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**Datasheet for the decision  
of 27 November 2023**

**Case Number:** T 1193/20 - 3.2.01

**Application Number:** 15165283.1

**Publication Number:** 2942294

**IPC:** B65B25/00, B65B49/06,  
B65B11/54, B65B11/28

**Language of the proceedings:** EN

**Title of invention:**

WRAPPING METHOD AND WRAPPING MACHINE FOR CONFECTIONERY  
PRODUCTS

**Patent Proprietor:**

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AUTOMATICHE-A.C.M.A.-S.p.A.

**Opponent:**

Theegarten-Pactec GmbH & Co. KG

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 56  
EPC R. 100(2)

**Keyword:**

Novelty - (yes)

Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number: T 1193/20 - 3.2.01**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 27 November 2023**

**Appellant:** Theegarten-Pactec GmbH & Co. KG  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
6 March 2020 concerning maintenance of the  
European Patent No. 2942294 in amended form.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** A. Pieracci  
O. Loizou  
C. Narcisi  
S. Fernández de Córdoba

## **Summary of Facts and Submissions**

- I. An appeal was filed by the opponent in the prescribed form and within the prescribed time limit against the interlocutory decision of the opposition division maintaining the European patent No. 2 942 294 in amended form.
- II. The opposition division found the patent as amended according to auxiliary request 2 and the invention to which it relates meet the requirements of the EPC.
- III. The Board informed the parties of its preliminary opinion on the case with a communication, pursuant to Rule 100(2) EPC, according to which the appeal was likely to be dismissed.
- IV. The patent proprietor replied to the Board's communication with letter dated 1 July 2022 and the opponent with letter dated 22 July 2022. The patent proprietor filed further submissions with letter dated 26 October 2023.
- V. Oral proceedings before the Board took place on 27 November 2023. At the end of the oral proceedings the decision was announced. For further details of the proceedings reference is made to the minutes thereof.
- VI. The final requests of the opponent (appellant) are:

that the decision under appeal be set aside and  
that the patent be revoked.
- VII. The final requests of the patent proprietor (respondent) are:

that the appeal be dismissed  
or, alternatively, that the patent be maintained in  
amended form on the basis of the set of claims of  
auxiliary request 1 or 2 filed with the reply.

VIII. The following documents are referred to in the present  
decision:

E02: EP 0 926 071 A1;

E06: EP 0 608 823 A1;

P02: EP 0 733 548 A;

P07: US 2013/111850 A1;

V03k: operating manual EMC1.004-006;

Declaration of Mr. Förster dated 15 July 2020.

IX. The arguments of the parties are dealt with in detail  
in the reasons for the decision.

X. Claim 1 of the patent as granted (main request) reads  
as follows:

"Method for wrapping a food product (100) comprising a  
lateral surface (103), a top portion (102) and a base  
portion (101) which are positioned on opposite sides of  
the lateral surface, said method comprising  
a step of winding a wrapping sheet (200) around said  
food product (100), said wrapping sheet (200) being  
wound substantially in a 'U' shape around said food  
product (100), a portion of the wrapping sheet, forming

a base of said 'U' shape, being positioned at said top portion;

a step of feeding said food product (100) provided with said wrapping sheet (200) in a direction of movement (V), said food product (100) and said wrapping sheet (200) being retained by pickup grippers (16), acting on said lateral surface (103);

a step of retaining said food product (100) and said wrapping sheet (200) using said top portion (102) and said base portion (101), said pickup grippers (16) releasing said food product (100) and the respective sheet (200) of wrapping material during said retaining step;

a step of smoothing said wrapping sheet (200) during said retaining step using a brush unit (18) delimiting a transit channel (19) for said food product (100) and the respective wrapping sheet (200), said wrapping method being characterised in that said smoothing step is performed by moving said brush unit (18) relative to said food product (100) provided with the wrapping sheet (200), said food product passing through said transit channel (19) during the smoothing step."

## **Reasons for the Decision**

1. Novelty of the subject-matter of claim 1 in view of the disclosure of E02 (Article 54 EPC)
- 1.1 The opponent argues that contrary to the finding of the opposition division (see the appealed decision, page 20, point 7.3) the step of  
  
"winding a wrapping sheet around said food product, said wrapping sheet being wound substantially in a 'U'

shape around said food product, a portion of said wrapping sheet, forming a base of said 'U' shape, being positioned at said top portion"

is implicitly disclosed in document E02.

In fact, so the opponent, due to the high working speed of the wrapping machines a 'U' shape wrapping of the sheet is necessarily obtained, in particular by wrapping a product as the one shown in figure 1 of E02.

- 1.2 The Board is not convinced by the argument of the opponent. First of all, document E02 does not describe a wrapping process but a process for smoothing (already) wrapped products (see paragraphs [0001] and [0002]). Furthermore, even if one would consider that a wrapping has to take place before the smoothing then, as argued by the opposition division, there are several alternative ways of wrapping a product. Since nothing is said in document E02 in this regard no conclusion can be drawn. The argument that the claimed 'U' shape is obtained as a consequence of the working speed of the machine is a statement which remains unsubstantiated and thus not convincing.
- 1.3 The opponent has thus failed to convincingly demonstrate that the finding of the opposition division that document E02 does not deprive of novelty the subject-matter of claim 1 is not correct.
2. Inventive step of the subject-matter of claim 1 in view of E02 in combination with the teaching of P02 (Article 56 EPC)
  - 2.1 The opponent argued that starting from E02, in which crease and unevenness of wrapped products are smoothed,

the person skilled in the art would be faced with the problem of choosing an appropriate process for wrapping the products shown therein.

The opponent argued with reference to Figure 43 of P02, that the grippers 26 hold both the product and a wrapping sheet on the top of the product and that due to the high working speed of the machine the wrapping sheet would be wound in a 'U' shaped form on the product before it is goes through the brush unit. By later smoothing the product so obtained with the device of E02 the person skilled in the art would then arrive at a method according to the claimed subject-matter.

- 2.2 The Board disagrees and rather shares the view of the patent proprietor that a 'U' shape form of the wrapped sheet is not directly and unambiguously derivable for the product of Figure 43 of P02. The argument that such shape is obtained as a consequence of the working speed of the machine is a statement which remains unsubstantiated and thus is not convincing. Furthermore the Board concurs with the patent proprietor that the person skilled in the art would not combine the processes of documents E02 and P02 since in the embodiment of figure 43 of document P02 brushes are already present and a further smoothing of the product with the device of E02 is not necessary.
- 2.3 The Board thus concurs with the patent proprietor that the subject-matter of claim 1 is not rendered obvious by the combination of the teaching of E02 and P02.
3. Inventive step of the subject-matter of claim 1 in view of the prior use of the EMC machine in combination with the teaching of document P07 (Article 56 EPC)

3.1 The opponent argued that considering as a distinguishing feature with respect to the prior use of the EMC machine the combination of features of claim 1 identified by the opposition division, namely

"said food product and said wrapping sheet being retained by pickup grippers acting at said lateral surface (of said product)",

the objective technical problem to be solved, as found by the opposition division, is to provide an alternative supply for the product and the wrapping sheet.

To use the grippers of 12a and 12b shown in figure 2 of P07 at the place of the grippers of the EMC machine shown in the figure at page 131 of document V03k would be an obvious alternative for a person skilled in the art. The argument of the opposition division that not enough space would be present between the grippers of P07 to house the pusher used in the EMC machine for transferring the product is not correct, so the opponent, since as indicated in paragraph [0070] of P07 and shown in Figure 3a and 4, a pusher arm (29) is also present between the grippers of that embodiment.

3.2 The Board cannot share the view of the opponent that the person skilled in the art looking for an alternative way for supplying the product and the wrapping material would introduce the grippers of P07 at the place of those of the EMC machine. There is in fact no reason apparent for the person skilled in the art for specifically singling out the grippers from document P07.

The mechanism for transferring the food product and the wrapping sheet are quite different in the EMC machine and in P07. In the EMC machine transfer pistons located between couples of grippers disposed on rotating drums on the same plane are used for holding the product and the wrapping sheet and transfer them from a rotating drum to the other (see the statement of grounds of appeal, page 15, third paragraph - page 16, second paragraph) while a system of intermeshing couples of grippers rotated of 90° the one respect to the other is used in P07 (see figure 2). The person skilled in the art when starting from the EMC machine and looking for an alternative way for transferring the product and the wrapping sheet from a drum to the other would possibly consider the transfer system of document P07 in its totality as an alternative way to transfer the product and the wrapping sheet from one drum to the other, but not just take the grippers of P07.

The person skilled the art would in fact rather consider these documents as providing two generally different teachings and would not combine specific elements of two different technical solutions with each other just to provide an alternative realization of what is already available to the skilled person.

- 3.3 The Board is thus not convinced by the argument of the opponent that the opposition division erred in finding that the person skilled in the art would not have introduced the grippers of P07 at the place of those of the EMC machine and thus considers the subject-matter of claim 1 to be inventive in view of the combination of EMC machine with the teaching of P07.
4. Inventive step of the subject-matter of claim 1 in view of the prior use of the EMC machine in combination with

the common general knowledge as derivable from the declaration of Mr. Förster and E06 (Article 56 EPC)

The opponent argued that, starting from the EMC machine the person skilled in the art would be in the position of modifying it by arranging the grippers on the two rotating drums with a different orientation, as it can be derived from the declaration of Mr. Förster and from E06.

This line of argument however does not deal with the introduction in the EMC machine of the distinguishing feature of the subject-matter of claim 1 as identified by the opposition division and acknowledged by the opponent and is thus not relevant.

5. In view of the above finding of the Board there is no need to deal with other contentious issues, such as the public availability of the machine EMC, the admittance into the proceedings of the objection of lack of novelty in view of E02 and of the objection of lack of inventive step in view of E02 in combination with P02.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated