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**Datasheet for the decision
of 22 February 2016**

Case Number: T 0149/13 - 3.2.07

Application Number: 04740152.6

Publication Number: 1638860

IPC: B65D79/00, B65D17/50

Language of the proceedings: EN

Title of invention:

CLOSURE

Patent Proprietor:

Crown Packaging Technology Inc

Opponent:

IMPRESS Group B.V.

Headword:

Relevant legal provisions:

EPC Art. 52, 54(2), 111(1)

Keyword:

Novelty - (yes)
Remittal to the opposition division - (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
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Chambres de recours**

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Case Number: T 0149/13 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 22 February 2016

Appellant: Crown Packaging Technology Inc
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Alsip, IL 60803-2599 (US)

Representative: Hoffmann Eitle
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Respondent: IMPRESS Group B.V.
(Opponent) Zutphenseweg 51051
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Representative: Leonhard, Frank Reimund
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 29 November
2012 revoking European patent No. 1638860
pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman H. Meinders
Members: K. Poalas
I. Beckedorf

Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal against the decision revoking the European patent No. 1 638 860.
- II. Opposition had been filed against the independent claim 6 and its dependent claims 7 and 8 of the patent based on Article 100(a) EPC (lack of novelty and inventive step) and on Article 100(b) EPC (insufficient disclosure).
- III. The opposition division found that the subject-matters of claims 6 and 7 of the patent as granted are not novel over the disclosure of X1 (EP-A-0 683 110) and revoked the patent.
- IV. In its statement setting out the grounds of appeal the appellant requested that the impugned decision be set aside and the patent be maintained as granted (main request), alternatively, that the patent be maintained on the basis of one of the sets of claims filed as first and second auxiliary request together with said statement. It requested further the correction of an obvious mistake in the opposition division's decision and the reimbursement of the appeal fee due to a violation of the right to be heard (Article 113(1) EPC). Oral proceedings were requested as a precautionary measure.
- V. In its communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) dated 3 December 2015, annexed to the summons for oral proceedings set for 9 March 2016, the Board gave its provisional opinion concerning *inter alia* novelty of the subject-matters of claims 6 and 7 of the patent in

suit over the disclosure of X1. It considered further the possibility to decide in written proceedings the setting aside of the decision under appeal and the remittal of the case to the opposition division for further prosecution on the basis of the further objections raised by the opponent during the opposition proceedings. The corresponding parts of said communication read as follows:

"3.2 The Board concurs with the appellant's arguments in the fifth paragraph of chapter 3.2 of its statement setting out the grounds of appeal that part 74 depicted in figure 10 of X1 "is an annular portion of the can body (X1, page 5, lines 10 to 16). Having the component which the claim requires to be bonded and then fixed to the filled can (74 of X1) already be a portion of the can, makes it objectively impossible to fix a pre-bonded unit comprising the component to the can". X1 therefore does not disclose the method step of fixing an annular component and panel bonded thereto to a filled can.

Accordingly, the subject-matter of claim 6 appears to be novel over the disclosure of X1. As a consequence the subject-matter of dependent claim 7 is also novel over the disclosure of X1.

...

3.4 For the above-mentioned reasons the Board, following the appellant's main request is of the preliminary opinion that the impugned decision has to be set aside and the case is to be remitted to the opposition division for further prosecution.

...

6. In view of the above provisional opinion of the Board the appellant is invited to clarify whether it wishes to maintain its request for oral proceedings. Otherwise, the Board could take in written proceedings the decision of setting aside the decision under appeal and remitting the case to the opposition division for further prosecution on the basis of the further objections raised by the opponent".

Under Points 4.3 to 4.5 of said communication, the Board dealt with the appellant's objection in respect of the alleged infringement of the appellant's right to be heard (Article 113(1) EPC) and its request for reimbursement of the appeal fee (Rule 103(2) EPC). The Board concluded that it could not establish a substantial procedural violation within the meaning of Rule 103(2) EPC and that the appeal fee should not be reimbursed.

- VI. In its response to the above-mentioned summons the appellant requested the setting aside of the decision under appeal and the remittal of the case to the opposition division for further prosecution on the basis of the further objections raised by the opponent, as set forth in section 6 of the annex to the summons. The request for oral proceedings as a precautionary measure was upheld. The request for reimbursement of the appeal fee was not mentioned at all.
- VII. The opponent remained silent during the entire appeal proceedings.
- VIII. Subsequently, the Board cancelled the oral proceedings scheduled for 9 March 2016.

Reasons for the Decision

1. *Claims 6 and 7 of the patent as granted - Novelty, Articles 52 and 54(2) EPC*
 - 1.1 Under point 3.2 of its above-mentioned communication the Board stated why it considers that the subject-matters of claims 6 and 7 of the patent as granted are novel over the disclosure of X1, see point V above.
 - 1.2 The above-mentioned preliminary finding of the Board has not been contested during the appeal proceedings, see point VII above. The Board considers that a time period of more than 2 months after receipt (4 December 2015) of its preliminary opinion by the respondent is sufficient for the respondent to have reacted.
 - 1.3 Under these circumstances, the Board - having once again taken into consideration all the relevant aspects concerning said issue - sees no reason to deviate from its above-mentioned finding.
 - 1.4 As a consequence, the subject-matters of claims 6 and 7 of the patent as granted are novel over the disclosure of X1.
2. *Remittal of the case to the opposition division*
 - 2.1 Due to the above-mentioned finding of the Board, see point 1.4 above, the reason of lack of novelty given for revoking the patent in suit is no longer valid. Since on the one hand the opposition division did not address in its contested decision any other reason hindering the maintenance of the patent, for example lack of inventive step, and on the other hand such an

objection has been raised in the notice of opposition, see for example chapters C.2 and C.3 of said notice, the Board exercises its discretion according to Article 111(1) EPC not to examine these issues of its own motion for the first time in the appeal proceedings, but to remit the case to the opposition division for further prosecution.

2.2 Since the appellant agreed to this course of action, see point VI above, the oral proceedings set for 9 March 2016 could be cancelled.

3. *Reimbursement of the appeal fee*

With regard to the appellant's original request for reimbursement of the appeal fee, the Board notes that this request was not reiterated by the appellant in its reply to the Board's communication under Article 15(1) RPBA nor did the appellant submit any counterarguments in this respect.

In that communication the Board expressed a negative opinion in this respect, see points 4.3 to 4.5 of said communication.

The appellant in clarifying its requests by letter of 2 February 2016 obviously did not wish to maintain that request.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated