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**Datasheet for the decision  
of 11 November 2019**

**Case Number:** T 1406/15 - 3.2.07

**Application Number:** 04075710.6

**Publication Number:** 1577222

**IPC:** B65D17/00, B21D51/38

**Language of the proceedings:** EN

**Title of invention:**

Tin lid

**Patent Proprietor:**

Ardagh MP Group Netherlands B.V.

**Opponent:**

CROWN Packaging UK PLC

**Headword:**

**Relevant legal provisions:**

EPC Art. 56, 113(1)

EPC R. 115(2)

RPBA Art. 13(3), 15(1), 15(3)

**Keyword:**

**Decisions cited:**

T 1704/06

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 1406/15 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 11 November 2019**

**Appellant:** Ardagh MP Group Netherlands B.V.  
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**Representative:** Brouwer, Hendrik Rogier  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 7 May 2015  
revoking European patent No. 1577222 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** V. Bevilacqua  
A. Pieracci

## Summary of Facts and Submissions

- I. The patent proprietor (appellant) lodged an appeal within the prescribed period and in the the prescribed form against the decision of the opposition division revoking the European patent No. 1 577 222.
- II. Opposition had been filed against the patent as a whole on all grounds for opposition under Article 100 EPC.
- III. The appellant requested that

the decision under appeal be set aside and that the patent be maintained in amended form on the basis any of the sets of claims filed as main request and as auxiliary requests I to III, with letter dated 1 August 2016.

These requests replaced those previously submitted with the statement setting out the grounds of appeal.

The respondent (opponent) requested

that the appeal be dismissed.

- IV. The following prior art, mentioned in the appealed decision and referred to during appeal proceedings is relevant to the Board's decision:

D7: US 4 511 299 A;  
D12: GB 1 426 308 B1.

V. **Claim 1 of the main request** reads as follows:

"A lid (1) for a sheet metal container, which lid (1) comprises:

- a sheet metal body;
- a curled edge part (2) for seaming to a container;
- a score line (5) substantially arranged along the periphery of the sheet metal body and defining a tear-out part (3);
- a tab (4) attached with a rivet (7) to the tear-out part (3) of the sheet metal body;
- a furrow (6) arranged in the tear-out part (3) of the sheet metal body adjacent and parallel along ~~to~~ the score line (5); and
- a furrow arranged in a lid part between the score line (5) and the edge part (2), and adjacent and parallel along the score line (5),

**characterized in that**

at least two additional furrows (9) arranged on sides of the tab (4) substantially perpendicular to the longitudinal direction of the tab and between the rivet (7) and the score line (5)."

**Claim 1 of the auxiliary request I** corresponds to claim 1 of the main request and additionally comprises the following features added at the end thereof:

"and provide additional stiffness to the part which is pushed open with the tab (4)."

**Claim 1 of the auxiliary request II** reads as follows (features added with respect to claim 1 of the main request are in bold, emphasis added by the Board):

A lid (1) for a sheet metal container, which lid (1) comprises:

- a sheet metal body;
  - a curled edge part (2) for seaming to a container;
  - a score line (5) substantially arranged along the periphery of the sheet metal body and defining a tear-out part (3);¶
  - a tab (4) attached with a rivet (7) to the tear-out part (3) of the sheet metal body;¶
  - a furrow (6) **consisting of one sheet metal layer thick walls, and** arranged in the tear-out part (3) of the sheet metal body adjacent and parallel along the score line (5); and¶
  - a furrow **consisting of one sheet metal layer thick walls, and** arranged in a lid part between the score line (5) and the edge part (2), and adjacent and parallel along the score line (5),¶
- characterized in that at least two additional furrows (9) arranged on sides of the tab (4) substantially perpendicular to the longitudinal direction of the tab and between the rivet (7) and the score line (5)."

**Claim 1 of the auxiliary request III** corresponds to claim 1 of auxiliary request II and additionally comprises the following features added at the end thereof:

"and provide additional stiffness to the part which is pushed open with the tab (4)."

