justified by the fact that the decision of the Opposition Division only dealt in any detail with the question of novelty and lacked any coherent reasoning with respect to the question of inventive step.

VII. In reply the respondents put forward substantially the following:

It was clear from the patent specification when read as a whole that the claimed subject-matter was concerned with a composite package where the lightweight inner plastics container had insufficient inherent rigidity to support its contents, with the necessary structural rigidity for the composite package as a whole being provided by the sleeve. Claim 1 had therefore to be read in this light and the term "composite package" understood accordingly. Although document D1 related to such a composite package, document D2 clearly did not, so that it was wholly inappropriate to combine their teachings in the way advanced by the appellants. Furthermore, the proposal of document D2 differed in any case in a number of significant respects to what was taught by the invention.

In particular, there was nothing in the state of the art which could have led the skilled person to depart from the teachings of document D1 concerning the way the sleeve was arranged with respect to the handle formed on the inner plastics container and to arrive at the claimed subject-matter, wherein handling of the composite package in use was facilitated by making the handle on the inner plastics container directly accessible. It was also significant in this respect that the composite package of document D1 was intended to be used in a different way to that claimed, namely in a permanently upside-down condition, so that the problems involved with handling of the two packages by the user were also different.

Reasons for the Decision

1. The appeal complies with the formal requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC. It is therefore admissible.
2. *Background to the claimed invention; cited state of the art*

The contested patent is particularly concerned with a composite package for a liquid consumer product wherein the inner plastic container is sufficiently rigid to support its own weight when empty but is insufficiently rigid to resist the deformation forces caused by the weight of the product when the container is filled. To prevent bulging or instability of the plastics container it is surrounded by an outer sleeve which may for example be of cardboard or the like. The plastics container and the outer sleeve are readily separable for ease of recycling.

This basic construction of composite package is well known, as witnessed by the several prior art documents referred to in the introductory description of the patent specification. Another example of the state of the art is disclosed in document D1. This document is particularly concerned with facilitating the dispensing of a predetermined volume of viscous product from such a composite package. To this end the base portion of the thin-walled inner plastics container is formed as a bellows and is provided with a one-way valve. The composite package is normally stored in use in an upside-down position, ie with its closable neck portion

downwards and the bellows-like base upwards. To dispense the product the composite package is lifted from its support surface, the flexible neck portion is withdrawn from the surrounding outer support sleeve, the closure cap is removed and then pressure is exerted on the bellows-like base. From column 3, lines 40 to 54, taken in conjunction with column 3, lines 11 to 21, and the single drawing of document D1 it can be seen that in one embodiment the inner plastics container is integrally formed with a handle located along one of its edges, in a manner well known per se, and that the outer sleeve is provided with apertures which correspond to the aperture defined between the handle and the body of the plastics container, thereby allowing access of the fingers of the user's hand. The parts of the outer sleeve which are pressed out to form the apertures therein are folded around the handle of the plastics container.

Document D2 relates to a composite package for the transport of aggressive fluids. It comprises an inner plastics container of typical canister form with a screw-capped opening and a handle arranged within a depression on the upper surface of the container. To provide extra protection for the plastics container it is disposed with a small amount of play within a box-like outer container which is also made of plastics material. The open upper end of the outer container comprises four closure flaps the two main ones of which are provided with openings which in the closed position overlie and give access to the handle on the top of the inner container.

3. *Novelty and inventive step (claim 1)*

It is apparent from the above discussion of the disclosure of document D1 that the composite package described there comprises not only all the features specified in the preamble of claim 1 but also the feature specified in the characterising clause of the claim that the inner plastics container is integrally formed with a handle which, in the terms of the claim, it "defined by two openings which are located on either side of one of the edges" of the plastics container. Furthermore, the outer sleeve is provided on respective sides of the handle with apertures which are formed by inwardly folding respective cut-out tongues around the handle. Those apertures cannot however be equated to the aperture specified in the characterising clause of the claim. That aperture is formed by cutting away a predetermined area in the region of the edge of the sleeve thus defining an upper edge section and a lower edge section, the aperture "corresponding" to the handle. It is apparent that in the context the term "corresponding" must be understood as meaning that the aperture is positioned over the handle and is of such a size that it provides direct and full access for the user to the handle, see column 2, lines 31 to 35, of the patent specification.

With regard to document D2 the Board accepts the arguments of the respondents that the composite package disclosed there does not correspond to what is set out in the preamble of claim 1 insofar as the outer box-like container is not a "sleeve" in any normal sense of the term and a "substantial part" of the inner surface of the outer container is not in contact with the inner plastics container (in normal use the only contact is with the base of the inner container as it rests on the

outer container). The argument of the respondents in this respect that the inner plastics container of document D2 is not lightweight and is self-supporting does not however seem appropriate since this feature does not appear in claim 1 and is in fact stated at column 3, lines 27 to 29 of the patent specification to be preferred. With the exception of the feature that the inner plastics container is provided with an integral handle it is also apparent that the features specified in the characterising clause of the claim are also not disclosed in document D2.

The subject-matter of claim 1 is therefore novel with respect to the cited state of the art (Articles 52(1) and 54 EPC).

With regard to the evaluation of inventive step the Board is of the opinion that the appropriate technical problem of which account should be taken was the need to "facilitate handling of the container by the consumer, in particular the lifting of the container by the consumer and pouring from the container", see column 2, lines 6 to 10, of the patent specification. (In this context it is remarked that the description of the patent specification generally uses the term "composite container" rather than "composite package" as used in the claims, so that the reference to "container" in the passage quoted above should be understood accordingly.) Insofar as the patent specification then indicates that it is an objective of the invention to allow the consumer to take a firm and positive grip on the plastic of the container, unlike the prior art containers which (sic) gripping forces are transmitted through the outer sleeve to the inner

container", the Board agrees with the respondent that this is in fact that basic idea underlying their solution to the above-mentioned technical problem rather than an appropriate statement of that problem itself.

Accordingly, the issue of inventive step comes down in essence to the question whether, as argued by the appellants, the person skilled in the art would have been encouraged by the teachings of document D2 to modify the arrangement of the outer sleeve of the composite package of document D1 by forming an aperture in its edge region overlying the handle of the inner container thus enabling the handle to be grasped directly by the consumer. For the following reasons the Board is not convinced that this is the case. Although the documents D1 and D2 indeed relate to composite packages in the general sense the nature of the two packages involved is markedly different. Whereas document D1 is particularly concerned, as is the contested patent, with a package having a inner plastics container of limited rigidity, which is given the necessary support in use by the outer sleeve, both the inner and outer containers of the composite package of document D2 are clearly self-supporting.

Furthermore, although not explicitly stated in document D2, it is apparent that once the box-like outer container of document D2 has been opened to allow access to the screw cap of the canister-like inner container, than in practice the two containers will be separated from each other when it is wished to lift the inner container and pour product from it. In other words it is evident that the outer container of the composite package of document D2 is only intended

physically to protect the inner container during transport. Thus the person skilled in the art concerned with the development of the type of composite package disclosed in document D1 is unlikely to have had recourse to the teachings of document D2 when considering how to improve the handling of such a composite package in normal use by the consumer.

The only real similarity between the composite package disclosed in document D2 and that claimed is in the fact that apertures are cut away in the outer container so as to provide full access to the handle of the inner container. However, the handle of the canister-like inner container of document D2 is provided in conventional manner on its top surface so that the apertures in the outer container have to be provided in the upper closure flaps of the latter. These different arrangements of the handles of the inner containers of the two composite packages makes the likelihood of the person skilled in the art being encouraged by document D2 to cut away an edge region of the outer sleeve of the composite package of document D1 so as to provide full and direct access to the correspondingly located handle of the inner container disclosed there even more improbable.

Another factor which would speak against the person skilled in the art considering modifying the arrangement of apertures in the outer sleeve of the composite package of document D1 in the sense presently claimed is that this arrangement serves the specific purpose of locking the outer sleeve to the inner container so that if dispensed with some other means for achieving this end would need to be found.

Having regard to the above the Board therefore comes to the conclusion that the subject-matter of claim 1 cannot be derived in an obvious manner from the cited state of the art and accordingly involves an inventive step (Articles 52(1) and 56 EPC).

4. *Claims 8*

The method of claim 8 comprises no more than what must be considered conventional steps for the manufacture of the individual components (inner container and outer sleeve) of a composite package as defined in claim 1 and their assembly into such a package. However, insofar as that combination of components is, for the reasons stated above, new and inventive, then these findings also apply to the subject-matter of claim 8.

5. *Reimbursement of the appeal fee*

According to Rule 67 EPC one of the requirements for a request for reimbursement of the appeal fee to be successful is that the appeal is allowable. Since that is not the case here this request of the appellant must be rejected.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is

rejected.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel