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**Datasheet for the decision
of 20 September 2006**

Case Number: T 0744/05 - 3.2.04

Application Number: 00917217.2

Publication Number: 1176894

IPC: A47G 21/18

Language of the proceedings: EN

Title of invention:
Flexible drinking straw

Applicant:
Fotopoulos, G. Anastasios

Opponent:

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Headword:

-

Relevant legal provisions:
EPC Art. 54(2)

Keyword:
"Novelty (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0744/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 20 September 2006

Appellant: Fotopoulos, G. Anastasios
(Applicant) 51 Zakynthou Street
GR-113 62 Athens (GR)

Representative: -

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 10 February 2005
refusing European application No. 00917217.2
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. Scheibling
Members: M. Pook
H. Preglau

Summary of Facts and Submissions

I. By its decision dated 10 February 2005 the Examining Division refused the patent application. The Examining Division considered that the subject-matter of claim 1 filed with letter of 19 July 2004 was not novel with respect to D1: GB-A-1 219 595. On 28 February 2005 the Appellant (applicant) filed an appeal. The appeal fee was paid on 15 February 2005. The statement setting out the grounds of appeal was received on 30 May 2005.

II. The following documents played a role during the appeal proceedings:

D1: GB-A-1 219 595

D2: DE-A-32 42 257

D5: JP-A-9-276113 (and its translation into English)

III. With letter of 30 March 2006 the Appellant filed a new set of claims. The independent claims now read as follows:

"1. A flexible drinking straw that is attached to the packaging of liquid foodstuffs, which is continuously bent until its use in order to take up less space of said packaging, comprising a corrugated zone, said corrugated zone comprises more than ten re-entrant overlapping folds, characterized in that said corrugated zone comprises contracted said re-entrant overlapping folds (1, 3, 4) and expanded said re-entrant overlapping folds (2, 5) interspersed among each other."

"3. A flexible drinking straw that is attached to the packaging of liquid foodstuffs, which is continuously bent until its use in order to take up less space of said packaging, comprising a corrugated zone, said corrugated zone comprises more than ten re-entrant overlapping folds, characterized in that a number of the first said re-entrant overlapping folds (1) of said corrugated zone are contracted and all others are expanded, so that said straw, after its straightening, may bend to all directions."

IV. The Appellant requested that a patent be granted on the basis of the newly filed claims.

He mainly argued that the straw shown in Figure 3b of D5 does not comprise expanded or contracted re-entrant overlapping folds and that nowhere in D5 it is indicated that some re-entrant overlapping folds remain contracted after bending in the manner of the present invention.

Reasons for the Decision

1. The appeal is admissible.
2. *Novelty of the independent claims:*
 - 2.1 From D5 (translation, Figures 1a, 1b, 3a, 3b) there is known a flexible drinking straw (Figures 1a, 1b) that is attached to the packaging of liquid foodstuffs (paragraph [0015], Figures 3a, 3b), which is continuously bent until its use in order to take up less space of said packaging, comprising a corrugated

zone, said corrugated zone comprising more than ten overlapping folds (Figures 1a, 1b). It is further indicated in lines 16 to 18 of paragraph [0010] that the corrugated zone of the embodiment according to Figure 1 may vary between a contracted state (Figure 1a) and an extended state (Figure 1b) such that the length of said zone passes from 60 mm to 125 mm.

- 2.2 As the Appellant indicated in the description filed with letter of 30 March 2006, on page 3, lines 24 to 28, "There are 2 types of folds: (i) The folds as in the above document [i.e. US-A-4 036 392] where no contracted folds exist. The folds of this type may extend only in a minor degree (about 1/4 in Figs 3, 4) and (ii) The re-entrant folds as in present invention (please see also document GB-A-1 219 595)".

This statement confirms the Board's view that folds which are able to extend such that the length of the corrugated zone when expanded is twice as long as the same corrugated zone when contracted, must compulsorily be of the re-entrant type.

Since in D5 the extended length of the straw is about 2.1 times the initial length, the folds must be of the re-entrant overlapping type.

- 2.3 The Appellant held that there is no indication in D5 that the folds of the corrugated zone are of the re-entrant overlapping type. He argued that the folds of a straw which are not of the re-entrant type are already expanded because of their elasticity. If in some way they are kept depressed they can have a very small

length with respect to the length of the zone when expanded.

However, there is no indication which could lead to the assumption that the "contracted state" referred to in D5 corresponds to a state where a force is continuously exercised upon the straw to keep the corrugated zone depressed. On the contrary the normal understanding of a skilled person reading the description of D5 in the light of the drawings is that Figures 1a and 1b show the straw in a contracted, respectively an extended state without said straw being subjected to any external force to keep it in the shown state.

- 2.4 The independent claims 1 and 3 of the application also specify the way the contracted and expanded folds are distributed over the corrugated zone and claim 3 specifies further that the straw "after its straightening, may bend to all directions".

However, how the contracted and expanded folds are distributed over the corrugated zone can be determined at will by altering the point at which pressure is exerted to bend the straw and thus, is not an intrinsic characteristic of the straw itself. Therefore it is not a limiting feature of the claim which could distinguish its subject-matter from the straw shown in D5.

Furthermore, as the Appellant indicated in the description of the application (as filed with letter of 30 March 2006) page 6, lines 6 to 9: "we aim at keeping a number of fist folds (1) contracted (e.g. 2-4 first folds) so that after straightening, the straw may bend to all directions thanks to the contracted folds".

Thus, the fact that after straightening, the straw may bend in all directions, is solely linked to the presence of contracted folds after straightening and consequently not an intrinsic characteristic of the straw itself, but of the way it has been used or stored. Therefore it cannot distinguish the claimed straw from the prior art either.

2.5 Consequently, the subject-matter of the independent claims 1 and 3 is not new.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

C. Scheibling