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**Datasheet for the decision
of 23 January 2024**

Case Number: T 2236/22 - 3.2.07

Application Number: 15711864.7

Publication Number: 3110702

IPC: B65C9/46, B65B19/02, B65B19/28,
B65B41/18

Language of the proceedings: EN

Title of invention:

METHOD FOR CHECKING THE POSITION OF AN ADHESIVE LABEL ON A
SHEET MATERIAL

Patent Proprietor:

G.D S.p.A.

Opponent:

Focke & Co. (GmbH & Co. KG)

Headword:

Relevant legal provisions:

EPC Art. 54(2), 56

Keyword:

Novelty - (yes)

Inventive step - common general knowledge - (no) - after
amendment - (yes)

Decisions cited:

Catchword:



Beschwerdekammern

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Case Number: T 2236/22 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 23 January 2024

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 August 2022
rejecting the opposition filed against European
patent No. 3110702 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman G. Patton
Members: V. Bevilacqua
Y. Podbielski

Summary of Facts and Submissions

- I. An appeal was filed by the opponent against the opposition division's decision to reject their opposition against European patent No. EP 3 110 702.
- II. The opposition was based on the ground of lack of inventive step (Article 100(a) EPC in combination with Article 56 EPC).

- III. This decision makes reference to the following documents:

D1: EP 1 770 015 A2
D3: EP 0 790 187 A2
D5: EP 1 209 083 B1
D8: EP 1 026 082 A2

In its letter dated 5 July 2023, the opponent (appellant) additionally referred to the following Wikipedia articles:

D9: <https://de.wikipedia.org/wiki/Zigarettenpackung>
D10: <https://de.wikipedia.org/w/index.php?title=Zigarettenpackung&oldid=122161433>

- IV. The opposition division found that the only ground for opposition raised did not prejudice maintenance of the patent as granted.
- V. In preparation for the oral proceedings, the Board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA 2020.
- VI. Oral proceedings before the Board took place on 23 January 2024.

At the conclusion of the proceedings, the decision was announced.

Further details of the proceedings can be found in the minutes.

VII. The parties' final requests are as follows:

on the part of the appellant:

- that the decision under appeal be set aside and
- that the patent be revoked.

on the part of the respondent (patent proprietor):

- that the appeal be dismissed, and the patent be maintained as granted,
- as an auxiliary measure, if the decision is set aside, that the patent be maintained in amended form according to one of auxiliary requests 1 and 3 to 5, filed during the opposition proceedings by letter dated 15 June 2022 and re-submitted with the reply to the statement setting out the grounds of appeal.

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

IX. Independent claim 1 of the **main request** (patent as granted) reads as follows (the feature analysis used in the appealed decision, section I.11, has been added by the Board):

- a) "A method for checking the position of an adhesive label on a sheet material, the sheet material forming or being designed to form a wrapper (3) which is part of a cigarette packet (1), and
- b) the label (18) being applied to the sheet material after separation of the label from a web (31);

the method being characterized in that it comprises,
- c) before separation of the label (18) from the web (31), the printing on the label (18) of at least a centering mark (33) extending as far as the outer perimeter of the label (18);
- d) the check of the position of the label (18) on the sheet material occurring through the detection of the position of the part of the perimeter of the label (18) on which the centering mark (33) extends."

Independent claim 1 of **auxiliary request 1** corresponds to independent claim 1 of the main request, with the following features added at the end thereof:

", wherein, during the printing process, the centering mark (33) of the label (18) projects onto the web (31) beyond the outer perimeter of the label (18)."

Independent claim 1 of **auxiliary request 3** corresponds to independent claim 1 of the main request, with the following features added at the end thereof:

", wherein the centering mark (33) comprises a first and a second centering eye mark (24 to 30), said eye marks extending, respectively, as far as a first and a second perimetric edge of the label (18); said first

and second perimetric edges being substantially orthogonal relative to one another."

The text of the independent claims of **auxiliary requests 4 and 5** is not relevant to the present decision.

Reasons for the Decision

1. D5 - content of the disclosure
- 1.1 The opposition division found that document D5 did not disclose features c) and d) of claim 1 of the main request.
- 1.2 The appellant contests the above findings relating to feature c) as follows.

The tear strip ("Aufreißstreifen" 12, see paragraph [0042] and figures 5 and 13) of D5 is to be considered a label according to claim 1.

D5 (figures 5, 13 and paragraph [0030]) then discloses the printing of a centering mark extending beyond (and therefore as far as) the cutting line dividing a double strip ("Doppelstreifen" 41) in two. This cutting line follows the outer perimeter of the label 12. Printing is done before separating the label 12 from a web (the other half of the double strip 41).

The opposition division's finding that feature c) is not disclosed in this document is therefore not correct.

1.3 The Board concurs with the appellant.

1.3.1 The respondent's argument that, in light of the definition given in paragraph [0007] of the patent in suit, a skilled person would not consider the continuous tear strip disclosed in figure 5 of D5 to be a label because of its elongation or its function in tearing open the package, is not convincing.

This is because, as argued by the appellant, there is no reason to consider that this rather restrictive interpretation of "label" would be the one chosen by a skilled reader of claim 1 of the main request. The word "label" used in claim 1 does not imply any specific form nor exclude any additional function.

As established in the case law (see Case Law of the Boards of Appeal, 10th edition 2022, hereinafter "CLB", II.A.6.1), a broad term used in a claim is not to be construed narrowly, even if, as in the case at hand, the narrower interpretation would refer to a structure which is common, but not exclusive, in the technical field concerned.

When reading a broadly formulated claim, only technically illogical interpretations should be excluded.

Therefore, the tear strip (12, see figure 13) of D5, being coated with an adhesive (see paragraph [0014], line 5) and carrying decorative elements (see paragraph [0027], line 50 and figure 13 of D5) is to be considered an adhesive label according to claim 1 of the main request.

1.3.2 The respondent argues that the step, disclosed in figure 5 and paragraph [0030] of D5, of "cutting a double-strip in half to obtain two strips" does not correspond to the claim feature "separation of the label from a web", because the other strip cannot be considered a "carrying web", and also because separation from a carrying web has to be understood, in the technical field of the patent in suit, as involving the use of adhesive, the label being glued on the web, and being removed therefrom by being peeled off.

This argument is not convincing because, as mentioned above, the case law establishes that a broad term used in a claim is not to be construed narrowly.

Claim 1 of the main request neither requires that the web be a "carrying web" upon which the labels stick, nor that the label and the web exist as physically separate entities before the separation step.

An area of a web which is to be separated therefrom and then applied on a sheet material can therefore also be considered a label in the sense of claim 1 of the main request.

D5 discloses a label and a web because one half of the double strip 41 of D5, figure 5, can be seen as the label (18 in figure 5, 12 in figure 13), and the other half thereof as the web from which the label comes.

As claim 1 also does not stipulate that "separation of the label from the web" necessarily involves peeling off, D5 also discloses such a separation step, because the label (e.g. the left hand strip 18 in figure 5) is separated from the web (e.g. the right-hand strip 18 in figure 5) by cutting.

- 1.3.3 As convincingly explained by the appellant, paragraph [0030] of D5 describes a step of printing on the label of at least a centering mark extending as far as the outer perimeter of the label, before separation of the label from the web (feature c).

This is because, in the embodiment according to figure 5 (see paragraph [0030], lines 30 to 36), a double strip 41 is printed with a centering mark 24 over its full width, such that after separation of the label from the web, as explained above, the label (strip 18, left-hand side) exhibits a centering mark 24 extending as far as the former center line of the double strip, which is now the outer perimeter of the label.

- 1.4 The appellant then also argues that D5 also discloses feature d) of claim 1 of the main request, as follows.

Paragraphs [0004] and [0019] to [0022] of this document describe a step of recognizing and adjusting the relative position and alignment between the tear strip (12) and a sheet material (11, 13) based on the detected marks, such that the strip is positioned exactly.

This teaching has to be interpreted in more general terms than the opposition division's interpretation.

If the marks are used for achieving an exact position, a skilled person will immediately understand that the relative position has to be checked not only in the direction along which the label and web are fed (this direction, clearly identifiable in figure 5 of D5, will hereinafter be referred to as the "longitudinal direction") but also in a direction lying in the plane

of the sheet material perpendicular to the longitudinal direction (this direction is also clearly identifiable in figure 5 of D5 and will be referred to hereinafter as the "transverse direction").

As the centering mark extends, in the transverse direction, as far as the outer perimeter of the label, D5 also discloses checking the position of the label on the sheet material by detection of the position of the part of the perimeter of the label on which the centering mark extends.

As a consequence of the above, and contrary to the findings of the appealed decision, detecting a mark (24) which extends to the perimeter of the label in order to check the position of the label also inherently means detecting the perimeter portions of the label on which the mark extends.

The opposition division's finding that feature d) is not disclosed in this document is therefore not correct.

1.5 The Board disagrees for the following reasons.

As explained by the respondent, the centering mark (24) extending over the double strip width described in paragraph [0030] is not used in a step of checking the position of the label on the sheet material by detecting the position of the part of the perimeter of the label on which this mark extends.

This is because, as is evident from paragraph [0031], the method and apparatus according to figure 5 of D5 checks only the longitudinal position of the strip 12

with respect to the sheet material 11, 13, and not the transverse position thereof.

The coloured mark disclosed in D5 (Farbmarkierung, 58) is not used to check the position of the label, and is in fact not even read by a sensor at all. On the contrary, D5 explains that this mark is used to visually indicate to a consumer where to grasp the pull tab (D5, paragraph [0011], line 45).

The argument according to which the disclosure of "exact positioning" given in paragraphs [0004] and [0019] to [0022] of D5, being generic, should be seen as encompassing also checking the position of the label on the sheet material in the transverse direction, is not convincing.

This is because, according to established case law (CLB, I.5.2.6), a generic feature, such as "exact positioning" in view of the general teaching of D5, does not amount to the disclosure of a specific feature such as "exact positioning in the transverse direction", as claimed.

D5 does not therefore disclose feature d).

- 1.6 As a consequence of the above, the Board concurs with the findings of the opposition division (see decision under appeal, II.14.3.4) according to which feature d) distinguishes the subject-matter of claim 1 of the main request from the method disclosed in document D5.

The novelty objection based on this document, submitted with the statement of grounds of appeal, is therefore irrelevant.

There is therefore no reason to discuss any of the issues, raised during the written phase of the appeal proceedings, relating to the admittance of this objection.

2. Main request - inventive step starting from D5

2.1 The opposition division found that claim 1 of the main request was inventive over the combination of document D5 with the knowledge of a skilled person.

This assessment was based upon the incorrect finding, discussed above, that D5 also failed to disclose feature c).

2.2 The respondent explained that feature d) alone is enough to establish an inventive step starting from D5 and taking the knowledge of the skilled person into account, arguing as follows.

The embodiment in figure 5 of D5, to which paragraph [0030] refers, focuses solely on longitudinal positioning and control of the continuous tear strip using the detected marks. There is no teaching or suggestion in D5 of also detecting the lateral edges or alignment of the tear strip through the marks extending to its lateral edges.

The effect of feature d) is to check that the position of the label on the sheet material is correct.

The problem to be solved is therefore how to achieve this effect using the method of D5.

Still according to the respondent, there is no motivation for a skilled person, wishing to check that

the position of the label on the sheet material is correct, to modify this known method to also encompass feature d).

This is because, when starting from D5, checking mutual positioning in a transverse direction is not an issue, because this position is fixed due to the strip being transversely guided by mechanical elements such as the slitted rollers 62 of figure 9 which, as explained in paragraphs [0034] and [0038], have nuts to guide the strip.

As a result, in D5, incorrect positioning of the label strip can only occur in the longitudinal direction, and achieving exact longitudinal positioning is important because the edge of the tear strip (see mark 58 in figure 13) has to be exactly at the corner of the packet for it to be grasped.

- 2.3 The Board however concurs with the appellant, who replies that no inventive step is to be acknowledged on the basis of feature d) alone.

The appellant contends that even though D5 does not explicitly disclose laterally detecting the edge regions of markings (24) and (58), this would be obvious to the skilled person when considering the broader teaching of D5.

The appellant, while agreeing with the respondent on the effect of the distinguishing feature, and on the formulation of the problem to be solved (see point 2.2 above), convincingly argued that a skilled person wishing to check that the position of the label on the sheet material is correct would take the teaching of paragraphs [0019] and [0020] of D5 into account.

This is because paragraph [0019] clearly identifies achieving an exact relative position between a label and a sheet material as one of the objects of the method disclosed in D5.

According to subsequent paragraph [0020], this object can be achieved by detecting the position of centering marks using optical reading devices.

As discussed in section 1.5 above, the skilled person would recognize the general nature of this teaching, and immediately understand that the relative position between the label and the sheet material may be inexact in both the longitudinal and transverse directions.

Paragraph [0022] of D5 explains that the relative position of the label (12) on the sheet of material (13) is checked through the interaction of a reading device (26) and a centering mark (24) on the label.

Contrary to the respondent's arguments, the skilled person would, on reading these paragraphs, immediately see the advantages of also checking the transverse position of the label in the method disclosed by D5.

This is because the skilled person is aware that, due to construction tolerances, vibration and wear effects, even if in this method the label strips are guided by rollers, there is still no guarantee that the position of the label is correct and will not change over time.

Due to the general nature of this teaching and to the wide availability of optoelectronic sensors, a skilled person would have no practical difficulties in applying

the above teaching to the method disclosed in D5, thereby checking the transverse position,.

In this way, the skilled person would arrive at the subject-matter of claim 1 of the main request without having to exercise any inventive skill.

This is because, in the transverse direction, the centering mark 24 of D5 extends as far as the outer perimeter of the label.

Consequently, a check of the position of the label on the sheet material in the transverse direction inevitably occurs through the detection of the position of the part of the perimeter of the label on which the centering mark extends (feature d)).

Consequently, the subject-matter of this claim does not involve an inventive step (Article 56 EPC) and the main request cannot be allowed.

3. Auxiliary request 1 - lack of inventive step

3.1 The appellant argues that the features added to claim 1 of auxiliary request 1 with respect to claim 1 of the main request do not contribute to inventive step because they are already disclosed in D5.

3.2 The respondent disagrees, arguing that, since the centering mark is printed over the whole width of the double strip (see paragraph [0030] of D5) before the label is separated by cutting, the outer perimeter of the label is not yet defined, and that for this reason D5 fails to disclose that, during the printing process, the centering mark of the label (18) projects onto the web beyond the outer perimeter of the label.

This is because this feature can only be achieved if the label already exists as a part in itself, independent from the web, at the moment of printing.

- 3.3 The Board is not convinced by the above arguments and rather concurs with the appellant because, as already discussed in point 1.3.2 above, the Board agrees with the appellant's interpretation of figure 5 of D5 according to which the left-hand half of the double strip of D5, figure 5, is to be considered the label, and the other half the web from which the label is separated.

The consequence of this interpretation is that the label, being the left-hand half of the double strip, already exists at the moment of printing.

When, as explained in paragraph [0030], lines 30 to 36, the double strip 41 is printed with a centering mark 24 over its full width, said centering mark projects onto the web (the right-hand portion) beyond the outer perimeter of the label (the left-hand portion).

The additional feature of claim 1 of auxiliary request is therefore disclosed in D5.

As the features distinguishing the subject-matter of claim 1 of auxiliary request 1 from the method of D5 are the same as those already discussed for the main request (feature d)), the subject-matter of claim 1 of auxiliary request 1 lacks inventive step over the combination of D5 with the common general knowledge of a skilled person for the same reasons as already discussed in relation to claim 1 of the main request.

4. Auxiliary request 3 - inventive step

- 4.1 During the oral proceedings, the appellant argued for the first time that the subject-matter of claim 1 of auxiliary request 3 lacks an inventive step over the combination of document D5 with the knowledge of the skilled person, because the features added thereto with respect to the main request are disclosed in this document.

According to the appellant, D5 (figure 13) also discloses a centering mark (58, 24) comprising a first (24) and a second (58) centering eye mark, said eye marks extending, respectively, as far as a first (horizontal in figure 13 for eye mark 24) and a second (vertical in figure 13 for eye mark 58) perimetric edge of the label (12), said first and second perimetric edges being substantially orthogonal relative to one another.

Since the markings (24) and (58) extend fully to the perimeter of the tear strip (12), it would be logical for the skilled person to leverage both those markings to detect two perpendicular lateral edges of the label and check that the position thereof is correct.

- 4.2 The Board, however, concurs with the respondent, who requested non-admittance of the above objection but also justified the presence of inventive step as follows.

The only mark disclosed in D5 which can be identified as a centering mark is mark 24, which extends as far as a first (horizontal in figure 13) perimetric edge of the label.

Mark 58, which is printed at the gripping end of the strip 12, is shown schematically in figure 13 and only referred to in paragraph [0011] without, however, any specific disclosure as to whether it extends as far as the vertical perimetric edge of the label. Thus, contrary to the appellant's view, this feature cannot be deemed to be directly and unambiguously disclosed in D5. Furthermore, mark 58 cannot be considered a centering mark of the label either.

This is because this mark 58 is not used to check the position of the label, and is in fact not even read by a sensor at all, but is only used to visually indicate the pull tab to a consumer (D5, paragraph [0011], line 45).

As a consequence of the above, D5 does not disclose a centering mark comprising a first and a second centering eye mark, as claimed.

The effect of this distinguishing feature is that only parts of two edges of the label need to be printed, i.e. the centering mark does not need to cover the complete surface of the label area.

This feature therefore solves the problem of reducing the visual impact of the centering mark of D5 (which is printed over the whole width of the label), while still allowing the position of the label on the sheet material to be checked in two directions.

A skilled person would not consider utilising the coloured mark 58 of D5 as a centering mark since it cannot be directly and unambiguously derived that the label's gripping end, on which mark 58 is printed, ends with a vertical edge nor that mark 58 extends as far as

the edge (see figure 13). Furthermore, as it is not directly and unambiguously disclosed in figure 13 or elsewhere in D5 that said edge is vertical, its suitability for accurate optical detection, because it inherently introduces a degree of uncertainty or inaccuracy if not strictly vertical, makes it an impractical choice for exact alignment or centering tasks where precision is critical.

It is noted that paragraphs [0019] to [0022] of D5, which have been regarded as suggesting making use of mark 24 to also check the transverse position, also do not contain anything which could be deemed to suggest replacing this centering mark 24 with a first and a second rectangular mark, as now claimed.

Therefore, the skilled person faced with the above-mentioned problem would not find the claimed solution in D5. They would also not arrive at the claimed solution by using their common general knowledge as there is no evidence in this respect.

- 4.2.1 During the oral proceedings before the Board, the respondent objected to the above-discussed objection in respect of lack of inventive step being admitted into the proceedings.

There is, however, no need to discuss the issue of its admittance in the present decision, since, even if this objection is taken into account, to the benefit of the appellant, claim 1 of auxiliary request 3 is found to be inventive, as set out above.

- 4.3 The appellant also submitted by letter of 5 July 2023, sections III, VI and VII (see also the statement setting out the grounds of appeal, point IV.2), that

the subject-matter of claim 1 of auxiliary request 3 lacks inventive step over documents D8 and D3 taken as the closest prior art, not least because these documents disclose labels with printed linear marks extending along perimetric edges thereof which are substantially orthogonal relative to one another.

During oral proceedings, the appellant explicitly maintained these objections and merely referred to the above written submissions.

- 4.3.1 The Board is not convinced by the appellant's objections in respect of lack of inventive step. It is true that D8 discloses the application of a tax seal ("Steuerbanderole" 11) to a finished cigarette package (see decision under appeal, point II.18.2.2). However, the tax seal 11 is not further specified in D8 and, hence, contrary to the appellant's allegation, cannot be deemed to comprise the feature added to claim 1 of auxiliary request 3 with respect to claim 1 of the main request of a centering mark comprising a first and a second centering eye mark, as claimed. Not all tax seals are identical or similar to the one presented by way of example by the appellant in its written submissions on the basis of documents D9 and D10.

The Board further concurs with the appellant that D8 does not directly and unambiguously disclose feature c) and part of d). As a consequence, D8 is more remote from the claimed subject-matter than D5 (the starting document from which an inventive step has been acknowledged, see above).

As far as the objection starting from D3 is concerned, the appellant has not provided a structured and complete line of argument based on the problem-solution

approach in its written submissions. In particular, it is not explained how the combination of the teaching of D1 with the closest prior art D3 would lead to the claimed subject-matter in an obvious manner. For this reason alone, it is not convincing.

Furthermore, similar considerations to those stated above in regard to D8 apply to D3 because the Board agrees with the respondent's view that this document is also more remote than D5 from the claimed subject-matter. As a matter of fact, D3 does not disclose a centering mark comprising a first and a second centering eye mark, as claimed, nor the step of separating the label from a web (feature b)).

D3 in fact deals with the inspection of the perimeter of blanks during their transportation (see claim 1) and does not deal with checking the relative position of a label on a sheet material.

In view of the above, inventive step is also acknowledged for the subject-matter of claim 1 of auxiliary request 3 when starting from D8 or D3 as the closest prior art.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in amended form on the basis of auxiliary request 3 filed with the reply to the statement of grounds of appeal and a description to be adapted thereto.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated