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**Datasheet for the decision  
of 18 March 2019**

**Case Number:** T 0234/15 - 3.2.07

**Application Number:** 07841937.1

**Publication Number:** 2064126

**IPC:** B65D43/16

**Language of the proceedings:** EN

**Title of invention:**

NON-ROUND MOISTURE-TIGHT RE-SEALABLE CONTAINERS WITH ROUND  
SEALING SURFACES

**Patent Proprietor:**

CSP Technologies, Inc.

**Opponent:**

Clariant Produkte (Deutschland) GmbH

**Headword:**

**Relevant legal provisions:**

RPBA Art. 12, 13

**Keyword:**

Admissibility of auxiliary request 1 - yes  
Allowability of auxiliary request 1 - yes

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0234/15 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 18 March 2019**

**Appellant 1:**  
(Patent Proprietor)

CSP Technologies, Inc.  
960 West Veterans Boulevard  
Auburn, Alabama 36832 (US)

**Representative:**

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**Appellant 2:**  
(Opponent)

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**Representative:**

Hoffmann Eitle  
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**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
9 December 2014 concerning maintenance of the  
European Patent No. 2064126 in amended form.**

**Composition of the Board:**

**Chairman** K. Poalas  
**Members:** V. Bevilacqua  
R. Cramer

## **Summary of Facts and Submissions**

- I. The patent proprietor (appellant 1) and the opponent (appellant 2) lodged each an appeal in the prescribed form and within the prescribed time limit against the interlocutory decision of the opposition division maintaining European patent EP 2 064 126 in amended form.
  
- II. The patent proprietor initially requested  
  
that the decision under appeal be set aside and that the patent be maintained as granted (main request), or, alternatively, that the patent be maintained in amended form on the basis of one of the sets of claims being filed as auxiliary requests 1-8 with its statement setting out the grounds of appeal.
  
- III. The opponent requested  
  
that the decision under appeal be set aside and that the patent be revoked.
  
- IV. By communication pursuant to Article 15(1) RPBA the Board provided the parties with its preliminary opinion on the above requests.
  
- V. When responding to this preliminary opinion, the patent proprietor replaced, with letter dated 14 February 2019, auxiliary requests 1-8 with new auxiliary requests 1 to 5.
  
- VI. Oral proceedings were held on 18 March 2019, during which the factual and legal situation was discussed

with the parties.

During the oral proceedings the patent proprietor submitted arguments in favour of admissibility and allowability of **auxiliary request 1**.

The opponent declared during the oral proceedings to have no objection against the admissibility and the allowability of auxiliary request 1.

At the end of oral proceedings the patent proprietor's sole request was that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the set of claims filed with the letter of 14 February 2019 as **auxiliary request 1**, and the description in the version as upheld by the opposition division.

The opponent stated finally, that its request remained unchanged, namely that the decision under appeal be set aside and that the patent be revoked.

For further details of the course of the oral procedure, reference is made to the minutes thereof.

The decision was pronounced at the end of the oral proceedings.

VII. The wording of the independent claim 1 of **auxiliary request 1** is as follows:

"A hinged container (10) comprising:

- (a) a base (12, 112) having an outer perimeter (18);
- (b) a lid (14, 114) having an outer perimeter (20);

(c) a hinge (16) joining the base (12, 112) and lid (14, 114), allowing the lid (14, 114) to pivot open or closed relative to the base (12, 112);  
the base (12, 112) and/or the lid (14, 114) having a non-round outer perimeter (18, 20),  
(d) an outwardly tapered outer seal member (26) defining a center axis (28) and mounted in fixed relation to one of the base (12, 112) and the lid (14, 114) and disposed at least partially within the corresponding outer perimeter (18, 20);  
(e) an inwardly-tapered inner seal member (30, 130) defining a center axis (28) and mounted in fixed relation to the other of the base (12, 112) and the lid (14, 114) and disposed at least partially within the corresponding outer perimeter (18, 20);  
(f) the inner and outer seal members (26, 30, 130) being positioned to engage concentrically to wedge the inwardly and outwardly tapered surfaces together and form a moisture-tight seal when the base (12, 112) and the lid (14, 114) are closed, and to disengage concentrically to part the inwardly and outwardly tapered surfaces when the base (12, 112) and the lid (14, 114) are opened,  
characterised in that the inner and outer seal members are both circular and the base (12, 112) is provided with a latch portion (164), the lid (14, 114) is provided with a catch (170), and the latch portion (164) is positioned to engage the catch (170) when the lid (14, 114) and the base (12, 112) are closed and wherein the container (10) further comprises at least one push tab (156) in association with the latch portion (164), whereby when the push tab (156) is depressed, the latch portion (164) is released from the catch (170), and a spring (158) in association with the push tab (156) wherein the spring (158) returns the push tab (156) from its depressed position."

## Reasons for the Decision

### 1. Auxiliary request 1

1.1 In the present case the final and sole request of the patent proprietor was that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the set of claims filed with the letter of 14 February 2019 as **auxiliary request 1**, and the description in the version as upheld by the opposition division.

1.2 Claim 1 of auxiliary request 1 corresponds to the combination of claims 1, 10 and 11 of the patent as granted and dependent claims 2 to 10 of auxiliary request 1 correspond to claims 2 to 9 and 12 of the patent as granted. Such set of claims has not been dealt with in the impugned decision.

1.3 The opponent stated expressly during the oral proceedings, that it had no longer objections concerning the admissibility and the allowability of auxiliary request 1 and the description in the version as upheld by the opposition division (see minutes of the oral proceedings).

1.4 Under these circumstances, i.e. in the absence of any objections by the appealing opponent, the Board sees also no reason for not admitting auxiliary request 1 into the proceedings and for not considering said request allowable.

1.5 Therefore, the Board admits auxiliary request 1 into the proceedings and considers said request allowable.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent in amended form on the basis of the following documents:
  - claims 1-10 filed as auxiliary request 1 with the letter of 14 February 2019;
  - description columns 1 and 2 filed during the oral proceedings before the opposition division
  - description columns 3-9 of the patent specification
  - drawings Figures 1-9 of the patent specification.

The Registrar:

The Chairman:



G. Nachtigall

K. Poalas

Decision electronically authenticated