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**Datasheet for the decision
of 24 February 2015**

Case Number: T 1245/14 - 3.2.07

Application Number: 04757333.2

Publication Number: 1663799

IPC: B65D33/06

Language of the proceedings: EN

Title of invention:
MULTI-HANDLED SEALED BAG

Applicant:
CARGILL, INCORPORATED

Headword:

Relevant legal provisions:

EPC Art. 52, 54
EPC R. 115(2)
RPBA Art. 12(4), 15(3)

Keyword:

Examination procedure - correct exercise of discretion (yes)
Oral proceedings - non-attendance at oral proceedings

Decisions cited:

T 1704/06

Catchword:



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Boards of Appeal
Chambres de recours**

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Case Number: T 1245/14 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 24 February 2015

Appellant: CARGILL, INCORPORATED
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 2 January 2014
refusing European patent application No.
04757333.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman H. Meinders
Members: V. Bevilacqua
C. Brandt

Summary of Facts and Submissions

I. The applicant lodged an appeal against the decision of the Examining Division to refuse the European patent application No. 04 757 333.2.

II. The following document of the examination proceedings is relevant for the present decision:

D1: GB 2 341 382 A

III. The Examining Division decided, under Rule 137(3) EPC, not to allow the main request submitted during oral proceedings to re-introduce claims 1-14 filed on 10 October 2008 and subsequently withdrawn.

The Examining Division also held that the subject-matter of the independent claims 1 and 11 of the auxiliary request submitted during oral proceedings lacked inventive step (Article 56 EPC).

IV. With the statement of grounds of appeal the appellant requested to set aside the decision and to grant the patent on the basis of one of the following sets of claims:

- main request corresponding to the main request not admitted by the Examining Division;

- auxiliary request I corresponding to the set of claims the subject-matter of which was regarded as lacking inventive step;

- a new auxiliary request II, based on use claims.

As an auxiliary request an oral hearing was requested.

V. The text of the independent claims 1 submitted with the statement of grounds of appeal and on which the present decision is based reads as follows.

Main request

A sealed, multi-handled bag for packaging loose materials comprising:

a non-resealable sealed body having a first end and a substantially opposite second end, the body including a pair of opposing panels defining a storage cavity therebetween, the opposing panels being attached to each other at the first end and the second end, the opposing panels attached to each other at the first end to form a first seam and at the second end to form a second seam;

a first flap formed from portions of the opposing panels extending beyond the first seam at the first end and a second flap formed from portions of the opposing panels extending beyond the second seam at the second end;

a first handle formed in the first flap, wherein the first flap includes a stack of panels formed from the portions of the opposing panels extending beyond the seam, and the first handle is formed by one of a cut and a series of perforations formed through the stack, and wherein the first handle further comprises a patch attached to the stack of panels and the one of a cut and a series of perforations extends through the patch or the stack of panels includes a double stack of panels formed from the portions of the opposing panels extending beyond the seam being folded over and

attached to themselves; and a second handle formed in the second flap.

First auxiliary request

A sealed, multi-handled bag for packaging loose materials comprising:

a non-resealable sealed substantially tubular shaped body without intucked sides, having a first end and a second end, the second end being substantially opposite the first end in a longitudinal direction of the non-resealable sealed body,

the body including a pair of opposing panels defining a storage cavity therebetween, to the opposing panels being directly attached to each other at the first end to form a non-resealable first seam and at the second end to form a non-resealable second seam;

a first flap formed from first portions of the opposing panels extending in the longitudinal direction beyond the first seam at the first end and a second flap formed from second portions of the opposing panels extending in the longitudinal direction beyond the second seam at the second end;

a first handle formed in the first flap, wherein the first flap includes a stack of panels formed from the first portions of the opposing panels, and the first handle is formed by one of a cut and a series of perforations formed through the stack of panels and a non-resealable third seam distal to the first handle along the entire body end; and a second handle formed in the second flap wherein the second flap includes a second stack of panels formed from the second portions

of the opposing panels, the second handle is formed by one of a cut and a series of perforations formed through the second stack of panels and a non-resealable fourth seam distal to the second handle along the entire second end; wherein all the seams are formed with heat seal bonds or permanent adhesive bonds extending substantially along the entire body end.

