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Aktenzeichen / Case Number / N^o du recours : W 29/90 - 3.2.4

Anmeldenummer / Filing No / N^o de la demande : PCT/CA90/00011

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

Bezeichnung der Erfindung: Packaging perishable liquids in gable top cartons

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : B65B 55/14, B65D 5/06

ENTSCHEIDUNG / DECISION

vom / of / du 2 October 1990

Anmelder / Applicant / Demandeur : FBI Brands Ltd

Patentinhaber / Proprietor of the patent /

Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Rules 13.1, 13.2(ii)(iii), 40.1 PCT

Schlagwort / Keyword / Mot clé : "Unity of invention - Method, devices and article (yes)"

Leitsatz / Headnote / Sommaire



Case Number : W 29/90 - 3.2.4
International Application No. PCT/CA90/00011

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 2 October 1990

Applicant : FBI Brands Ltd
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Subject of the Decision : Protest according to Rule 40.2(c) of the Patent Cooperation Treaty made by the applicants against the invitation (payment of 4 additional fees) of the European Patent Office (branch at The Hague) dated 17 April 1990.

Composition of the Board :

Chairman : C. Andries
Member : H. Seidenschwarz
Member : M. Schar

Summary of Facts and Submissions

- I. On 5 January 1990 the applicant filed International patent application PCT/CA90/00011.

- II. On 17 April 1990 the EPO, acting as International Searching Authority (ISA), sent to the applicant an invitation to pay an additional search fee in accordance with Article 17(3)(a) and Rule 40.1 PCT. The ISA indicated that the subject-matter claimed related to two inventions set out as follows:
 1. Claims 1-29, 38-44: Packaging, pasteurizing and sealing of the flaps of a gable top carton.

 2. Claims 30-37: A die for sealing a gable top carton.

The following reasons for the aforesaid findings were given:

The Claims 1-29 and 38-44 are dealing with the filling, pasteurizing and sealing of a gable top carton and describe characteristics and shape of predetermined portions of the sealing flaps, intended to facilitate opening of these flaps by the user.

This first problem does not constitute unity with a second problem to improve the construction of a die for sealing gable top cartons, as mentioned in Claims 30-37, these gable top cartons could differ from those described in Claims 16 or 25.

III. By telefax received on 28 May 1990, confirmed in writing (letter received on 30 May 1990) and including an appropriate payment voucher, the Applicant paid the additional search fee under protest (Rule 40.2(c) PCT), believing that the request was not justified.

The Applicant made a reasoned statement as to why it was considered that the claims related to a single inventive concept. He requested that the findings as to lack of unity of invention be reviewed.

Reasons for the Decision

1. In accordance with Article 154(3) EPC and Article 9 of the Agreement between EPO and WIPO under the PCT (cf. OJ EPO, 1985, 320), the Boards of Appeal are responsible for deciding on the protest raised by an Applicant against the additional search fee.
2. The protest complies with Rule 40.2(c) PCT and is, therefore, admissible.
3. According to the description the problem to be solved is to provide a system for shelf stable packaging of perishable liquids which allows use of a gable top carton which can be hermetically sealed to ensure shelf stability while retaining an easily opened spout (cf. PCT-CA90/00011: page 11, lines 1 to 5).
4. One of the essential features for solving this problem is, according to the different independent Claims 1, 16, 22, 23, 24, 25, 26, 38, 42 and 43, the sealing of the closure of the gable top carton and the design of the seal, so that an hermetically sealing can be obtained by applying heat and/or pressure, in such a manner that a predetermined

amount of pressure is applied to predetermined portions of the sealing flaps and less pressure is applied to other portions of these flaps so as to produce an easily opened seal:

Claim 1: feature (c);
Claim 16: lines 11 to 17;
Claim 22: lines 3 to 6 and 9 to 12;
Claim 23: lines 8 to 13;
Claim 24: feature (b);
Claim 25: feature (b);
Claim 26: feature (d);
Claim 38: lines 12 to 18; and
Claims 42 and 43: in their entirety.

5. The subject-matter of independent Claim 30 is a die for sealing a heat sealable carton, having a gable shaped closure, which includes side flaps extending from opposed side panels and end flaps extending from opposed end panels to a lower height than the flaps of the side panels, and corresponding, therefore, to the gable top carton as specified in the other independent claims. The die itself includes a pair of jaws which are specifically designed (upper and lower surfaces; a recessed area; a protrusion) to form a seal by pressing together said side flaps and said end flaps, which seal closes hermetically the gable top carton and which is still easy to be opened.

The die can therefore be used to solve the above-mentioned problem.

6. The application, therefore, relates to a group of inventions so linked as to form a single general inventive concept, since each of the first mentioned independent claims (cf. paragraph 4) refers to a specific sealing of a

gable top carton by heat and/or pressure, and independent Claim 30 (cf. paragraph 5) is directed to a die, which is suitable to carry out that specific sealing. More particularly, the independent claims of the present application satisfy the requirements of Rule 13.2(ii) and (iii) PCT which clearly provide for the inclusion in the same application of apparatus claims specifically designed for carrying out the process in addition to the process or manufacture claims and product claims.

- 7. It follows from the above considerations that the application does comply with Rule 13.1 and 13.2 PCT and, consequently, the invitation to pay an additional search fee was not justified.

Order

For these reasons, it is decided that:

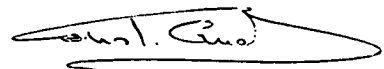
Refund of the additional search fee is ordered.

The Registrar:



N. Maslin

The Chairman:



C. Andries

In. H. M. 10.7.0
H. 5.10.90