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**Datasheet for the decision
of 5 March 2024**

Case Number: T 1451/22 - 3.2.07

Application Number: 15164282.4

Publication Number: 3085636

IPC: B65D51/20

Language of the proceedings: EN

Title of invention:
SEALING FOIL WITH TEAR LINE

Patent Proprietor:
N.V. Nutricia

Opponent:
GPI Systems AB

Relevant legal provisions:
EPC Art. 54(2), 56, 83, 123(2), 100(a), 100(b), 100(c)
RPBA 2020 Art. 12(6)

Keyword:

Grounds for opposition - added subject-matter (no) -
insufficiency of disclosure (no) - lack of patentability (no)
Novelty - (yes)
Inventive step - (yes)
Late-filed objection - should have been submitted in first-
instance proceedings (yes) - admitted (no)



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Case Number: T 1451/22 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 5 March 2024

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 5 April 2022
rejecting the opposition filed against European
patent No. 3085636 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman G. Patton
Members: V. Bevilacqua
E. Mille

Summary of Facts and Submissions

- I. An appeal was filed by the opponent (appellant) against the opposition division's decision to reject its opposition against European patent No. 3 085 636.
- II. The opposition division found that no ground for opposition prejudiced the maintenance of the patent as granted.
- III. Reference will be made to the following documents mentioned in the appealed decision:
 - D1: US 3 776 450 A
 - D2: GB 998 102 A
 - D3: WO 2014/062119 A1
 - D4: WO 2005/075314 A2
 - D5: JP 61-217350 A
 - D5a: English machine translation of D5.
 - D6: EP 0 397 861 A1
- IV. In preparation for the oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, according to which the appeal was to be dismissed.
- V. Oral proceedings before the board took place on 5 March 2024. At the conclusion of the proceedings, the decision was announced. Further details of the proceedings can be found in the minutes.

VI. The final requests of the parties were as follows:

for the appellant

- that the decision under appeal be set aside and that the patent be revoked in its entirety;

for the respondent (patent proprietor)

- that the appeal be dismissed, i.e. that the patent be maintained as granted (**main request**),

or in the alternative, in the event of the impugned decision being set aside,

- that the patent be maintained in amended form on the basis of the set of claims of any of

auxiliary request 1A, filed with the reply to the statement setting out the grounds of appeal, or

auxiliary request 1, filed as auxiliary request 5 in the opposition proceedings by letter dated 20 October 2020, or

auxiliary requests 2 to 8, filed in the opposition proceedings by letter dated 23 September 2021.

- VII. Claim 1 of the main request reads as follows (the feature identification used in the appealed decision has been added by the board):
- a) "A sealing foil (1) for closing a packaging container comprising:
 - b) a pre-cut first layer (2);
 - c) a hermetic second layer (3), connected to the first layer and coextensive therewith over the full extent of the second layer;
 - g) wherein the first layer extends beyond the second layer for connection to an inner wall of the container;
 - d) characterized in that the first layer is pre-cut with a plurality of tear lines defining a tearing path (5) leading from a pull tab (6) to a tear end (7)
 - e) including a lead-in tear line extending from the pull tab to a circumferential tear line defining an access opening such that a central portion (8) of the sealing foil can be removed to provide an access opening to the container;
 - f) wherein the lead-in tear line (5A) is contiguous with the circumferential tear line (5B) such that uncontrolled ripping of the sealing foil is prevented,
 - h) and the lead-in tear line extends from the pull tab outwards to the circumferential tear line and enters tangentially or crosses the circumferential tear line."

The wording of claim 1 of the auxiliary requests is irrelevant to the decision.

- VIII. The parties' arguments relevant to the decision are discussed in detail in the reasons below.

Reasons for the Decision

1. Objection under Article 100(c) EPC
 - 1.1 The opposition division rejected the objection of added subject-matter raised against claim 1 of the main request, citing paragraphs [0012] and [0013] from both the contested patent and the corresponding published patent application (as detailed in sections II.3.1 to II.3.3.5 of the appealed decision). It was concluded that the opposition ground under Article 100(c) EPC did not affect maintenance of the patent in suit.
 - 1.2 The appellant contests the above findings, arguing that the originally filed documents do not disclose that the lead-in tear line enters the circumferential tear line tangentially (feature h)).

According to the appellant, the opposition division wrongly identified paragraph [0013] and original claim 9 (corresponding to granted claim 7) as a valid basis therefor.

Original claim 9 does not provide a valid basis for feature h) because it defines a punch which produces a lead-in tear line which joins the circumferential tear line at an angle, which is in direct conflict with the requirement of claim 1 that the lead-in tear line enter the circumferential tear line tangentially.

The mention of "tangential" in [0013] of the patent application in relation to the embodiment of figure 5 does not provide, according to the appellant, a basis for claiming that the lead-in tear line **enters** the circumferential tear line **tangentially**, because the

paragraph does not give any detail as to the specific arrangement of the tear line's entry. Furthermore, a critical examination of figure 5, where the tear line is parallel to the circumferential tear line in proximity thereof, clearly reveals the absence of any discernible entry point.

The appellant acknowledges that figure 5 discloses directly and unambiguously a tear line 25A with an end 25D that extends parallel to the circumferential tear line 25B, and a skilled person understands from paragraph [0013] that the lines 25B and 25D are to be made as close as possible to each other, and can only coincide if the set-up of the respective punches is geometrically perfect.

The appellant also agrees that the skilled person understands from the text that the two lines should be as close as possible.

However, the consequence of arranging these lines as close as possible is not a tangential entry, but rather an angled entry.

While tolerances may play a role in how broadly a skilled person interprets "tangentially" and in whether also parallel configurations are considered to fall within this feature, there is no margin of tolerance when identifying if and where the lead-in tear line enters the circumferential tear line.

Paragraph [0012] of the published patent application does not disclose this feature either, as in this embodiment, depicted in figure 4, the tear line first crosses the circumferential tear line at an acute

angle, then turns back and enters the circumferential tear line again, again at an acute angle.

Similar considerations apply to paragraph [0014] and figure 6 of the published patent application, where a lead-in tear line which extends into the circumferential tear line is disclosed, but again without its being specified whether this happens "tangentially" or at an acute angle.

This lack of information cannot be remedied by figure 6, due to its schematic nature.

Original claim 4 merely discloses that the lead-in tear line "curves tangentially to the circumferential tear line" but does not disclose the feature of an entry point at all.

When taken in combination with original claim 2, original claim 4 still fails to provide a disclosure for the feature "enters tangentially" because this claim combination clearly refers to the embodiment of paragraph [0012] and figure 4, where no tangential entry is provided.

1.3 The board is not convinced by the above arguments.

1.3.1 As argued by the respondent, the feature that the lead-in tear line **enters** the circumferential tear line **tangentially** is derivable from the combination of originally filed claims 1, 2 and 4.

This is because

- claim 1 specifies that a lead-in tear line is contiguous with a circumferential tear line to prevent uncontrolled ripping,
- claim 2, referring back to claim 1, further defines that the lead-in tear line enters the circumferential tear line, and
- claim 4, referring back to claim 2, specifies that the lead-in tear line curves tangentially to the circumferential tear line.

Taken together, these claims describe an embodiment in which a lead-in tear line curves tangentially to a circumferential tear line and enters said circumferential tear line (tangentially).

The board sees no reason to consider that the rather restrictive interpretation proposed by the appellant of the disclosure linked to these originally filed claims, according to which claims 1, 2 and 4 are exclusively to be construed within the boundaries of original paragraph [0012] and original figure 4, would be the one chosen by a skilled reader.

This argument, submitted by the appellant during the oral proceedings, is not convincing, because it is established case law that, when reading broadly formulated claims, the scope of a claim should not be cut down by implying into it features which appear only in the description, as this would deprive claims of their intended function (see the Case Law of the Boards of Appeal, CLB hereinafter, 10th Edition 2022, II.A. 6.3.4).

- 1.3.2 The ground for opposition according to Article 100(c) EPC does not therefore hold against claim 1 of the patent in suit (main request).

2. New objections of lack of sufficiency of disclosure, admittance (Article 12(6) RPBA)
 - 2.1 In the statement setting out the grounds of appeal, the appellant raises objections of lack of sufficiency of disclosure against granted claims 6 and 7, which the respondent requests be not admitted.
 - 2.2 The board notes that these new objections, presented for the first time with the statement setting out the grounds of appeal, were not submitted during the opposition proceedings. As a matter of fact, the appealed decision does not appear to contain any passage in which these particular objections are discussed, and the appellant did not indicate any such passage.

According to Article 12(6), second sentence, RPBA, the board shall not admit objections which should have been submitted in the proceedings leading to the decision under appeal unless admittance appears to be justified by the circumstances of the appeal case.

As the claims under discussion (main request) are those of the granted patent, the appellant could and actually should already have raised all objections thereto in the opposition proceedings.

As a consequence, the board does not see how the admittance of these new objections could be considered as being justified by the circumstances of the present appeal case.

Based on the above, the board has decided not to admit these new objections into the appeal proceedings under

Article 12(6), second sentence, RPBA.

3. Objection under Article 100(b) EPC

3.1 The opposition division found that the ground for opposition according to Article 100(b) EPC did not hold against the present main request, so dismissing an objection of lack of sufficiency of disclosure based on the allegation that claim 1 does not include the essential features for achieving the claimed effect of preventing uncontrolled ripping (appealed decision, point II.4.2).

3.2 The appellant contests the above findings, arguing that a skilled reader would not know how to produce the claimed sealing foil which can be safely opened because, according to paragraph [0003] of the patent in suit, uncontrolled ripping is prevented only through perfect alignment of the punching tools.

The disclosure of the patent in suit is insufficient because the only production method mentioned in paragraph [0003], being based on conventional punching tools, cannot guarantee that the tear lines produced therewith are perfectly aligned, with the consequence that uncontrolled ripping would still be possible.

According to the appellant, the curving back of the lead-in tear line is an essential feature of the claimed alternative "cross", missing from claim 1, for achieving the technical effect of avoiding uncontrolled ripping.

The skilled person is therefore not in a position to create a sealing foil having the structural features

mentioned in claim 1 which achieves the claimed result that uncontrolled ripping is prevented.

3.3 The board is not convinced by the above line of argument.

Paragraph [0003] is not to be read as containing teaching according to which a manufacturing method using conventional punching tools could not be used for achieving controlled ripping of the foil as the use of such tools may, due to manufacturing tolerances, produce tear lines which are not perfectly aligned.

The appellant's allegation that the claim lacks the only feature preventing uncontrolled ripping is also not convincing, for the reasons already discussed in the appealed decision (see section II.4.10 and II.4.11), which have not been specifically contested by the appellant.

By specifying that "the lead-in tear line is contiguous with the circumferential tear line", claim 1 already contains features enabling achievement of the claimed effect of avoiding uncontrolled ripping of the sealing foil in comparison with prior art not comprising said feature (see figures 1 to 3).

This is also confirmed by paragraph [0003] of the patent in suit (see lines 30-33).

3.3.1 The ground for opposition according to Article 100(b) EPC does not therefore hold against the patent in suit (main request).

4. Objection under Article 100(a) EPC
Lack of novelty in view of D1, Article 54 EPC

4.1 The opposition division (see decision under appeal, point II.5.1) acknowledged novelty of the subject-matter of granted claim 1 over D1 on the basis of features c) and h) (see respectively points II.5.1.5 and II.5.1.3 of the appealed decision).

4.2 The appellant contests the above findings, arguing that feature h) is disclosed in figure 3 and column 2, lines 60-63 of D1, because the grip tongue "continues into the punched cutting line 19".

According to the appellant, feature c) is also disclosed in D1, in particular in column 3, lines 32-36 thereof, because the lower layer 26 in the sealing foil, despite being cut along a cutting line 27, can be considered to be hermetic because said cut is sealed by the welding area 29 between the upper and lower layers.

4.3 The board disagrees.

Feature h) is not disclosed in D1 because, as also acknowledged by the opposition division (section II.5.1), the lead-in tear-line shown in figure 3, indicated by reference 22 and entering the circumferential tear line 19 at an acute angle, neither enters tangentially, nor crosses said tear line.

The appellant's argument that feature c) is disclosed in D1 because the lower layer 26 in the sealing foil, despite being cut along a cutting line 27, can be considered to be hermetic because said cut is sealed by the welding area 29 between the upper and lower layers,

as explained in column 3, lines 32-36, is not convincing either.

This is because, according to column 3, lines 32-36, the cuts in the second layer of D1 are sealed by the welding joint, which is not a component thereof. This means that the welding joint can be reached through the cuts in the second layer.

In other words, by being provided with cuts, the second layer cannot be considered to be hermetic.

As a consequence of the above, the subject-matter of claim 1 is novel over the disclosure content of document D1.

5. Objection under Article 100(a) EPC
Lack of novelty in view of D2, Article 54 EPC
- 5.1 The opposition division acknowledged novelty over the disclosure content of document D2, see decision under appeal, point II.5.2.
- 5.2 In the statement setting out the grounds of appeal, the appellant raises novelty objections referring to the
 - "first embodiment" of D2 (page 2, line 120 to page 3, line 40),
 - "first modified embodiment" of D2 (see page 3, lines 83-90) and
 - "second modified embodiment" of D2 (see page 3, lines 91-99).
- 5.3 The board concurs with the respondent that the appellant has not convincingly demonstrated that D2 is novelty destroying, not least because none of the embodiments of document D2 discloses that the first

layer extends beyond the second layer for connection to an inner wall of the container (feature g)).

The only argument presented by the appellant in this respect is that in the first modified form of the embodiment of figure 1 of D2 the peripheral portion formed from the outer layer alone is **suitable for** connecting to an inner wall of a packaging container.

The board, however, disagrees for the following reasons.

- 5.3.1 The first embodiment does not disclose feature g) because the two layers (first layer 4 and second layer 6, see figure 2) are coextensive and the first layer is not connected to the inner wall of the container (see figures 1 and 2).
- 5.3.2 In the first modified embodiment (not depicted), the first layer extends beyond the second layer, but there is no disclosure, on page 3, lines 83-90, that the first layer is suitable for connecting to an inner wall of the container.
- 5.3.3 Similar conclusions apply to the second modified embodiment mentioned on page 3, lines 91-99 (also not depicted). As explained in this passage of D2, this embodiment "corresponds generally in construction and arrangement with the first embodiment and differs therefrom only in that the scoring does not extend into the inner layer", which a skilled reader would understand to mean that, as in the first embodiment, there are coextensive layers and therefore feature g) is also not disclosed.

As a consequence of the above, the subject-matter of claim 1 is novel over the content of the disclosure of document D2.

6. Objection under Article 100(a) EPC
Lack of novelty in view of D5, Article 54 EPC
- 6.1 The opposition division acknowledged novelty over D5 on the basis of feature g), which defines that the first layer extends beyond the second layer for connection to an inner wall of the container (see decision under appeal II.5.3.2).
- 6.2 The appellant contests the above findings, arguing that the outer layer material 8 extends beyond the intermediate layer 7 for connection with the bonded part 4 to the flange 3 which is an extension of the inner wall of the container shown in figure 2.
- 6.3 The board disagrees.

D5 does not disclose feature g) because, as can be seen from figure 2, layer 8 does not extend for connection to an inner wall of the container.

As shown in figure 2, the only layer which is connected to the container (but not to an inner wall thereof) is layer 6, which is however not pre-cut.

As a consequence of the above, the subject-matter of claim 1 is novel over the disclosure content of document D5.

7. Objection under Article 100(a) EPC
Lack of novelty in view of D6, Article 54 EPC

7.1 The opposition division acknowledged novelty of the subject-matter of granted claim 1 over the content of the disclosure of document D6 and dismissed two distinct objections, both based on figures 2 to 4 of this document and respectively identifying feature g) and feature c) as distinguishing features (appealed decision, point II.5.4.2).

According to the first objection, elements 2 (metal foil) and 3 (resin film) respectively corresponded to the first and second layer of claim 1.

The second objection identified element 15 (reinforcing layer) as the second layer of claim 1.

7.2 The appellant contests the above findings, arguing during the oral proceedings that all the features of granted claim 1 are disclosed in combination in the embodiment of figure 7 of D6.

D6 deals with foils for closing a packaging container, comprising a pre-cut first layer, which comprises a metal foil, indicated by reference 2 in figure 3 (see also page 6, lines 21 to 24), and a second layer, connected thereto, indicated by reference 3 in figure 3 and described on page 8.

Said second layer is hermetic, as explained on page 12, see in particular lines 21 to 23, according to which *"even if a defect such as a pinhole or crack is generated on the laminate when a weakened line is formed, this defect is covered with the reinforcing*

layer of the thermoplastic resin and complete protection can be obtained".

As submitted during the oral proceedings, the first layer also comprises, in addition to the pre-cut metal foil, a further element, called "inner patch" on page 7, lines 7 to 16 and "reinforcer" on page 13, line 16 (and identified by reference 13 in figure 3). This additional element covers the V-shaped small hole 11, visible in figure 7, and is fusion-bonded to the pull tab 12, as explained on page 7, lines 7 to 16.

Given that the first layer, as defined above, comprises these two components, it remains continuous even when the pre-cut metal foil (identified by reference 2 in figure 3) is perforated (V-shaped hole 11). This continuity is due to the small V-shaped hole 11 being filled by the second component of the first layer, which is the one connected to the pull tab (the inner patch or the reinforcer).

As a consequence of the above, D6 also discloses that the first layer, as defined above, completely covers the second layer (15 in figure 7), or, using the language of the claim, that the hermetic second layer 3 is

"connected to the first layer and coextensive therewith over the full extent of the second layer" (feature c)).

Looking now at the circular crown indicated by reference sign 6 in figure 7 and identified as "heat sealing peripheral edge portion" on page 6, lines 27 and 28, it is also clear that D6 also discloses that *"the first layer extends beyond the second layer for connection to an inner wall of the container" (feature g).*

As a consequence of the above, according to the appellant D6 discloses both the distinguishing features identified in the appealed decision.

The subject-matter of granted claim 1 therefore lacks novelty over the disclosure content of D6.

7.3 The board is not convinced that, in the embodiment of figure 7 of D6, the element 13 covering the V-shaped hole in the pre-cut metal foil 2 and connected to the pull tab 12 can be considered part of the pre-cut first layer within the meaning of claim 1, because it considers that this argument presented by the appellant is based on an incorrect interpretation of the disclosure of the embodiment of figure 7 of D6.

7.3.1 The appellant confuses the reinforcing layer 15 of this embodiment with the separate inner patch 13 mentioned on page 7 in the context of the description of figures 2 to 4, or with the reinforcer mentioned on page 13 in the context of the disclosure of example 1, no such separate patch or reinforcer being identifiable in figure 7.

The description of this allegedly novelty-destroying embodiment also does not mention any separate "reinforcer" or "inner patch" in relation to this specific embodiment, in contrast to the embodiment of figures 2-4.

On the contrary, the description explains that in this embodiment the reinforcing resin layer 15 constitutes a hermetic second layer within the meaning of granted claim 1, connected to the first layer, because it is

formed to cover all of the weakened lines 4, 7, 8 and 10 (page 8, lines 25-27).

- 7.3.2 Given the absence of a separately disclosed reinforcer or inner patch in both figure 7 and the description passages related thereto, the skilled person would directly and unambiguously infer that in this particular embodiment it is the reinforcing resin layer 15 itself which must cover the V-shaped small hole 11 and it is again this reinforcing resin layer 15 which is connected to the pull tab 12.

Therefore the only element visible in figure 7 which can be identified as the pre-cut first layer of the claim is the perforated and pre-cut metal foil 1, the reinforcing resin layer 15 corresponding to the hermetic second layer connected thereto.

However, since the pre-cut first layer has a V-shaped hole (see figure 7), which is covered by the reinforcing resin layer, said reinforcing layer 15 (corresponding to the second layer of the claim) extends beyond the internal boundary of the metal foil (first layer), with the result that feature c) is missing.

- 7.3.3 In light of this finding, it is not necessary to address the admissibility objection raised by the respondent against the appellant's line of argument discussed above, which was submitted during the oral proceedings before the board for the first time.

This is because even if the argument were held admissible, for the reasons given above it does not persuasively demonstrate the presence of the claimed features in document D6.

7.3.4 In addition, the board is not convinced that the separate inner patch 13 should be regarded as belonging to the first layer in figure 3, as alleged by the appellant. The fact that hole 11 is sealed by fusion-bonding the opening tab 12 and inner patch 13 to each other, as disclosed on page 7, lines 14-16, merely shows that the inner patch 13 is *de facto* an additional part added to the lid, distinct from the layer 2, which cannot therefore be regarded as part of said first layer 2. In the board's opinion, the appellant's view consists in an artificial construction of the lid of figure 3 of D6 using the knowledge of the claimed invention. Similarly, the passage on page 8, lines 1-3 of D6, which discloses that the inner patch 13 and resin layer 15 are formed of two individual films, likewise does not teach that the inner patch 13 is part of the first layer 2. Finally, contrary to the appellant's allegation, the method for producing the lid of D6 disclosed on page 12, lines 5 to 25 does not teach a first step of forming the first layer which would consist of the layer 2 and the inner patch 13, followed by a second step of applying the reinforcing resin layer 15 or 3. This passage of D6 is silent on when, with respect to the other parts of the lid, the reinforcing resin layer 15 or 3 is applied.

8. Objection under Article 100(a) EPC
Lack of inventive step, D3 in combination with D1

8.1 The appellant contests the findings under point II.6.3 of the appealed decision relating to the combination of documents D3 and D1.

The sealing foil disclosed in D3 differs from the sealing foil of claim 1 in that, although tear lines

are mentioned, there is no disclosure of the exact configuration thereof.

Starting from these distinguishing features, the appellant formulates the problem to be solved as being how to configure these tear lines for opening the sealing foil in a controlled manner.

According to the appellant, the skilled person, faced with the above problem, would see the advantages of the tear lines disclosed in D1 and have no practical difficulties in applying the same structure to the foil disclosed in D3. In this way, they would arrive at the subject-matter of claim 1 of the main request without having to exercise any inventive skill.

- 8.2 The board is not convinced that applying the tear lines disclosed in D1 to the foil of D3 would result in the subject matter of claim 1 of the main request.

This is because, as discussed above in relation to novelty over D1, this document teaches a tear line structure in which the second layer, being provided with cuts, is not hermetic. The first and second layers are combined in D1 to provide the disclosed sealing foil and the skilled person would not think of isolating one layer from the other.

Consequently, the appellant's objection of lack of inventive step based on the combination of D3 and D1 is not convincing.

9. Objection under Article 100(a) EPC
Lack of inventive step, combination of D3 with D2

- 9.1 The appellant also contests the findings under point II.6.3 of the appealed decision relating to the combination of D3 and D2.

According to the appellant, the skilled person, faced with the problem of how to configure the tear lines mentioned in D3 for opening the sealing foil without uncontrolled ripping, would see the advantages of the tear lines disclosed in D2 and have no practical difficulties in applying the same structure to the foil disclosed in D3. In this way, they would arrive at the subject-matter of claim 1 of the main request without having to exercise any inventive skill.

- 9.2 The board is not convinced that the skilled person, faced with the problem of how to configure the tear lines mentioned in D3, would look at document D2.

This is because, as argued by the respondent, there is no motivation to consider D2, since this document does not provide any solution to the problem of uncontrolled ripping of a flexible laminate foil such as the one of D3, including an aluminium layer and a layer of weldable plastic. As a matter of fact, D2 relates to can-like containers usually opened with a key (column 1, lines 18-25) and discloses a lid made by two superposed aluminium sheets (4, 6).

The appellant has not convincingly explained on what basis a skilled person would consider that a tear line configuration based on the specific configuration disclosed in D2 would also achieve opening of the sealing foil without uncontrolled ripping thereof in the case of the foil of D3.

10. Objection under Article 100(a) EPC
Lack of inventive step, combination of D3 and D4
- 10.1 The appellant also addresses the findings under point II.6.3 of the appealed decision, according to which the subject-matter of claim 1 of the main request is inventive over the combination of documents D3 and D4.
- 10.2 The respondent argues that D4 does not disclose a configuration of tear lines as claimed (see also the appealed decision, II.6.3.5).

The last features of claim 1 are not taught by D4, namely that the lead-in tear line is contiguous with the circumferential tear line such that uncontrolled ripping of the sealing foil is prevented, and the lead-in tear line extends from the pull tab outwards to the circumferential tear line and enters tangentially or crosses the circumferential tear line.

This is because this document is silent as to the particular geometry of the tear lines.

The respondent also argues that D3 is not a suitable starting point to discuss inventive step, in accordance with the findings in section II.6.3.2 of the appealed decision.

As the focus of this document is not on the tear line structure, the skilled person would not start from this prior art to solve a problem linked to the geometry of tear lines.

The mention, on page 4, lines 1-3 of this document, of "tear tracks" and of a "pull-tab to facilitate removal of the lid from a container" would not motivate the

skilled person to start searching for particular tear line structures to avoid uncontrolled ripping.

- 10.3 The board is of the opinion that the appellant failed to convincingly demonstrate that the subject-matter of claim 1 of the main request lacks inventive step over the combination of documents D3 and D4.
- 10.3.1 D3 is a suitable starting point for discussing inventive step, because, as noted by the appellant, this document belongs to the same technical field of the patent in suit and discloses a sealing foil which, except for the tear line configuration, is similar in both design and purpose to the sealing foil of the contested patent.
- 10.3.2 As already discussed above, the claimed sealing foil comprises tear lines and a pull tab, and differs from the one disclosed in D3 in that the exact configuration thereof is not specified.
- 10.3.3 Starting from these distinguishing features, the board agrees with the appellant's formulation of the problem to be solved as being how to configure these tear lines for opening of the sealing foil in a controlled manner.
- 10.3.4 D4 discloses a packaging container having a sealing foil provided with a tear lip ("pull lip" 15) and a weakening line 14 on the upper surface thereof (page 5, lines 10-13).

The teaching of D4 is that the provision of a weakening line having the design shown in figure 2 allows controlled opening of the sealing foil.

A skilled person, looking at figure 2, would immediately identify a lead-in tear line starting from a pull tab and curving smoothly thereinto, and understand that pulling on the pull tab 15 will result in tearing along the circumferential tear line 14.

As can be seen in figure 2 of D4, the tear line starts from the pull lip 15 and enters the circumferential tear line 14 and is also contiguous with the circumferential tear line in that it continues into the circumferential tear line 14.

Since figure 2 of D4 is a schematic depiction, and since there is no passage in D4 disclosing that the tear line starting from the pull lip enters tangentially into the circumferential tear line, or is parallel thereto, the board considers that the feature of claim 1 that the lead-in tear line "enters" the circumferential tear line "tangentially" is not derivable from this document.

This is because, according to the established case law (see the Case Law of the Boards of Appeal, 10th Edition 2022, I.C.4.6), even if it is assumed that this feature might possibly appear in the drawings, this still cannot amount to a direct and unambiguous disclosure for the skilled person taking into consideration that figure 2 is a schematic view from which, in the absence of any specification, no specific angles can be inferred.

As a consequence of the above, even if the skilled person were to see the advantages of the teaching of D4 and have no practical difficulties in applying it to the foil disclosed in D3 in line with the problem defined above, they would still not arrive at the

subject-matter of claim 1 of the main request, i.e. at the specific feature that the lead-in tear line enters the circumferential tear line tangentially.

The appellant has therefore also not convincingly explained why the findings at point II.6.3 of the appealed decision are not correct.

11. New objections of lack of inventive step - Admittance

11.1.1 Against granted claim 1, the appellant submitted two new inventive step objections (starting from D3 in combination with either D5 or D6) filed for the first time with the statement setting out the grounds of appeal, which the respondent requests be not admitted.

The board notes that inventive step of granted claim 1 has already been challenged, starting from D3, in the notice of opposition (see point I.6 thereof).

As a consequence, the board considers that the appellant could and should have submitted these new objections against claim 1 as granted with their notice of opposition, or at the latest, in reaction to the respondent's reply thereto.

According to Article 12(6), second sentence, RPBA, a board shall not admit evidence which should have been submitted in the proceedings under appeal unless the circumstances of the case justify admittance thereof.

As the appellant did not provide any argument justifying the late filing of these two new objections, the board has decided not to admit these objections into the proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Lichtenvort

G. Patton

Decision electronically authenticated