Second auxiliary request

A use of a sealed, multi-handled bag comprising:

a non-resealable sealed body having a first end and a substantially opposite second end, the body including a pair of opposing panels defining a storage cavity therebetween, the opposing panels being attached to each other at the first end and the second end, the opposing panels attached to each other at the first end to form a first seam and at the second end to form a second seam;

a first flap formed from portions of the opposing panels extending beyond the first seam at the first end and a second flap formed from portions of the opposing panels extending beyond the second seam at the second end;

a first handle formed in the first flap, wherein the first flap includes a stack of panels formed from the portions of the opposing panels extending beyond the seam, and the first handle is formed by one of a cut and a series of perforations formed through the stack, and wherein the first handle further comprises a patch attached to the stack of panels and the one of a cut and a series of perforations extends through the patch or the stack of panels includes a double stack of

panels formed from the portions of the opposing panels extending beyond the seam being folded over and attached to themselves;

for packaging loose materials;

wherein, first, the bag is filled with the loose materials and, second, one of the handles is formed after the bag is filled with the loose materials.

VI. The appellant argued, insofar as relevant for the present decision, as follows.

D1 was not a suitable starting point for the inventive step discussion, because this document did not relate to a heavy-duty bag in the sense of the claims 1, but only to a bag suitable for large quantities of coins.

The decision of the Examining Division incorrectly identified the problem to be solved as how to provide a handle in a bag.

Inventive step should have been acknowledged, because none of the other prior art documents disclosed a bag having at least a handle formed after the bag is sealed.

The non-admittance of the main request as decided in the impugned decision was not addressed.

No reasons were further given for the claims of the second auxiliary request, as to how they would overcome the reasons of the impugned decision.

VII. With a communication dated 10 November 2014 and annexed to the summons to oral proceedings the Board questioned

admissibility of the main request on the following grounds:

1. *Admissibility of the main request*

1.1 *The Board is of the preliminary opinion that the main request is not admissible since the statement of grounds of appeal contains no substantiation (Article 12(2) RPBA) as to why the examining division was wrong in its exercise of discretion nor why the Board should exceptionally admit this request.*

1.2 *The Board is of the preliminary opinion that the main request should in any case not be admitted in the appeal proceedings under Article 12(4) RPBA, because this request has correctly not been admitted at the oral proceedings in examination. The Board further sees no particular circumstances that warrant its admission as late as the appeal proceedings.*

VIII. The Board also gave its preliminary opinion that the subject-matter of claim 1 of the first auxiliary request lacked novelty over the content of the disclosure of document D1 in the following terms:

4. *D1*

According to the description of the present application the capacity of heavy duty bags ranges from about 5 to about 50 kg (from 10 to 100 pounds, see the end of paragraph [23]).

The Board is not convinced that the bag of D1, which is suitable for transporting large quantities of coins, does not reach a capacity of 5 kg and above.

This is all the more so when reading page 4, lines 4-8.

The argumentation of the appellant according to which D1 is not a suitable starting point to discuss inventive step because it does not disclose a "heavy-duty " bag, is therefore not accepted by the Board.

5. *Claim 1 of the first auxiliary request*

D1 discloses:

a sealed, multi-handled bag for packaging loose materials (coins) comprising:

a non-resealable sealed (by welding, see page 3, line 4) substantially tubular shaped body without intucked sides (as clearly visible in figures 1 and 2), having a first end (14) and a second end (16), the second end (16) being substantially opposite the first (14) end in a longitudinal direction of the non-resealable sealed body (corresponding to the axis II-II),

the body including a pair of opposing panels (4,8, see figure 2) defining a storage cavity (18) therebetween, to the opposing panels being directly attached to each other ("welded all around the periphery", see page 3, line 4) at the first end (belonging to the periphery) to form a non-resealable first seam (10) and at the second end (also belonging to the periphery) to form a non-resealable second seam (12);

a first flap formed from first portions of the opposing panels extending in the longitudinal direction beyond the first seam (see the leftmost portion 14 in figure 2) at the first end and a second flap formed from second portions of the opposing panels extending in the

longitudinal direction beyond the second seam at the second end (see the rightmost portion 16 in figure 2).

D1 also discloses that "Apertures 24 and 26 are formed in the end region of the bag, respectively , so as to extend through both plies of material" (see page 3, third paragraph).

In the preliminary opinion of the Board this amounts to a disclosure of all the remaining features of claim 1, namely that:

a first handle (24) formed in the first flap, wherein the first flap includes a stack of (two) panels formed from the first portions of the opposing panels, and the first handle is formed by a cut (called "elongate slots", see page 3, third paragraph) formed through the stack of panels and a non-resealable third seam (the transversal part of the weld "all around the periphery, page 3, line 4) distal to the first handle along the entire body end;

and a second handle (26) formed in the second flap wherein the second flap includes a second stack of (two) panels formed from the second portions of the opposing panels, the second handle is formed by a cut (26) formed through the second stack of panels and a non-resealable fourth seam (the other transversal part of the weld "all around the periphery) distal to the second handle along the entire second end;

wherein all the seams are formed with heat seal bonds (the circumferential seams are made by welding, see page 3, line 4, the transversal seams 10,12) extending substantially along the entire body end.

The subject matter of claim 1 of the first auxiliary request is therefore considered as lacking novelty over D1.

IX. Concerning the admissibility of the claims of the second auxiliary request the Board had formulated the following objection:

2. Admissibility of the second auxiliary request

2.1 The second auxiliary request should neither be admitted in the appeal proceedings on the basis of Article 12(4) RPBA because, again, there is no substantiation (Article 12(2) RPBA) for this request, in this case how the amendments would overcome the reasons of the decision.

2.2 Neither are there reasons brought forward why this request was not submitted before the examining division, so that it could have formed a basis for the impugned decision.

2.3 Introducing it into appeal proceedings would bring about a fresh case, which the Board would have to decide as first instance department.

X. With letter dated 20 January 2015 the appellant submitted **only** the following response to the Board's communication:

In response to the Summons to attend Oral Proceedings dated 10 November 2014, the Boards of appeal is kindly informed that the representative of the Appellant/Applicant will not participate in the Oral Proceedings scheduled on 24 February 2015 here in Munich.

- XI. Oral proceedings before the Board were held in the absence of the appellant.

At the end of the oral proceedings the Board announced its decision.

Reasons for the Decision

1. In its communication accompanying the summons for oral proceedings the Board, taking account of the impugned decision and the submissions of the appellant, raised objections against the main request and the first and second auxiliary requests.
2. This communication explained why, in the Board's opinion, the main request and the second auxiliary request should not be admitted under Article 12(4) RPBA, and the subject matter of claim 1 of the first auxiliary request lacked novelty (Articles 52 and 54 EPC) over D1 (see point VIII above).
3. The appellant did not reply in substance to these objections (see point X above). It indicated that it would not attend the oral proceedings.

There has been no attempt by the appellant to refute or overcome the objections raised in the above communication. The Board has reviewed the factual and legal situation and sees no reason to depart from its preliminary opinion as expressed therein.

4. Although the appellant did not attend the oral proceedings, the principle of the right to be heard pursuant to Article 113(1) EPC is observed since it

only affords the opportunity to be heard and, by absenting itself from the oral proceedings, a party gives up that opportunity (see the explanatory note Article 15(3) RPBA cited in T 1704/06, not published in OJ EPO; see also the Case Law of the Boards of Appeal, 7th Edition 2013, IV.E.4.2.3 c)).

5. Taking account of the preceding observations, the Board concludes that the main request and the second auxiliary request are not admitted in the proceedings (Article 12(4) RPBA), and that the first auxiliary request is not allowed (Articles 52 and 54 EPC), because the subject-matter of claim 1 lacks novelty over the content of the disclosure of D1.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated