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**Datasheet for the decision  
of 7 June 2024**

**Case Number:** T 1664/21 - 3.3.02

**Application Number:** 14167862.3

**Publication Number:** 2767583

**IPC:** C12G1/00, B67C3/02, B65D1/02

**Language of the proceedings:** EN

**Title of invention:**  
WINE PACKAGED IN ALUMINIUM CONTAINERS

**Patent Proprietor:**  
Intelligent Packaging Pty Ltd.

**Opponent:**  
Ball Corporation

**Relevant legal provisions:**  
EPC 1973 Art. 123(3)

**Keyword:**  
Extension of protection conferred



**Beschwerdekammern**

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Case Number: T 1664/21 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 7 June 2024**

**Appellant:** Ball Corporation  
(Opponent) 10 Longs Peak Drive  
Broomfield, CO 80021 (US)

**Representative:** Crooks, Elizabeth Caroline  
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**Respondent:** Intelligent Packaging Pty Ltd.  
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**Representative:** Sonnenberg Harrison Partners  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
15 July 2021 concerning maintenance of the  
European Patent No. 2767583 in amended form**

**Composition of the Board:**

**Chairman** M. O. Müller  
**Members:** P. O'Sullivan  
M. Blasi

## **Summary of Facts and Submissions**

I. The appeal of the opponent (hereinafter appellant) lies from the decision of the opposition division according to which European patent 2 767 583 in amended form according to auxiliary request 1 was found to meet the requirements of the EPC.

II. With the reply to the grounds of appeal, the patent proprietor (hereinafter respondent) submitted several sets of claims of auxiliary requests, the first of which was auxiliary request 2.

III. In a communication pursuant to Article 15(1) RPBA sent in preparation for oral proceedings, which were appointed as requested, the board *inter alia* expressed the view that the objection under Article 123(3) EPC raised by the appellant in respect of claim 1 of auxiliary request 2 also applied to claim 1 of auxiliary request 1 found allowable by the opposition division.

With letter dated 27 March 2024, the respondent stated that it would not attend oral proceedings scheduled for 11 April 2024. The respondent maintained auxiliary request 1 (main request) and withdrew all further requests.

IV. The scheduled oral proceedings were cancelled.

V. Requests relevant to the present decision

The appellant requested that the decision under appeal be set aside, and that the patent be revoked in its entirety.

The respondent requested dismissal of the appeal, implying maintenance of the patent as amended in the version of auxiliary request 1 found allowable by the opposition division.

VI. For the text of claim 1 of auxiliary request 1 (main request), reference is made to the reasons for the decision, below.

VII. For the relevant party submissions, reference is made to the reasons for the decision, below.

**Reasons for the Decision**

Auxiliary request 1 (main request in appeal proceedings)

1. Article 123(3) EPC

1.1 Independent claim 1 reads as follows:

*"A filled aluminium container containing a wine characterised in that the maximum oxygen content of the head space is 1 % v/v and the wine prior to filling is micro filtered and dissolved oxygen levels throughout the aluminium container filling process are maintained up to 0.5 mg/L and final levels of dissolved CO<sub>2</sub> are from 50 ppm for white and sparkling wines and from 50 ppm to 400 ppm for red wines, prior to filling the*

*container, wherein the filled aluminium container of wine has a molecular sulphur dioxide content of between 0,4 and 0,8 mg/L,  
wherein the wine has a pH of 2.9 to less than 3.5 for white wines in which the alcohol content is above 9 % v/v,  
wherein the wine has a pH of 2.9 to less than 3.5 for sparkling rose wines in which the alcohol content is above 9 % v/v,  
wherein the wine has a pH of 2.9 to less than 3.5 for low alcohol and wine based products in which the alcohol content is below 9 % v/v and having a sorbic acid range above 90 mg/L,  
and wherein the wine has a pH of 2.9 to less than 3.5 for red wines in which the alcohol content is above 9 % v/v."*

In this claim, the entire text immediately following the first instance of "wherein the wine has a pH of 2.9 to less than 3.5" was added compared to claim 1 as granted.

- 1.2 As stated in the board's communication pursuant to Article 15(1) RPBA (point 2.1), the objection under Article 123(3) EPC raised by the appellant in relation to claim 1 of auxiliary request 2 (letter of 13 October 2022, pages 5 to 6) also applies to claim 1 of auxiliary request 1.
- 1.3 Claim 1 of auxiliary request 1 specifies an individual pH range for each of "white wines", "sparkling rose wines", "low alcohol and wine based products in which the alcohol content is below 9 % v/v and having a sorbic acid range above 90 mg/L", and "red wines".

- 1.4 Claim 1 of the granted patent on the other hand stipulates that "the wine has a pH of 2.9 to less than 3.5", without reference to any specific types of wine to which this pH limitation applies. Therefore, in granted claim 1, the pH range of 2.9 to less than 3.5 applies to all types of wine.
- 1.5 In contrast, claim 1 of auxiliary request 1 no longer imposes any limitation on the pH range of wine types different from those specific wine types listed in claim 1 for which a pH range applies. For example, claim 1 includes non-sparkling rose wines, or "low alcohol and wine based products" not meeting the requirement of having "a sorbic acid range above 90 mg/L" having any pH, or indeed any other liquid which despite not belonging to any of the specific wine types listed in claim 1, would nevertheless be considered a wine.
- 1.6 Consequently, the protection conferred by claim 1 of auxiliary request 1 is extended compared to that of claim 1 as granted, in contravention of Article 123(3) EPC.
- 1.7 The main request is therefore not allowable.
2. Since there are no further claim requests, the patent is to be revoked.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



H. Jenney

M. O. Müller

Decision electronically authenticated