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**Datasheet for the decision  
of 16 October 2007**

**Case Number:** W 0021/07 - 3.2.07

**Application Number:** PCT/EP 2006/009871

**Publication Number:**

**IPC:** B65D 21/02

**Language of the proceedings:** EN

**Title of invention:**

Packaging with continuing labels

**Applicant:**

UNILEVER N.V.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

PCT R. 40.2(c)

**Keyword:**

"Protest made but not sufficiently substantiated"

**Decisions cited:**

W 0024/06, W 0002/07

**Catchword:**

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**Case Number:** W 0021/07 - 3.2.07

**International Application No.** PCT/EP 2006/009871

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.07**  
**of 16 October 2007**

**Applicant:**

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**Representative:**

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**Decision under appeal:**

Protest according to Rule 40.2(c) of the Patent Cooperation Treaty made by the applicants against the invitation (payment of additional fees) of the European Patent Office (International Searching Authority) dated 30 January 2007.

**Composition of the Board:**

**Chairman:** H. Meinders  
**Members:** P. O'Reilly  
T. Bokor

## Summary of Facts and Submissions

- I. International application No. PCT/EP2006/009871 was filed with twenty claims.
- II. The prior art documents cited in the present decision are:
- D1: GB-A-213 374  
D2: US-A-2004/232023  
D3: US-A-2004/070836
- III. The European Patent Office acting as International Searching Authority (ISA) pursuant to Article 16 PCT and Article 154 EPC informed the applicant with a notification dated 30 January 2007 that the application did not comply with the requirement of unity of invention and invited the applicant to pay five additional search fees pursuant to Rule 40.1(ii) PCT.
- IV. The ISA considered that the set of claims contained the following six inventions:
1. claims 1-3, 5-7, and 16: package providing a picture when used in groups;
  2. claims 4, 14: package which can support itself in different positions;
  3. claim 8: package enabling dispensing of the product;
  4. claims 9-11: package containing different products;

5. claims 12, 13, 15, 17-20: package having an ergonomic form;
6. claim 20: method for fixing labels to a container.

The ISA argued that the six inventions lacked unity of invention for the following reasons:

The subject-matter of independent claim 1 is anticipated by each of D1, D2 and D3. Claims 2 to 20 do not comprise any common special technical features and they solve different technical problems (Rule 13(2) PCT).

V. The applicant paid one additional search fee for the search to be carried out on the alleged second invention of claims 4 and 14. The fee was paid under protest in accordance with Rule 40.2(c) PCT as set out in the letter of the applicant of 28 February 2007.

VI. The applicant in its letter of 28 February 2007 argued as follows:

"We believe that the additional embodiments as present in the current application are very close to the original inventive concept as formed by original claim 1. In our opinion, the search can be extended over all further embodiments without much effort. Therefore an additional search fee should not be required."

VII. With a notification dated 5 June 2007 the applicant was invited to pay the protest fee pursuant to Rule 40.1(iii) PCT. With this notification the result of the deliberation of a "review panel" of the ISA was enclosed.

The review panel reviewed the invitation to pay the additional search fees and found it to be justified.

VIII. The appellant paid the protest fee on 19 June 2007.

### **Reasons for the Decision**

#### 1. *Competence of the Board to hear the protest*

For the reasons already set out in decision W 24/06 (not published in OJ EPO) the present board considers itself competent to hear the protest.

#### 2. *Admissibility of the protest*

2.1 In the view of the present Board the examination of the admissibility of the protest is limited to examining whether the protest is considered "to have been made" according to Rule 40.2(e) PCT. This examination is essentially an examination as to whether the requirements of Rule 40.1 (ii) and (iii) PCT have been complied with.

2.2 The appellant paid the additional search fee under protest on 28 February 2007, i.e. within one month of the relevant invitation of the EPO as ISA dated 30 January 2007. Thus the requirement of Rule 40.1 (ii) PCT as applicable to the protest in question is fulfilled.

2.3 The invitation to pay the protest fee was sent out on 5 June 2007 and the protest fee was paid on 19 June 2007,

so that also the requirement of Rule 40.1 (iii) PCT as applicable to the protest in question is fulfilled.

2.4 The protest is therefore considered to have been made in the sense of Rule 40.2(e) PCT.

3. *Substantiation of the protest*

3.1 The ISA argued that D1 took away the novelty of claims 1 and 11. The appellant has not disputed this view.

3.2. The ISA further argued that there were six groups of dependent claims which did not involve one or more of the same or corresponding special technical features thus forming separate inventions. The appellant has not contested this argument of the ISA but has paid only one additional search fee.

3.3 The sole argument of the appellant is an argument as to the extent of the search of the first invention. In particular, the appellant argues that the search should not have stopped at claims 1-3, 5-7 and 16 but should have continued to all other claims. In the opinion of the appellant the search could have been extended over all further embodiments without much effort.

3.4 The reasons given in the protest thus do not concern the possible lack of unity, but only concern the extent of the search.

This argumentation does not provide reasons as to why the application "complies with the requirement of unity of invention" or why "the amount of the additional fees is excessive" (cf. Rule 40.2(c) PCT) on the basis of

which the Board could find that the protest is justified. With respect to the meaning of the term "excessive" the Board would refer to W 0002/07 (not published in OJ EPO), point 14 of the reasons to which the present Board subscribes. In accordance with that decision the term "excessive" in the context of this rule means that whilst the protest acknowledges the presence of more than one invention it considers the number of extra inventions, and hence additional search fees to be paid, to be less than that stated by the ISA. The reasons given in the present protest do not address this point so that the protest cannot be justified on the basis that the number of additional search fees is excessive.

- 3.5 The Board therefore concludes that the protest has been made but is not sufficiently substantiated.

## **Order**

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

1. The protest is rejected.

The Registrar:

The Chairman:

G. Rauh

H. Meinders