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**Datasheet for the decision  
of 2 April 2019**

**Case Number:** T 0900/16 - 3.2.07

**Application Number:** 10735202.3

**Publication Number:** 2593373

**IPC:** B65D19/04, B65D77/04

**Language of the proceedings:** EN

**Title of invention:**

OVERPOCK FOR STORAGE AND HANDLING OF CONTAINERS FOR LIQUIDS

**Applicant:**

Ecolab USA Inc.

**Headword:**

**Relevant legal provisions:**

EPC Art. 54(1), 56, 123(2)

**Keyword:**

Amendments - extension beyond the content of the application  
as filed (no)

Novelty - (yes)

Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0900/16 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 2 April 2019**

**Appellant:** Ecolab USA Inc.  
(Applicant) 1 Ecolab Place  
St. Paul, MN 55102 (US)

**Representative:** Godemeyer Blum Lenze Patentanwälte  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 24 November  
2015 refusing European patent application No.  
10735202.3 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** G. Patton  
A. Pieracci

## **Summary of Facts and Submissions**

- I. The appellant (applicant) lodged an appeal within the prescribed period and in the prescribed form against the decision of the examining division refusing European patent application 10 735 202.3.
- II. In its decision, the examining division held that the subject-matter of claim 1 of the then main request was lacking novelty over D1 (=US 5 465 865 A) and the subject-matters of claims 1 of the then first and second auxiliary requests were lacking inventive step starting from the prior art "Drumtainer" as closest prior art, acknowledged in the application, page 1, lines 21-26, in combination with the teaching of D1, possibly also taking into consideration the skilled person's common general knowledge.
- III. With the statement setting out the grounds of appeal dated 18 March 2016 the appellant requested:

that the decision be set aside and  
that a patent be granted on the basis of one of the sets of claims filed  
as main request with letter dated 16 December 2014  
and as first to third auxiliary requests with said statement of grounds.
- IV. In its communication dated 12 March 2019 pursuant to Article 15(1) RPBA the Board gave its negative provisional opinion concerning the above-mentioned appellant's requests with respect to the fulfilment of the requirements of Articles 54(1), 56 and/or 123(2) EPC.

In reaction, the appellant filed a fourth auxiliary request by letter dated 23 March 2019.

- V. Oral proceedings before the Board took place as scheduled on 2 April 2019.

During the oral proceedings the appellant filed an amended new fourth auxiliary request (annex B of the minutes) and withdrew all other requests. It also filed an adapted description and Figures (annex D of the minutes).

For further details on the course of the oral proceedings, in particular the matters discussed with the appellant, reference is made to the minutes thereof.

The order of the decision was given at the end of the oral proceedings.

- VI. The appellant requested

that the decision under appeal be set aside and that a patent be granted on the basis of the amended new fourth auxiliary request filed during the oral proceedings of 2 April 2019 (Annex B of the minutes).

- VII. Claim 1 of the **amended new fourth auxiliary** reads as follows:

"Overpack (1) for storage and handling of drums (2) for liquids, with volumes of 200 - 500 litres, wherein the overpack (1) is integrally formed of plastics and stackable,

wherein the overpack (1) comprises an upper portion and a lower portion, and the upper portion comprises an opening for inserting or removing a drum (2) into or from the overpack (1) and provides a spill containment, the opening is covered by a removable lid (3),

wherein the lid (3) is arrangeable next to a side wall of the overpack (1) in an open position;

wherein the upper portion and lower portion are constructed to match one another such that the overpack (1) is stackable, and wherein the lid (3) covering the opening is positioned below a highest point of the overpack (1),

wherein the overpack (1) comprises handling recesses (8) constructed for handling of the overpack (1) by a fork or hand lift,

wherein the handling recesses (8) are located at the base portion of the overpack (1);

wherein the handling recesses (8) are formed from one side wall of the overpack (1) to the opposing side wall of the overpack (1);

wherein the overpack (1) is constructed in that, when stacking an overpack (1) on top of another overpack (1) the upper surface of the lid (3) covering the opening of the lower overpack (1) is spaced apart from the lower surfaces of the upper overpack (1);

wherein the load of the upper overpack (1) is supported by projecting side walls of the lower overpack (1)."

Claim 8 of the **amended new fourth auxiliary** reads as follows:

"Safety system (9) for storage and handling of containers for liquids comprising, an overpack (1) according to one of claims 1 to 7 and a container located inside the overpack (1)."

VIII. The appellant's arguments form part of the reasons for the decision as discussed below.

## **Reasons for the Decision**

### 1. *Amendments*

1.1 Claim 1 of the amended new fourth auxiliary request comprises the following features (a) to (k):

(a) Overpack (1) for storage and handling of drums (2) for liquids, with volumes of 200 - 500 litres, wherein the overpack (1) is integrally formed of plastics and stackable;

(b) wherein the overpack (1) comprises an upper portion and a lower portion, and the upper portion comprises an opening for inserting or removing a drum (2) into or from the overpack (1);

(c) and provides a spill containment;

(d) the opening is covered by a removable lid (3);

(e) wherein the lid (3) is arrangeable next to a side wall of the overpack (1) in an open position;

(f) wherein the upper portion and lower portion are constructed to match one another such that the overpack (1) is stackable;

(g) and wherein the lid (3) covering the opening is positioned below a highest point of the overpack (1);

(h) wherein the overpack (1) comprises handling recesses (8) constructed for handling of the overpack (1) by a fork or hand lift;

(i) wherein the handling recesses (8) are located at the base portion of the overpack (1);

(j) wherein the handling recesses (8) are formed from one side wall of the overpack (1) to the opposing side wall of the overpack (1);

(k) wherein the overpack (1) is constructed in that, when stacking an overpack (1) on top of another overpack (1) the upper surface of the lid (3) covering the opening of the lower overpack (1) is spaced apart from the lower surfaces of the upper overpack (1); wherein the load of the upper overpack (1) is supported by projecting side walls of the lower overpack (1).

1.2 The Board sees no reason not to follow the applicant's view that the skilled person, using his common general knowledge, will derive directly and immediately features (a) to (k) of claim 1 of the amended new fourth auxiliary request from the application as originally filed on the following basis:



- feature (a): claim 1;
- feature (b): claim 2, page 3, lines 10-11 and figures 2 and 3;
- feature (c): page 3, lines 31-33 and page 6, lines 12-14;
- feature (d): claim 3;
- feature (e): claim 5;
- feature (f): page 2, lines 9-17, claim 1 and figures 1 to 3;
- feature (g): claim 3 and figures 1 to 3;
- feature (h): claim 14;
- feature (i): claim 16;
- feature (j): claim 15; and
- feature (k): page 2, lines 14-22 and figures 1 to 3.

Dependent claims 2-4 and 6 of the amended new fourth auxiliary request are based on original dependent claims 8-10 and 17.

Dependent claim 5 of the amended new fourth auxiliary request is based on original claim 12 and page 4, lines 1-2 of the original description.

Dependent claim 7 of the amended new fourth auxiliary request is based on original claim 7 and page 3, lines 10-11 of the original description.

Claim 8 of the amended new fourth auxiliary request is based on original claim 18.

Dependent claim 9 of the amended new fourth auxiliary request is based on original claim 19, page 4, line 30 to page 5, line 2 and page 7, lines 9-12 of the original description.

Dependent claims 10-11 of the amended new fourth auxiliary request are based on original claims 21-22.

Hence, the set of claims according to the amended new fourth auxiliary request fulfils the requirements of Article 123(2) EPC.

2. *Novelty*

None of the available prior art documents discloses in combination all the features of claim 1 of the amended new fourth auxiliary request so that novelty of its subject-matter is acknowledged (Article 54(1) EPC).

The same applies to claim 8 which comprises the features of claim 1 of the amended new fourth auxiliary request (Article 54(1) EPC).

3. *Inventive step*

3.1 Closest prior art

The Board is of the opinion that D1 represents the closest prior art since it concerns, like claim 1, a stackable overpack, i.e. for the same purpose.

Contrary to the impugned decision, points 12.2.2 the Board considers that the prior art "Drumtainer" mentioned in the application as originally filed, page 1, lines 21-26, does not represent an appropriate starting point for the skilled person since it concerns an **unstackable mobile overpack** provided with wheels (see the brochure of the Company Promens filed by the appellant with the statement setting out the grounds of appeal and showing a "Drumtainer"). The skilled person would have to completely redesign the known

"Drumtainer", i.e. to modify the curved shape of the top part and to remove the wheels, contrary to its purpose, in order to render it stackable.

### 3.2 Disclosure of D1

**D1** discloses an overpack ("outer container" 3) for storage and handling of drums ("inner container" 4) for liquids, with volumes of 1000 litres, wherein the overpack (3) is integrally formed of plastics such as polyethylene or polyvinyl chloride and stackable (column 1, lines 10-27; column 4, lines 63-67; Figures 2 and 4),

wherein the overpack (3) comprises an upper portion and a lower portion, and the upper portion comprises an opening for inserting or removing a drum (4) into or from the overpack (3) (column 5, lines 19-22) and

provides a spill containment (see Figure 2 where the overpack (3) has, at least to some extent, spill containment function, i.e. configured to retain fluid, since the protrusions (10) have space available therefor, like also protrusion (13) below the aperture for the sump (7) and the drain valve (8)),

the opening is covered by a removable lid (14), removably attached by screws to the overpack (3) (column 5, line 65 to column 6, line 5; Figures 1 to 4),

wherein the lid (14) is arrangeable next to a side wall of the overpack (3) in an open position, i.e. the lid (14) being suitable for being placed as such,

wherein the upper portion and lower portion are constructed to match one another such that the overpack (3) is stackable (see Figure 4),

wherein the overpack (3) comprises handling recesses ("spaces" 11) constructed for handling of the overpack (3) by a fork lift (column 5, lines 34-37; Figures 1 and 2),

wherein the handling recesses (11) are located at the base portion of the overpack (3) (Figures 1 and 2),

wherein the handling recesses (11) are formed from one side wall of the overpack (3) to the opposing side wall of the overpack (3) (Figures 1 and 2).

### 3.3 Distinguishing features

D1 does not disclose the following features of claim 1:

(a') the overpack is for drums with volumes of 200 - 500 litres;

(g) the lid covering the opening is positioned below a highest point of the overpack; and

(k) the overpack is constructed in that, when stacking an overpack on top of another overpack the upper surface of the lid covering the opening of the lower overpack is spaced apart from the lower surfaces of the upper overpack;

the load of the upper overpack is supported by projecting side walls of the lower overpack.

3.4 Technical effect

The technical effect associated with features (g) and (k) is that the upper overpack does not contact the lid of the lower overpack when stacked on one another.

3.5 Problem to be solved

The problem to be solved can then be seen as to avoid damaging the lid of the lower overpack.

3.6 Inventiveness

Since the claimed solution (features (g) and (k)) is neither disclosed by the available prior art, nor belongs to the skilled person's common general knowledge, inventive step of the subject-matter of claim 1 of the amended new fourth auxiliary request is acknowledged.

The same applies to claim 8 which comprises the features of claim 1 of the amended new fourth auxiliary request.

3.7 Adapted description and Figures

The Board had no objections to the adapted description and figures filed during the oral proceedings (Annex D of the minutes).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent in the following version:

description:

pages 1 to 8 received during the oral proceedings of 2 April 2019 (Annex D of the minutes)

claims:

1 to 11 received as amended new fourth auxiliary request during the oral proceedings of 2 April 2019 (Annex B of the minutes)

drawings:

1 to 3 received during the oral proceedings of 2 April 2019 (Annex D of the minutes).

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated