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D E C I S I O N
of 28 June 2002

Case Number: T 0256/01 - 3.2.7

Application Number: 96105691.8

Publication Number: 0728673

IPC: B65D 65/38

Language of the proceedings: EN

Title of invention:
Packaging for hazardous liquid products

Applicant:
RHONE-POULENC AGRICULTURE LIMITED

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54, 111(1)

Keyword:
"Novelty - (yes, after amendment)"

Decisions cited:
-

Catchword:
-



Case Number: T 0256/01 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 28 June 2002

Appellant: RHONE-POULENC AGRICULTURE LIMITED
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Representative: Bentham, Stephen
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 9 October 2000
refusing European patent application
No. 96 105 691.8 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. Burkhart
Members: P. A. O'Reilly
E. Lachachinski

Summary of Facts and Submissions

- I. The appellant (applicant) filed an appeal against the decision of the Examining Division to refuse the European patent application No. 96 105 691.8.
- II. The Examining Division held that the subject-matter of independent claims 1 and 32 of both the main request and the single auxiliary request under their consideration was not novel in view of document D1.

The most pertinent documents in the proceedings are:

D1: GB-A-922 317

D11: US-A-4 115 292

D12: CA-A-1 112 534

D14: R. Kreinhofer and H. Reip, "Polyvinylalkohol - eine neue wasserlösliche Verpackungs-Folie", Fette"Seifen"Anstrichmittel, No. 9, 1961, pages 855 to 862.

- III. The appellant requested that the decision of the Examining Division be set aside and that a patent be granted on the basis of claims 1 to 39 filed with fax of 19 June 2002. Independent claims 1 and 32 of this request read as follows:

"1. A package containing a liquid (5) comprising a compound which is potentially toxic or damaging or detrimental to health or the environment which package comprises an envelope (3) which comprises a water soluble or water dispersible material (4) and which

envelope (3) has a thickness from 10 to 100 micrometres and comprises a flexible wall which is water soluble or water dispersible characterised in that the envelope (3) comprises a water soluble or water dispersible heat seal and also comprises an air space."

"32. A process for the preparation of a package which comprises an envelope (3) which comprises a water soluble or water dispersible material (4) and which envelope (3) has a thickness from 10 to 100 micrometres and comprises a flexible wall which is water soluble or water dispersible which package contains a liquid (5) comprising a compound which is potentially toxic or damaging or detrimental to health or the environment and also comprising an air space characterised in that the process comprises heat sealing the envelope material (4) to obtain a water soluble or water dispersible heat seal."

These claims differ from the corresponding claims on which the Examining Division based their decision in that the feature that the envelope "also comprises an air space" has been added to each independent claim.

IV. At the oral proceedings held on 28 June 2002 the appellant essentially argued as follows:

The documents D1, D11 and D12 make no reference to the existence of any air space in the packages mentioned in those documents.

In document D14 there is no reference to any air space in any packages produced. The document gives little in the way of concrete teaching as to the manner of manufacture of packages. The only concrete reference is

to the manufacture of cushion packs. Cushion packs however by their nature do not contain any air space. The method of manufacture of cushion packs described in document D14 would not give rise to any air space.

Reasons for the Decision

1. *Novelty*

The Board agrees with the appellant that documents D1, D11, and D12 do not disclose the presence of an air space in the packages disclosed in those documents. The closest prior art document is document D14. The appellant indicated that he would not dispute that D14 disclosed all the feature of the claims 1 and 32 except for the feature that the envelope also comprises an air space. This is also the opinion of the Board. Therefore, it needs only to be considered whether this feature is also disclosed in document D14 in combination with the remaining features of the respective claims.

Document D14 does not contain any express mention of an air space. On page 861 of the document, left hand column, there is a discussion of automatic filling of packages with products. It is not however indicated that these products are liquid. The only specific reference in this section regarding the nature of the products is a reference to dusty products and their problems which would not include liquids.

Liquids are however mentioned with respect to filling cushion packs as set out in the passages linking the left and right hand columns of page 861 under the

heading "Fertigung von Kissenpackungen". It is explained in these passages that the cushion packs are formed from a continuous film which is sealed and cut at intervals to form individual packs. This process is also illustrated in Figure 10. The polyvinyl alcohol (PVA) film is first formed into a tube and sealed along its length. The tube is thereafter filled with the liquid product. The filled tube is then heat sealed transversely at intervals and the heat seal is then cut so that the first sealed end of one bag is formed as well as the second sealed end of a preceding bag. It is stated that at the sealing area there are two elastic retainers, one on either side of the heating electrode. These holders serve to remove the liquid product from the sealing area and to avoid overfilling of the cushion packs. The retainers would therefore temporarily create a space in the portions of the tube adjacent the sealing area without any liquid product. After release of the elastic retainers the said space will not be an air space since the tube was filled only with liquid and contained no air. Thus, at both ends of the cushion pack the sealing is effected without the admission of any air and thus without creating an air space.

Therefore, the subject-matter of claims 1 and 32 is novel.

2. *Remittal to the first instance*

Claims 1 and 32 include an extra feature compared to the claims upon which the Examining Division have already taken a decision on novelty. The Examining Division have therefore not yet examined such claims with regards to inventive step. In accordance with

Article 111(1) EPC, the Board therefore considers it appropriate to remit the case to the first instance for further examination so as to give the appellant the possibility to argue his case before two instances.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution.

The Registrar:

The Chairman:

A. Townend

A. Burkhart