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**Datasheet for the decision
of 20 January 2015**

Case Number: T 0831/14 - 3.2.07

Application Number: 10747877.8

Publication Number: 2473414

IPC: B65D17/28

Language of the proceedings: EN

Title of invention:

FULL APERTURE BEVERAGE CAN END

Applicant:

Crown Packaging Technology, Inc.

Headword:

Relevant legal provisions:

EPC Art. 108

EPC R. 99(2)

Keyword:

Admissibility of appeal -

appeal sufficiently substantiated (no)

Statement of grounds of appeal - party's complete case

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0831/14 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 20 January 2015

Appellant: Crown Packaging Technology, Inc.
(Applicant) 11535 S. Central Avenue
Alsip, IL 60803-2599 (US)

Representative: White, Duncan Rohan
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 18 November
2013 refusing European patent application No.
10747877.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman H. Meinders
Members: V. Bevilacqua
E. Kossonakou

Summary of Facts and Submissions

- I. This appeal is against the Examining Division's decision to refuse application No. 10747877.8 for lack of inventive step (Articles 52 and 56 EPC).

- II. With letter of 18 March 2014 the appellant filed the statement of grounds of appeal as reproduced below, submitted amended claims intended for replacing those which constituted the basis for the appealed decision, and requested that the appeal be allowed.

Further to the EPO decision to refuse the European Patent application dated 18 November 2013 and the applicant's Notice of Appeal filed 09 December 2013, the applicant's representative herewith provides the Grounds of Appeal, including a revised set of 15 claims to replace those currently on file.

In section 7.2 of the reasons for the EPO decision to refuse the European Patent application, the examiner accepts that the subject matter of claim 1 differs from the known full aperture end disclosed in document D5 (EP 1 813 540) because it includes a vent score, allowing the main score to tear in a controlled and reliable manner. The applicant contends that the provision of this vent score is crucially important to the reliable and safe operation of a full aperture beverage can end.

Accordingly, the applicant has amended claim 1 to more clearly describe the vent score. This amendment is taken from the wording used in the second half of paragraph 0044 of the PCT application as filed and published as WO 2011/026900, from which the subject European application is derived.

In view of the amendment of claim 1, the applicant herewith requests favourable reconsideration of the application.

- III. In a communication, sent as an annex to the summons to oral proceedings, the Board expressed doubts based on the submissions of the appellant, about whether the appeal was admissible, because the issue of inventive step was not dealt with in the grounds of appeal.
- IV. No reaction to this communication was received by the Board.
- V. Oral proceedings took place on 20 January 2015 in the absence of the appellant pursuant to Rule 115(2) EPC and Article 15(3) of the Rules of Procedure of the Boards of Appeal (RPBA). At the end of the oral proceedings the present decision was announced.
- VI. The text of independent claim 1 on which the present decision is based reads as follows (underlining and strikethrough were added by the Board to indicate, respectively, features added to and deleted from claim 1 on which the impugned decision was based):

A full aperture beverage end having a centre panel, a countersink surrounding the centre panel, a main score arranged in proximity to the countersink to define a removable aperture panel and a vent score, characterised in that the beverage end is adapted for use with products held under pressure of at least 483 kPa, the vent score takes the form of a flap and the internal pressure causes the vent score to rupture without arresting , thereby deflecting the flap to vent pressures of greater than 483 kPa and during opening

~~the vent score is adapted to sever first, controlling the pressure differential between the external surface and the internal surface of centre panel, and thereby allowing the main score to tear in a controlled and reliable manner.~~

Reasons for the Decision

1. An appeal must be rejected as inadmissible according to Rule 101, Article 108 and Rule 99(2) EPC if the statement of grounds does not "indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, as well as the facts and evidence on which the appeal is based", unless the deficiency has been remedied before expiry of the relevant time limit laid down in Article 108 EPC.

By the same token, Article 12(2) RPBA requires that the statement of the grounds of appeal shall contain the appellant's complete case and set out the reasons why it is requested that the decision under appeal should be reversed or amended and specify expressly all the facts, arguments and evidence relied on.

According to the jurisprudence of the Boards of Appeal this requirement should be construed as follows: the responsible Board should, on the basis of this statement, be able to understand why the appellant considers the appeal allowable, without having first to make investigations of its own (see in this respect "Case Law of the Boards of Appeal", 7th edition 2013, chapter IV.E.2.6.5).

2. The decision under appeal

According to the decision under appeal the only difference between the subject matter of independent claim 1 under examination and the content of the disclosure of either document EP 1 813 540 (D5) or GB 2168313 (D10) is the presence of a vent score, allowing the main score to tear in a controlled and reliable manner.

The Examining Division formulated for this difference the problem of "providing a full aperture beverage can end which avoids uncontrolled tearing of the main score" and came to the conclusion that any of US 2008/0617 (D1), US 3 485 420 (D2) or US 4 502 262 (D4) suggested to solve this problem in the same way as the beverage end of claim 1 did.

3. The grounds of appeal

3.1 In the statement of grounds of appeal the appellant does not argue that D5 or D10 is not a suitable starting point to discuss inventive step, and accepts the difference (the vent score) as it was formulated in the appealed decision (see the second paragraph as reproduced in point II above).

The appellant only argues that "the provision of this vent score is crucially important to the reliable and safe operation of a full beverage can end".

The third paragraph then explains that claim 1 was amended to put this feature in evidence and mentions a basis for this amendment, coming from the description.

The last paragraph of this letter only contains the request that the application be favourably reconsidered.

- 3.2 The above presentation shows that, apart from the indication of the basis for the amendment and the indication that the provision of the vent score is the crucial characteristic of the invention, the appellant does not indicate any facts or give any arguments which allow the Board to understand why the objections raised in the appealed decision, namely the lack of inventive step over the state of the art mentioned therein, should be considered as not correct or no longer applicable.

Even supposing that the appellant starts from the same document and acknowledges the same difference as identified in the appealed decision, there is a complete lack of argumentation why the amendments by addition and deletion (see point VI above) confer inventive step.

To find out why the decision is wrong in that respect, the Board would itself have to make the appellant's case.

- 3.3 For these reasons the Board comes to the conclusion that the statement of grounds does not meet the above discussed requirements of Article 108 EPC and Rule 99(2) EPC (see point 1).

4. Filing amended claims

- 4.1 Exceptionally, an appeal with amended claims may be admissible, despite an insufficient statement of grounds, if the legal and/or factual basis underlying

the decision under appeal clearly no longer applies (see "Case Law of the Boards of Appeal", 7th edition 2013, chapter IV.E.2.6.5).

- 4.2 As set out above, claim 1 was amended, amongst others, by extracting features from the description.

Submitting amendments coming from the description, however, requires at least dealing with the question whether they are allowable pursuant to Article 123(2) EPC, in particular when the features are extracted from their context.

Such argumentation is missing from the statement of grounds of appeal under consideration.

- 4.3 As discussed in point 3.2 above, the Board would itself have to construe the appellant's case on inventive step. This is aggravated, in the present case, by the replacement of a previous, completely functional, definition of the vent score with a different functional definition extracted from the description.

Therefore the amendments made to claim 1 cannot, by themselves, overcome the reasons of the appealed decision.

- 4.4 The exception allowed by the jurisprudence of the Boards cannot therefore apply either.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated