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**Datasheet for the decision  
of 10 January 2022**

**Case Number:** T 2073/18 - 3.2.07

**Application Number:** 07799574.4

**Publication Number:** 2142446

**IPC:** B65D83/10

**Language of the proceedings:** EN

**Title of invention:**  
SYSTEM AND METHOD FOR PACKAGING CUTTING BLADES

**Applicant:**  
Crescent Manufacturing Company

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 56, 111(1), 113, 116  
RPBA 2020 Art. 11, 12(8)

**Keyword:**

Decision in written proceedings without oral proceedings -  
(yes)

Novelty - (yes)

Inventive step - (yes)

Appeal decision - remittal to the department of first instance  
(yes)

**Decisions cited:**

**Catchword:**

Special reasons present in the sense of Article 11 (1) RPBA  
2020 (see point 6 of the reasons for the decision)



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Case Number: T 2073/18 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 10 January 2022**

**Appellant:** Crescent Manufacturing Company  
(Applicant) 1310 Majestic Drive  
Fremont, OH 43420 (US)

**Representative:** Dennemeyer & Associates S.A.  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 12 February  
2018 refusing European patent application No.  
07799574.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** A. Pieracci  
B. Paul

## **Summary of Facts and Submissions**

I. This appeal, which was filed within the prescribed period and in the prescribed form, lies from the decision of the examining division according to the state of the file to refuse European patent application No. 07 799 574.4 for lack of novelty and inventive step of the subject-matter of claims 1 and 18.

II. The appellant requests

that the decision be set aside and  
that a patent be granted on the basis of the set of  
claims filed on 16 November 2016.

The applicant also requests that oral proceedings be arranged in case the impugned decision is not set aside (see applicant's letter dated 5 June 2020).

III. The present decision refers to the following document, which was considered in the communications of the examining division on which the decision under appeal is based:

D3: US 3 332 549 A.

IV. The appellant's line of argument contesting the decision of the examining division is dealt with in detail in the reasons for the decision.

V. Independent claim 1, on which the decision under appeal and the present decision are based, reads:

A flexible cutting blades package (10) having a row of blades, the package comprising:

a flexible first layer (12) having at least one pre-formed cavity (22) formed therein to form a base (20) for receiving a plurality of cutting blades (24); a flexible second layer (14) arranged over the base and proximate the base; and pulling tabs (34) to be pulled away from each other by a user,

a seal (26) formed about the periphery of each pre-formed cavity (22) to encapsulate a cutting blade (24) placed into the pre-formed cavity, the seal (26) being formed by applying a predetermined combination of heat and pressure to selected portions of the second layer (14) around the periphery of the pre-formed cavity (22) to cause the second layer (14) to selectively bond to the base (20), characterized in that the seal (26) maintains a vacuum in the pre-formed cavity (22) and wherein movement of each encapsulated cutting blade (24) is deterred during transport and handling by the pre-formed cavity (22) in cooperation with the seal and the second layer (14), the flexible second layer (14) being in intimate contact with the cutting blades (24), the release of said vacuum leading to a lack of intimate contact between said cutting blades (24) and the flexible second layer (14), the blades becoming slidably movable for dispensing from the base (20) and the second layer (14) when the seal (26) is broken by pulling tabs (34), formed at a transverse edge of package (10), away from each other, and when the vacuum is released the pre-formed cavity (22) expands slightly.

VI. Independent claim 18, on which the decision under appeal and the present decision are based, reads:

A method for making a flexible cutting blades package having a row of blades, the package comprising the steps of:

selecting a flexible first layer;

selecting a flexible second layer, the second layer (14) having an adhesive coating; forming at least one pre-formed cavity (22) in the first layer (12) to form a base; placing a cutting blade (24) into each pre-formed cavity;

placing the second layer (14) over the base such that the adhesive coating is proximate the base;

applying a predetermined combination of heat and pressure around the periphery of each pre-formed cavity (22) to cause the adhesive to bond together the base and the second layer, forming a seal around the vacuumized pre-formed cavity (22) and encapsulating the cutting blade (24) to form a package; and

cutting the package to a predetermined length, wherein movement of each encapsulated cutting blade (24) is deterred during transport and handling by the pre-formed cavity (22) in cooperation with the seal and the second layer, the flexible second layer (14) being in intimate contact with the cutting blades (24), the release of said vacuum leading to a lack of intimate contact between said cutting blades (24) and the flexible second layer (14), the blades becoming slidably movable for dispensing from the base (20) and the second layer (14) when the seal (26) is broken by pulling tabs (34), formed at a transverse edge of package (10), away from each other, and when the vacuum is released the pre-formed cavity (22) expands.

## **Reasons for the Decision**

1. The decision is issued in written proceedings without oral proceedings.

According to Article 12(8) RPBA 2020, the Board may, subject to Articles 113 and 116 EPC, decide the case at any time after filing of the statement of grounds of appeal.

Given the findings and the order of the decision, the appellant's auxiliary request for oral proceedings has not become effective because the Board sets the contested decision aside.

The case is ready for decision on the basis of the extensive appellant's written submissions and the decision under appeal. For this reason, the issuing of the decision in written procedure without oral proceedings is in compliance with the requirements of Articles 113(1) and 116(1) EPC.

2. Novelty of the subject-matter of claims 1 and 18 in view of D3 (Article 54 EPC)

The Board, although agreeing with the appellant that D3 (see column 3, line 7) mentions a "dished container", without providing any drawings or further details, is of the opinion that, since a dished container is to be considered by a person skilled in the art as a container having a cavity, it can be seen as being a "layer with a pre-formed cavity" as argued by the examining division (see communication dated 2 August 2017, point 1.1, second paragraph).

The Board however concurs with the appellant that the combination of features of claim 1 that

"(the) seal maintains a vacuum in the preformed cavity",

and that

"the flexible second layer...(is)...in intimate contact with the cutting blades",

are not to be derived directly and unambiguously from document D3.

Referring to the example of figures 1 to 3 in which the package is formed by the two panels (2, 3), document D3 mentions in column 3, lines 3 to 4, that

"...if desired the product can be vacuum packed..."

Starting from column 3, line 5, it is then mentioned that:

"...Instead of the package being in the form of an envelope and comprising two panels, it may be a two part container in which one part is a dished container and the other part a cover both parts bearing a sealing medium on their inner surfaces. The said parts are brought face to face, sealed and irradiated as previously described..."

The possibility of applying vacuum also in the case of the realization form of the package as a dished container and a cover is however not mentioned in the above passage and it cannot be directly and unambiguously derived from it.



Therefore, already for this reason, the objection of lack of novelty with respect to D3 does not hold.

Furthermore the Board notes that claim 1 is directed to "...a flexible cutting blades package (10) having a row of **blades...**"

while document D3 refers to "a surgical **blade**" (see column 1, lines 47 to 48) and throughout the description only a blade is discussed and a package with a single blade is shown in the drawings (see figures 1 and 2). Therefore, also for this reason document D3 does not deprive the subject-matter of independent claim 1 of novelty.

For analogous reasons the subject-matter of claim 18 is considered to be novel over the disclosure of D3.

3. Inventive step of the subject-matter of claims 1 and 18 in view of the teaching of D3 in combination with the common general knowledge (Article 56 EPC)

The objection of lack of inventive step expressed in point 1 of the communication dated 26 July 2016 and in the last paragraph of page 1 of the communication dated 2 August 2017 is not convincing at least for the reason that the features distinguishing the subject-matter of the claims from the disclosure of D3 have not been properly identified and taken into account.

4. The Board is thus of the opinion that the appealed decision cannot be upheld.

5. The Board furthermore notes that a thorough examination at least in relation to the requirements of Article 123(2) EPC appears not to have been carried out yet by the examining division.
6. According to Article 11 RPBA the Board shall not remit the case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so.

According to the explanatory notes to Article 11 RPBA 2020 (see Supplementary publication 1, OJ EPO 2020, Annex 2, page 215) if all issues can be decided without an undue burden, a Board should normally not remit the case.

In the present case it seems that at least the compliance with the issue of Article 123(2) EPC should have to be dealt with by the Board extensively for the first time.

The Board consider that the examination of this issues for the present case would imply an undue burden and judges it appropriate to remit the case to the examining division for further prosecution according to Article 111(1) EPC.

## 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 for further prosecution on the basis of the claims filed on 16 November 2016.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated