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**D E C I S I O N**  
**of 27 November 2001**

**Case Number:** T 0349/99 - 3.2.4

**Application Number:** 96901053.7

**Publication Number:** 0807055

**IPC:** B65B 29/02

**Language of the proceedings:** EN

**Title of invention:**

Round interconnected tea bags grouped in pairs

**Applicant:**

Premier Brands U.K. Limited

**Opponent:**

-

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

"Inventive step - no"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0349/99 - 3.2.4

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.4**  
**of 27 November 2001**

**Appellant:** Premier Brands U.K. Limited  
P.O. Box 171  
Franklin House  
Bournville  
Birmingham B30 2NA (GB)

**Representative:** Denmark, James  
Bailey, Walsh & Co.  
5 York Place  
Leeds LS1 2SD  
Yorkshire (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 29 September 1998  
refusing European patent application  
No. 96 901 053.7 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** M. G. Hatherly  
H. Preglau

## Summary of Facts and Submissions

I. The examining division's decision refusing the European patent application No. 96 901 053.7 (International publication No. WO-A-96/23695) for lack of inventive step of all claims was posted on 29 September 1998.

On 23 November 1998 the appellant (applicant) filed an appeal, paying the appeal fee on 25 November 1998 and filing the statement of grounds on 3 February 1999.

II. The claims of the application as published read:

"1. Round tea bags (as herein defined) characterised in that they are produced on high speed machinery they are grouped in pairs in tangential fashion, and they are interconnected where the webs are tangential by a severable web portion."

2. Round tea bags as claimed in Claim 1, characterised in that the tea bags are circular.

3. A modified high speed tea bag making machine of the Ima type in that the cutters for making the round tea bags are modified to define round tea bags as defined in Claim 1 or 2."

It is stated in the third paragraph of page 3 of the published description that round tea bags are intended to mean "tea bags having a periphery at least a portion of which is curved or having an edge portion which may be straight but which is of less length than the overall length of the tea bag in the same direction as that edge."

III. In the statement of grounds of appeal the appellant argued that the claimed invention was both novel and inventive. He explained that the skilled person knew that pairs of rectangular tea bags, joined along a common long edge, could be made on high speed machinery and also that individual round tea bags could be made on these machines. The appellant gave reasons why the skilled person would not have been guided by the prior art to try to make round tea bags in pairs and concluded that the examining division's decision was deeply based on hindsight.

In order to overcome an objection by the examining division to the clarity of claim 1, the appellant declared himself willing to delete the indication in claim 1 to the tea bags being produced on high speed machinery.

IV. In a communication dated 27 July 2001 the board summoned the appellant to oral proceedings and attached an annex commenting on the appeal.

In section 10 of this annex the board expressed its provisional opinion that round tea bags grouped in pairs tangentially and connected by a severable web portion were not inventive and that, since it was known to produce round tea bags in singles and rectangular tea bags in pairs on high speed machinery, the subject-matter of claims 1 and 2 was obvious to the skilled person.

In section 11 of the annex the board provisionally considered also the modified machine of claim 3 to be obvious to the skilled person.

In section 12 of the annex the board additionally objected provisionally *inter alia* that

- a. claim 1, being directed to tea bags i.e. articles as such, should not be characterised by the method step "characterised in that they are produced on high speed machinery" and that the relative term "high speed" was unclear;
  - b. the words "tea bag making machine of the Ima type" in claim 3 did not have a clear technical meaning and that the relative term "high speed" was unclear (Article 84 EPC); and
  - c. the machine and its cutters should be defined in claim 3 "as is", i.e. in their final states instead of by reference to what was modified.
- V. The board commented in section 15 of the annex that the appellant had given no reason for the request for reimbursement of the appeal fee.
- VI. Section 16 of the annex stated that "It seems that the appellant has presented all the possible arguments in favour of the claimed tea bags and machine but the board still sees no way in which the present application can proceed to grant. Accordingly, unless the appellant is prepared to withdraw the appeal, the board considers it appropriate to finalise the case, one way or the other, at oral proceedings."
- VII. The appellant replied by letter of 27 September 2001 that he remained convinced that the application should proceed to grant, maintaining that the idea of connecting round tea bags at a flimsy connection point

was a way in which an engineer would not proceed. He requested an amendment of the claims to the tea bags being round only.

VIII. In the letter of 27 September 2001 the appellant stated that he would not attend the oral proceedings. These were held on 27 November 2001 without him, in accordance with Rule 71(2) EPC.

IX. The appellant requests

- that the decision under appeal be set aside,
- that a patent be granted on the basis of the application as published with the International Publication Number WO-A-96/23695 but with the claims being amended to the tea bags being round only and (if necessary) with the indication in claim 1 to the tea bags being produced on high speed machinery deleted, and
- that the appeal fee be reimbursed.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The appellant provides little in his letter of 27 September 2001 to try to refute the provisional objections given by the board in the annex to the summons of 27 July 2001 and summarised in section IV of this decision.

As the appellant is aware, the arguments in the second

paragraph of the letter of 27 September 2001 are repetitive arguments, having already been made in the statement of grounds of appeal and dealt with by the board in the annex (in particular in sections 5 to 9).

The second paragraph of section 7 of the annex commented that the appellant was taking an extended definition of "round". The appellant's present request to restrict the claims to properly round tea bags does not change the board's provisional view expressed in sections 5 and 6 and the first paragraph of section 7 of the annex that even properly round tea bags were obvious.

3. The board has reconsidered its provisional negative opinion but reached the same conclusion, namely that the subject-matter of the present claims 1 to 3 is obvious to the skilled person.
4. Even if the appellant were right and round tea bags in pairs were inventive then the appellant has not overcome other objections of the board.

The deletion (if necessary) of the indication in claim 1 to the tea bags being produced on high speed machinery overcomes clarity objections in sections 12.2 and 12.3 of the annex (summarised in section IV a of this decision) but the appellant does not comment on the warning in said section 12.2 that deletion might contravene Article 123 EPC.

The appellant has not overcome the board's clarity objections to claim 3 in sections 12.3 and 12.4 of the annex (summarised in sections IV b and c of this decision).

5. The board sees no way in which the present application can proceed to grant and cannot allow the appeal.
6. The appeal fee will not be reimbursed because the conditions set out in Rule 67 EPC (allowable appeal and substantial procedural violation) do not apply.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries