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**Datasheet for the decision
of 11 February 2022**

Case Number: T 2902/18 - 3.2.07

Application Number: 10795003.2

Publication Number: 2521688

IPC: B67C7/00

Language of the proceedings: EN

Title of invention:

WORKING UNIT WITH LABELLING MACHINE AND MACHINE FOR FILLING
CONTAINERS

Applicant:

P.E. Labellers S.p.A.

Headword:

Relevant legal provisions:

EPC Art. 56, 113, 116
RPBA 2020 Art. 12(8)

Keyword:

Decision in written proceedings without oral proceedings -
(yes)
Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 2902/18 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 11 February 2022

Appellant: P.E. Labellers S.p.A.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 16 May 2018
refusing European patent application No.
10795003.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Pieracci
S. Watson

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 to refuse European patent application No. 10 795 003.2 for lack of inventive step of the main request and of the auxiliary request.

II. With the statement setting out the grounds of appeal the appellant requested

that the decision be set aside and
that a patent be granted on the basis of the main request or of the auxiliary request decided upon in the decision under appeal.

The appellant also requested that oral proceedings be arranged in the event that the Board intends to dismiss the appeal.

III. With a communication dated 17 December 2020 the Board indicated the intention to allow the appeal should the description be amended to comply with the requirements of Article 84 EPC.

IV. With letter dated 1 March 2021 the applicant filed an amended description for its main request.

V. The present decision refers to the following documents on which the decision under appeal is based:

D1: DE 198 19 731 A1;
D5: DE 25 49 144 A1;
D6: DE 10 2004 053663 A1.

VI. The appellant's lines of argument contesting the decision of the examining division will be dealt with in detail in the reasons for the decision.

VII. The only claim of the main request reads as follows:

A working unit (1) comprising a container labelling machine (2) provided with a rotating carousel (3) and a machine provided with a rotating carousel (4) for filling said containers that is arranged in series with said labelling machine (2) being positioned upstream of said filling machine (4), and a variable-spacing star conveyor (9), which is directly interposed between an exit star wheel (8) of said labelling machine (2) and an intake star wheel (10) of said filling machine (4) and is adapted to convey the containers (5) that exit from said exit star wheel (8) of said labelling machine (2) directly to the intake star wheel (10) of said filling machine (4), changing the spacing of said containers (5) so as to make it adapted for correct operation of said filling machine (4).

VIII. The text of the claim of the auxiliary request is not reproduced since the decision only deals with the main request.

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 Article 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 in the event that the Board was minded to dismiss the appeal is no longer relevant.

The case is ready for decision on the basis of the appellant's extensive 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. Inventive step of the subject-matter of claim 1
(Article 56 EPC)

2.1 The Board cannot follow the reasoning of the examining division that the person skilled in the art would position the labelling machine of D5 upstream of the filling machine. The examining division has reasoned that such a positioning of the labelling machine with respect to the filling machine is a well-known alternative which overcomes the disadvantages of labelling after filling, such as spilled product and humidity, as indicated in documents D1 and D6 (see points 14.7.4 and 14.7.5 of the reasons for the decision).

The Board concurs with the appellant (see page 2, third and fourth paragraph from the bottom of the statement setting out the grounds of appeal), that although the person skilled in the art could modify the working unit of D5 in the way suggested by the examining division, they would not do so, since this would imply a complete

rearrangement of the components of the unit of figure 2 of D5.

In fact as argued by the appellant (see page 2, penultimate paragraph - page 3, first paragraph of the statement setting out the grounds of appeal) this would imply in a first step moving the labelling machine (8) into the position occupied by the filling machine, then moving the filling machine (4) with the capping unit (6) to the original position of the labelling machine (8) and in a further step adapting the conveyor star (7) for cooperation with the intake star wheel (3) instead of the capping machine (6).

The finding of the impugned decision starting from document D5 appears to be the result of an *ex-post facto* analysis and is therefore not convincing.

- 2.2 The Board is also not convinced by the reasoning of the examining division that the person skilled in the art would integrate the filling machine, together with infeed and outfeed star wheels, of figure 2 of D5 into the working unit of D1. According to the examining division, the skilled person would directly interpose the transfer star wheel of D5 between the exit star wheel of the labelling machine of D1 and the intake star wheel of the filling machine of D5, in place of the linear air conveyor of D1. This would result in a labelling machine and a filling machine having different spacing/pitches being coupled in one conveying direction with reduction of noise and constructional complexity (see points 14.10 and 14.11.1 of the reasons for the decision).

The Board concurs with the appellant (see page 5, second paragraph from the bottom of the statement

setting out the grounds of appeal) that the filling unit downstream of the linear air conveyor (12) is disclosed in D1 only in a very generic manner. The relevant passage of D1 (see column 3, lines 15 to 16) in fact just reads:

"Sie [meaning the bottles 15 - added by the Board] werden von dort z.B. zur Füllmaschine verbracht".

As argued by the appellant the specific construction of the filling unit of D1 is not shown. In particular, it is not directly and unambiguously derivable from D1 that the filling machine has an intake star wheel and if it does, whether other units are interposed between the intake star wheel of the filling machine and the linear feeder. It is also not derivable from D5 whether the filling machine of D1 has a rotating carousel.

Thus the features distinguishing the subject-matter of the claim from the working unit of D1 have not been correctly identified in the impugned decision (see point 14.9 of the reasons for the decision). The formulation of the problem to be solved has therefore also not been formulated correctly, since the distinguishing features have not been correctly identified (see point 14.10 of the reasons for the decision).

The argument of the examining division is thus not convincing already for these reasons.

Furthermore, to insert the filling machine of D5 having a rotating carousel, infeed star wheel and outfeed star wheel into the unit of D1 is considered to be the result of an *ex-post facto* analysis, since the fact that the filling machine is provided with a rotating carousel is linked to the cause of the problem at the

base of the invention, which relates to the different spacing of the carousel of the filling machine in comparison to that of the carousel of the labelling machine (see page 1, line 20 - 30 of the application as originally filed), and not to the solution.

The argument of the examining division of lack of inventive step in view of the combination of the teachings of D1 and of D5 is thus also not convincing and cannot be followed.

- 2.3 The Board is therefore not convinced by the finding of the examining division in the impugned decision that the subject-matter of the claim is not inventive.
3. The appellant has thus convincingly demonstrated that the reasons on which the decision is based do not hold.

The impugned decision should therefore be set aside.

The impugned decision and also the examining division's communications prior to the impugned decision, in particular the annex to the summons to oral proceedings, are silent as to any other objection to the grant of a patent on the basis of the main request. The Board does not see any reason opposing the grant of a patent on the basis of the appellant's main request.

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, 1a, 2, 3 filed with letter dated 1 March 2021

Claim, Number

1 filed with letter dated 26 September 2018 as main request

Drawings, Sheets

1/1 as originally filed

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated