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**Datasheet for the decision  
of 13 March 2013**

**Case Number:** T 1439/10 - 3.2.07

**Application Number:** 03021228.6

**Publication Number:** 1415914

**IPC:** B65B 11/04, B65B 61/02

**Language of the proceedings:** EN

**Title of invention:**  
Method and apparatus for stretch-wrapping a load

**Patent Proprietor:**  
Lantech Management Corp. and Lantech Holding Corp.  
d/b/a Lantech, Inc.

**Opponent:**  
Robopac S.A.

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 123(2)

**Keyword:**  
"Amendments: not allowable (all requests)"

**Decisions cited:**  
T 1067/97

**Catchword:**  
-



Case Number: T 1439/10 - 3.2.07

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.07**  
**of 13 March 2013**

**Appellant:**  
(Patent Proprietor)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted 5 May 2010  
revoking European patent No. 1415914 pursuant  
to Article 101(3)(b) EPC.**

**Composition of the Board:**

**Chairman:** I. Beckedorf  
**Members:** K. Poalas  
G. Patton

## Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal against the decision of the Opposition Division revoking the European patent No. 1 415 914.
- II. The Opposition Division found that the subject-matter of claim 1 according to the main request does not meet the requirements of Articles 123(2) and 76(1) EPC, that the subject-matter of claim 20 according to the auxiliary request 1, the subject-matter of claim 19 according to the auxiliary request 2 and the subject-matter of claim 1 according to the auxiliary request 3 are not novel over the apparatus known from D9 (EP 0 517 502 A) and that the subject-matter of claim 1 according to one of the auxiliary requests 4 and 5 does not meet the requirements of Article 123(2) EPC.
- III. Oral proceedings before the Board took place on 13 March 2013.
- (a) The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of one of the sets of claims filed as main request and as auxiliary requests 1 and 2 with letter of 13 February 2013.
- (b) The duly summoned respondent (opponent) did not attend the oral proceedings, as announced with letter dated 6 March 2013, and the oral proceedings were continued without the respondent according to Rule 115(2) EPC and Article 15(3)

RPBA. In the written proceedings, the respondent did not submit any request.

IV. The independent apparatus claim 18 of the main request and the first and second auxiliary requests reads as follows (amendments over the independent apparatus claim 20 as granted are marked in bold):

Main request

"An apparatus for wrapping a load (124) with packaging material (116) comprising:

a dispenser for dispensing a web of packaging material (116);

a rotatable turntable (122) for providing relative rotation between the dispenser and the load (124) to wrap the web of packaging material (116) around the sides of the load (124); a packaging material holder (110) mounted on the rotatable turntable (122) for automatically grasping and releasing the web of packaging material (116); and means for selectively engaging the packaging material holder (110) to automatically release the web of packaging material (116);

the apparatus being characterized in that the packaging material holder (110) is isolated from any electrical or fluid power source by the rotatable turntable (122), **wherein the packaging material holder (110) includes a clamp for grasping, holding, and releasing packaging material (116) and a mechanical movement for actuating the clamp, the clamp including jaws (112, 114) mounted on a rail mounted on the turntable (122) to allow the jaws (112, 114) to translate relative to the turntable (122)".**

Auxiliary request 1

"An apparatus for wrapping a load (124) with packaging material (116) comprising:

a dispenser for dispensing a web of packaging material (116);

a rotatable turntable (122) for providing relative rotation between the dispenser and the load (124) to wrap the web of packaging material (116) around the sides of the load (124); a packaging material holder (110) mounted on the rotatable turntable (122) for automatically grasping and releasing the web of packaging material (116); and means for selectively engaging the packaging material holder (110) to automatically release the web of packaging material (116);

the apparatus being characterized in that the packaging material holder (110) is isolated from any electrical or fluid power source by the rotatable turntable (122) **wherein the packaging material holder (110) includes a clamp for grasping, holding, and releasing packaging material (116) and a mechanical movement for actuating the clamp, the clamp including jaws (112, 114) mounted on a rail mounted on the turntable (122) to allow the jaws (112, 114) to translate relative to the turntable (122), the mechanical movement being mounted on the turntable and including a floating cam in the form of a ramp (150) having an upper surface (152) and a lower surface (154), the mechanical movement further including a cam follower (158) which allows the jaws (112, 114) to travel on the surfaces (152, 154)".**

Auxiliary request 2

"An apparatus for wrapping a load (124) with packaging material (116) comprising:

a dispenser for dispensing a web of packaging material (116);

a rotatable turntable (122) for providing relative rotation between the dispenser and the load (124) to wrap the web of packaging material (116) around the sides of the load (124); a packaging material holder (110) mounted on the rotatable turntable (122) for automatically grasping and releasing the web of packaging material (116); and means for selectively engaging the packaging material holder (110) to automatically release the web of packaging material (116);

the apparatus being characterized in that the packaging material holder (110) is isolated from any electrical or fluid power source by the rotatable turntable (122) **wherein the packaging material holder (110) includes a clamp for grasping, holding, and releasing packaging material (116) and a mechanical movement for actuating the clamp, the clamp including jaws (112, 114) mounted on a rail mounted on the turntable (122) to allow the jaws (112, 114) to translate relative to the turntable (122), the mechanical movement being mounted on the turntable and including a floating cam in the form of a ramp (150) having an upper surface (152) and a lower surface (154), the mechanical movement further including a cam follower (158) which allows the jaws (112, 114) to travel on the surfaces (152, 154), wherein movement of the cam follower (158) up onto the upper surface (152) of the ramp (150) automatically causes the jaws (112, 114) to open, wherein the jaws**

(112, 114) remain open as long as the cam follower (158) is moving along the upper surface (152) of the ramp (150), and wherein the cam follower (158) rolling off the end of the ramp (150) automatically causes the jaws (112, 114) to close".

V. The appellant argued as follows:

*Claim 18 according to the main request - Amendments, Article 123(2) EPC*

Basis for the additional features of claim 18 according to the main request over claim 20 as granted is to be found in the application as filed on page 6, lines 11 to 13, 17 to 19 and 22 to 23. These features specify further structural features of the packaging material holder.

*Claim 18 according to the auxiliary request 1 - Amendments, Article 123(2) EPC*

Basis for the additional features of claim 18 according to the auxiliary request 1 over claim 18 according to the main request is to be found in the application as filed on page 6, line 28 to page 7, line 2 and page 7, lines 11 to 13. These features specify further structural features for guiding the movement of the jaws.

*Claim 18 according to the auxiliary request 2 - Amendments, Article 123(2) EPC*

Basis for the additional features of claim 18 according to the auxiliary request 2 over claim 18 according to

the auxiliary request 1 is to be found in the application as filed on page 7, lines 17 to 23. These features specify the interaction between different parts of the packaging material holder.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Claim 18 according to the main request - Amendments, Article 123(2) EPC*
  - 2.1 Claim 18 according to the main request discloses over claim 20 as granted the additional features that  
  
"the packaging material holder (110) includes a clamp for grasping, holding, and releasing packaging material (116) and a mechanical movement for actuating the clamp, the clamp including jaws (112, 114) mounted on a rail mounted on the turntable (122) to allow the jaws (112, 114) to translate relative to the turntable (122)".
  - 2.2 The appellant referred to the single specific apparatus embodiment depicted in the figures 1A to 4B and the corresponding description parts of the application as filed, page 6, lines 11 to 13, 17 to 19 and 22 to 23, as forming the basis for introducing the above-mentioned additional features into claim 18.
  - 2.3 The Board notes that the apparatus according to the single specific embodiment disclosed in the application as filed is depicted in the figures 1A to 4B and described on page 6, line 3 to page 12, line 10 of the



application as filed. Said apparatus comprises *inter alia* a packaging material holder 110 including jaws 112, 114 mounted on a rail mounted on the turntable 122, a mechanical movement mounted on the turntable and including a floating cam in form of a ramp 150 having an upper surface 152 and a lower surface 154, a cam follower 158 which allows the jaws to travel on said surfaces 152, 154, a cog element 132 consisting of an engaging element 134, a chain element 136 and a release element 138. The apparatus discloses further an actuator for the mechanical movement, said actuator being positioned apart from the turntable 122 and including a pin 130. A controller is further disclosed in said apparatus for engaging the pin 30 with the engaging element 134. This specific feature's combination allows the packaging material holder 110 to be isolated from any electrical or fluid source of power by the turntable, i.e. it allows the turntable to not carry electrical or fluid power sources with it during rotation and to act as a barrier between the packaging material holder and any electrical or fluid source of power, see page 9, lines 5 to 15 of the application as filed.

- 2.4 According to the established case law of the Boards of Appeal, if a claim is restricted to a preferred embodiment, it is normally not admissible under Article 123(2) EPC to extract isolated features from a set of features which have originally been disclosed in combination for that embodiment. Such kind of amendment would only be justified in the absence of any clearly recognisable functional or structural relationship among said features (see e.g. T 1067/97, point 2.1.3).

2.5 In the present case, claim 18 according to the main request although it defines some additional specific structural features of the packaging material holder it leaves out at the same time further structural features of said packaging material holder, for example the cog element, as well as features like the controller or the pin-actuator positioned apart from the turntable, said features being indispensable for having the packaging material holder from the claimed apparatus isolated from any electrical or fluid power source by the rotatable turntable.

2.6 The skilled reader would consider the presence of

- a) an actuator for the mechanical movement positioned apart from the turntable and including a pin;
- b) a cog element consisting of an engaging element, a chain element and a release element; and
- c) a controller actuating the pin for engaging the engaging element,

as indispensable for providing a functioning apparatus according to the present invention having a packaging material holder isolated from any electrical or fluid power source by the rotatable turntable.

2.7 Therefore, since claim 18 results from the extraction of isolated features from the specific feature's combination disclosed as essential in the single apparatus embodiment of the application as filed, and since the appellant did not refer to other parts of the application as filed that could support the proposed amendment, nor have such parts been identified by the Board, claim 18 as amended in accordance with the main request does not meet the requirements of Article 123(2) EPC.

3. *Claim 18 according to the auxiliary request 1 - Amendments, Article 123(2) EPC*

3.1 Claim 18 according to the auxiliary request 1 discloses over claim 18 according to the main request the additional features that

"the mechanical movement being mounted on the turntable and including a floating cam in the form of a ramp (150) having an upper surface (152) and a lower surface (154), the mechanical movement further including a cam follower (158) which allows the jaws (112, 114) to travel on the surfaces (152, 154)".

3.2 The appellant referred to the single specific apparatus embodiment depicted in the figures 1A to 4B and the corresponding description parts of the application as filed, page 6, line 28 to page 7, line 2 and page 7, lines 11 to 13, as forming the basis for introducing the above-mentioned additional features into claim 18.

3.3 The same argumentation concerning the single specific apparatus embodiment of the application as filed as presented under point 2 above in connection with claim 18 according to the main request applies mutatis mutandis also for claim 18 according to the auxiliary request 1.

3.4 As pointed out under point 2.6 above the skilled reader would consider the presence of  
a) an actuator for the mechanical movement positioned apart from the turntable and including a pin;

b) a cog element consisting of an engaging element, a chain element and a release element; and  
c) a controller actuating the pin for engaging the engaging element  
as indispensable for providing a functioning apparatus according to the present invention having a packaging material holder isolated from any electrical or fluid power source by the rotatable turntable.

3.5 The above-mentioned features are not present in claim 18 according to the auxiliary request 1 and thus claim 18 of said request results from the extraction of isolated features from the specific feature's combination disclosed as essential in the single apparatus embodiment of the application as filed.

3.6 Since the appellant did not refer to other parts of the application as filed that could support the proposed amendment, nor have such parts been identified by the Board, claim 18 as amended in accordance with the auxiliary request 1 does not meet the requirements of Article 123(2) EPC.

4. *Claim 18 according to the auxiliary request 2 - Amendments, Article 123(2) EPC*

4.1 Claim 18 according to the auxiliary request 2 discloses over claim 18 according to the auxiliary request 1 the additional features that

"movement of the cam follower (158) up onto the upper surface (152) of the ramp (150) automatically causes the jaws (112, 114) to open, wherein the jaws (112, 114) remain open as long as the cam follower (158) is moving

along the upper surface (152) of the ramp (150), and wherein the cam follower (158) rolling off the end of the ramp (150) automatically causes the jaws (112, 114) to close".

4.2 The appellant referred to the single specific apparatus embodiment depicted in the figures 1A to 4B and the corresponding description parts of the application as filed, page 7, lines 17 to 23, as forming the basis for introducing the above-mentioned additional features into claim 18.

4.3 The same argumentation concerning the single specific apparatus embodiment of the application as filed as presented under points 2 and 3 above in connection with claim 18 according to the main request and according to the auxiliary request 1 applies mutatis mutandis also for claim 18 of the auxiliary request 2.

4.4 As pointed out under point 2.6 above the skilled reader would consider the presence of

- a) an actuator for the mechanical movement positioned apart from the turntable and including a pin;
- b) a cog element consisting of an engaging element, a chain element and a release element; and
- c) a controller actuating the pin for engaging the engaging element

as indispensable for providing a functioning apparatus according to the present invention having a packaging material holder isolated from any electrical or fluid power source by the rotatable turntable.

4.5 The above-mentioned features are not present in claim 18 according to the auxiliary request 2 and thus

claim 18 of said request results from the extraction of isolated features from the specific feature's combination disclosed as essential in the single apparatus embodiment of the application as filed.

4.6 Since the appellant did not refer to other parts of the application as filed that could support the proposed amendment, nor have such parts been identified by the Board, claim 18 as amended in accordance with the auxiliary request 2 does not meet the requirements of Article 123(2) EPC.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

I. Beckedorf