**Claim 1 of the auxiliary request IV and claim 1 of the auxiliary request IV'** respectively correspond to claim 1 of the main request and of auxiliary request I and additionally comprise the following features added at the respective end thereof:

"wherein the distance of the centerline of the furrow (6) to the score line (5) is in the range of 0.75-2 times the width of the furrow (6)".

VI. In its communication pursuant to Article 15(1) RPBA, annexed to the summons for oral proceedings set for 11 November 2019, the Board gave its negative provisional opinion concerning the allowability of the requests submitted by the the appellant with letter dated 1 August 2016. The corresponding parts of said communication read as follows:

**"2. Main request - lack of inventive step**

2.1 *Both parties agree that D7 (US 4 511 299) discloses a suitable starting point to discuss inventive step, and that the distinguishing features are those of the characterising portion of claim 1 of the main request.*

2.2 *The appellant argues that the opposition division failed to acknowledge the combinatory effect linked to these features, of avoiding peaking and improving the opening properties, and therefore wrongly formulated the problem to be solved.*

2.3 *The Board disagrees.*

*According to established case law (see Case Law of the Boards of Appeal, 8th Edition 2016, I.D.4.4.1), when applying the problem solution approach, any technical effect provided by the invention may be used as a basis for formulating the objective technical problem, as long as that effect is derivable from the application as filed.*

*Since in the present case a plurality of technical effects linked to the distinguishing features are mentioned or derivable from the application as filed, the objective technical problem to be solved can be validly formulated by taking only one of those technical effects into account.*

*As explained in paragraph [9] of the application as originally filed (reference is made to EP 1 577 222 A), corresponding to paragraph [10] of the patent in suit, two additional furrows adjacent to the tab increase the strength of the lid.*

*Based on this effect, the objective technical problem to be solved may be formulated as to increase the strength of the lid in the area adjacent to the tab.*

2.4 *Having this problem in mind, the skilled person would take GB 1 426 308 (D12) into consideration, as this document not only belongs to the same technical field of D7 and of the patent in suit, but also because it explicitly addresses the issue of mechanical strength of the lid panel (see page 1, lines lines 32-36).*

*D12 teaches (see figure 3, and page 2, lines 50-55) that two additional furrows (depressed beads 23, see also lines 5 and 6) arranged on sides of the tab (see rivet 12) substantially perpendicular to the longitudinal direction of the tab (indicated by line 15) and between the rivet (15) and the score line (11) act as stiffeners adjacent to the tab.*

*It is also noted that in D12 (see page 2, lines 55-57) due to the presence of the furrows (23) "...a greater arc length of score line to each side of the tab nose*



*is initially fractured..."*, whereby better opening properties are provided.

2.5 *The skilled person would see the advantages of this teaching and would have no practical difficulties in applying it to the lid disclosed in D7. By this he would arrive at the subject-matter of claim 1 of the main request without having to exercise any inventive skill.*

***Consequently, the subject-matter of this claim does not involve an inventive step in view of the teaching of D7 chosen as closest prior art in combination with the teaching of D12 (Article 56 EPC).***

**3. *Auxiliary request I - lack of inventive step***

*Claim 1 of the auxiliary request I corresponds to claim 1 of the main request and additionally comprises the following features added at the end thereof:*

*"and provide additional stiffness to the part which is pushed open with the tab (4)."*

*As this effect is disclosed in D12 (see figure 3, and page 2, lines 50-55) claim 1 of auxiliary request I does not comprise, when compared with claim 1 of the main request, any additional distinguishing feature.*

***As a consequence of that, claim 1 of auxiliary request I lacks inventive step for the same reasons already discussed in relation to claim 1 of the main request in view of the teaching of D7 chosen as closest prior art in combination with the teaching of D12.***

**4. Auxiliary requests II and III - lack of Inventive step**

*Claim 1 of auxiliary request II has been amended to specify the presence of furrows consisting of one sheet metal layer thick walls.*

*This feature is clearly shown in figure 6 of D7, because the two furrows (30 and 32) made in the top surface of the lid are always delimited by the exterior top surface of the lid, which is always defined by a one sheet metal layer thick wall.*

*Claim 1 of auxiliary request II does not comprise, when compared with claim 1 of the main request, any additional distinguishing feature.*

*The same applies to claim 1 of auxiliary request III.*

***As a consequence of that the subject-matter of claim 1 of auxiliary requests II and III lacks inventive step for the same reasons already discussed in relation to claim 1 of the main request in view of the teaching of D7 chosen as closest prior art in combination with the teaching of D12."***

VII. The appellant reacted to the preliminary opinion of the Board with letter dated 10 September 2019 by submitting two new auxiliary requests (IV, IV') and arguments in support of their admissibility and allowability.

This letter however neither contained arguments in respect of the requests previously submitted, nor comments on the objections thereto contained in the communication pursuant to Article 15(1) RPBA issued by the Board (see point V above).

VIII. In a further communication, dated 18 October 2019, the Board raised doubts as to the admissibility of auxiliary requests IV and IV' as follows:

*"The appellant puts forward that auxiliary requests IV, IV' are admissible being the reply to an objection which was raised against auxiliary request I for the first time in the communication issued by the Board.*

*The Board notes that the objection identified by the appellant as being new (page 5, last paragraph of the preliminary opinion) appears to correspond to the objection raised by the respondent against auxiliary request I in his letter dated 27.1.16 (see the sentence comprised between page 13 and 14).*

*As a consequence of the above the arguments provided by the appellant in support of admissibility of the requests filed with letter dated 10.9.19 do not appear, at least at the present procedural stage, to be convincing."*

IX. With its submission dated 6 November 2019 the appellant informed the Board that it would not be attending the oral proceedings set for 11 November 2019. The appellant made no observations on the content of the Board's communications mentioned above.

X. Oral proceedings before the Board took place as scheduled on 11 November 2019. Since the duly summoned appellant, as announced with its above-mentioned submission did not attend, the oral proceedings were continued without the appellant according to Rule 115(2) EPC and Article 15(3) RPBA.

## **Reasons for the Decision**

### 1. Right to be heard

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 that Article 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 to Article 15(3) RPBA cited in T 1704/06, not published in OJ EPO, see also the Case Law of the Boards of Appeal, 9th edition 2019, section III.B.2.7.3).

### 2. *Allowability of the main request and of auxiliary requests I to III*

2.1 Under the sections 2. to 4. of its above-mentioned communication pursuant to Article 15(1) RPBA the Board stated why it considered that the main request and the auxiliary requests I to III did not involve an inventive step.

2.2 The above-mentioned preliminary finding of the Board has not been commented on nor has it been contested by the appellant during the appeal proceedings, see point VII above.

2.3 Under these circumstances, the Board - having once again taken into consideration all the relevant aspects concerning said issues - sees no reason to deviate from its above-mentioned finding.

2.4 As a consequence, the main request and auxiliary requests I to III cannot be allowed because of a lack of inventive step (Article 56 EPC).

3. *Admittance of auxiliary requests IV and IV' into the proceedings*

3.1 The appellant amended its case after having been summoned to oral proceedings by filing new auxiliary requests IV and IV'.

Such amendments underfall for their admittance into the appeal proceedings the provision of Article 13(3) RPBA.

In its communication dated 18 October 2019 the Board explained why the arguments put forward by the appellant to justify the late submission of auxiliary requests IV and IV', filed in response to the Board's communication under Article 15 (1) RPBA, were not convincing.

3.2 Again, this preliminary opinion of the Board has not been commented on, nor has it been contested by the appellant (see point IX above).

3.3 Under these circumstances, the Board - having once again taken into consideration all the relevant aspects concerning said issues - sees no reason to admit late filed auxiliary requests IV and IV' (Article 13(3) RPBA).

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated