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Bezeichnung der Erfindung **Open-mouth containers and method and mould core**  
Title of invention: **for making them**  
Titre de l'invention :

Klassifikation / Classification / Classement : B65D 1/14

**ENTSCHEIDUNG / DECISION**

vom / of / du **21** December 1987

Anmelder / Applicant / Demandeur : **Imperial Chemical Industries plc**

Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

**EPO / EPC / CBE** Articles 56 and 123(2)

Kennwort / Keyword / Mot clé : **Inventive step  
Amendments**

**Leitsatz / Headnote / Sommaire**

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Case Number : T 77/83

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 21 December 1987

**Appellant :** IMPERIAL CHEMICAL INDUSTRIES PLC  
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**Decision under appeal :** Decision of Examining Division 081  
of the European Patent Office  
dated 27 December 1982 refusing  
European patent application  
No. 78 300 221.5 pursuant to  
Article 97(1) EPC.

**Composition of the Board :**

**Chairman :** C. Maus  
**Members :** H. Seidenschwarz  
R. Gryc  
P. Ford  
F. Benussi

## Summary of Facts and Submissions

I. By the decision dated 28 October 1981, this Technical Board of Appeal remitted the present application (application No. 78 300 221.5, filed on 1 August 1978 and claiming the priority of two previous applications of 8 August and 28 November 1977 respectively) to the Examining Division for continued examination.

The decision was based on a set of twelve claims comprising three independent claims (Claims 1, 9 and 11).

II. The Board held that, contrary to the opinion of the Examining Division, the provisions of Article 84 and Rule 27(1)(d) EPC did not constitute valid grounds for the rejection of the application. The patent could, however, not be granted since the invention according to Claim 1 had not yet been examined with regard to novelty and inventive step. This question should be treated first by the Examining Division. Concerning Claims 9 to 12, which are not subordinated to Claims 1 to 8, the Board stated that these claims would be allowable.

III. The Examining Division refused the application by a second decision dated 27 December 1982, which was based on Claim 1, received on 11 August 1980, Claims 2 to 12, received on 10 March 1980 and pages 1 and 1a and 2 to 11 of the description, received on 20 June 1981 and 10 March 1980 respectively.

IV. In the decision, the Examining Division held that the amendments in the present description would be unallowable by reason of Article 123(2) EPC and that the subject-matter of Claim 1 did not involve an inventive step. In support of its view the Examining Division argued that having regard

to the fact that the lidding problem and its solution had been correctly mentioned as state of the art in the application as filed, it could not be derived from this document that the subject-matter of Claim 1 would merely consist of the lidding problem and the features set forth in this claim solely solving this problem. For these reasons, the corresponding amendments in the description as well as the statement that a further problem (to be solved by the container according to Claim 1) would be the moulding problem were not allowable.

The subject-matter of Claim 1 did not involve an inventive step because the features solving the lidding problem belonged to the state of the art whereas the other features did not add anything further in view of solving the aforesaid problem.

In a letter issued together with the decision the Examining Division gave its reasons against the patentability of the subject-matter of Claim 1 in more detail in case the Appellant would fall back on the originally disclosed lidding and moulding problem. It was of the opinion that Claim 1 would be unallowable since it comprised also containers which are not produced around a divisible core component. The patentability of containers which are moulded around a core component would be never in doubt even in consideration of GB-A-1 207 017.

- V. On 21 February 1983, the Appellant filed notice of appeal against the decision by telex, requesting that the decision under appeal be cancelled in its entirety. A letter reproducing the contents of the telex was received on 1 March 1983 and the fee for appeal was paid simultaneously.

The statement setting out the Grounds of Appeal was submitted on 16 April 1983.

The Appellant contested the conclusions of the Examining Division. He had the impression that the Examining Division overlooked what the disclosure on page 1 of the original text meant to a person skilled in the art. It was clearly derivable from the description that the invention was dealing with two problems: stacking and lidding on one hand and simplified moulding on the other. The objection of the Examining Division based on Article 123(2) EPC was therefore unjustified.

The container disclosed in GB-A-1 207 017, which was the closest prior art with regard to the invention, would be certainly stackable and had longitudinal protruding portions and longitudinal inset portions like the container according to Claim 1. However, the inset portions according to GB-A-1 207 017 served to permit stacking whereas in the present case the protruding portions permitted stacking while the inset ones facilitated moulding. The subject-matter of Claim 1 involved therefore an inventive step.

Furthermore, the Appellant requested that the case be considered by the Enlarged Board of Appeal because a number of important legal principles were involved in the case.

VI. During the procedure before the Board of Appeal, the Appellant submitted new Claim 1 and new pages 2 and 3 of the description by a letter of 23 September 1987, received on 28 September 1987 and a new page 1 of the description, received on 24 December 1985.

Claim 1 reads as follows:

"1. An open mouth one-piece container (1) comprising a generally cylindrical body having longitudinal inset portions (4) and shaped to provide an open mouth (8) which can receive a lid, characterised in that it comprises:

- (a) a body composed of at least two longitudinal protruding portions (3) the inner surface (9) of each protruding portion (3) lying outside the perimeter (7) of the open-mouth (8) and at least two longitudinal portions (4) inset relative to the protruding portions, the said portions having inner surfaces (9, 10) which define the inner surface of the body and
- (b) extensions (5, 6) of the protruding and inset portions (3, 4) of the body which extensions define the perimeter (7) of the mouth (8) of the container, wherein the mouth-defining extension (5) of each protruding portion (3) extends inwardly of the inner surface (9) of that protruding portion; and in that
- (c) the protruding portions (3) lie sufficiently far beyond the perimeter (7) of the open mouth (8) that an applied lid (2) will not overhang the protruding portion (3)
- (d) the inner surface (10) of each inset portion (4) lies not outside the perimeter (7) of the mouth (8) so that the mouth-defining extension (6) of each inset portion (4) does not extend inwardly of the inner surface (10) of that inset portion, and
- (e) the dimensions of the inner surfaces (9, 10) of the protruding and inset portions (3, 4) are such that if the inset portions (4) were notionally removed from the body and the protruding portions (3) were notionally moved inwards until they touched along

their longitudinal boundaries (11), then the notional inner surface defined by the inner surfaces of the touching protruding portions would be capable of being passed through the mouth (8) of the container."

#### Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. Besides the features mentioned in Claim 1 as filed, Claim 1 now on file comprises in addition the following features
  - (i) the container consists of one piece
  - (ii) feature (c) of the characterising portion of the claim.

The former feature is disclosed in original Claim 9 and the latter on page 3, lines 29 to 37 and page 8, lines 22 to 24 of the description as filed.

Claim 1 does, therefore, not contravene Article 123(2) EPC.

3. The Appellant derived the preamble of Claim 1 from the container disclosed in GB-A-1 207 017. There is no objection against this since, according to the findings of the Board, this container comes closest to the subject-matter of Claim 1. Furthermore, the preamble also fulfills the requirements of Rule 29(1)(a)-EPC because all the features mentioned are, in combination part of the container according to the aforesaid document.

4. According to the description (cf. page 1) liddable open-mouth containers should be constructed so that the lids do not space apart the containers, in order to avoid a waste of storage space as well as a lack of stability when the lidded containers form a line when leaving the lidding machine.

The container disclosed in the aforesaid GB-A-1 207 017 complied already with this requirement. Its mouth could be closed by a lid which does not overhang the body of the container because the mouth is defined by inwards extensions of two longitudinal protruding portions and two longitudinal portions inset relative to the protruding portions, said four portions forming the body.

5. The described shape of the container was, however, disadvantageous in case that for the shaping of the container a mould having a core component was used. Due to the fact that the core could only be withdrawn through the undercutting perimeter of the mouth complex techniques were necessary for withdrawing the segments of the core implying five or more movements of the segments. According to the opinion of the Appellant such segmented cores are moreover prone to excessive wear and also cannot be cooled quickly enough in order to be used economically in the mass production processes.

6. The problem underlying the invention according to Claim 1 is, therefore, to provide a container

- (1) which can be placed next to a similar container with the bodies of the containers contiguous to each other even when they are lidded and

- (2) which can be shaped around the core component of a mould (especially the core component of a core-and-

cavity mould) using a relatively simple technique (cf. page 1, line 32 to page 2, line 1 of the description).

Although the container according to GB-A-1 207 017 already solves the first part of the problem, there is no objection against the admittance of this part. For the skilled person it follows immediately from the given context that the invention shall solve the moulding problem without giving up the advantage of the prior art container (the bodies of lidded containers can be placed contiguous to each other).

The statements concerning the problem comprise no novel subject-matter in respect of which the question would arise whether its introducing would be allowable with regard to Article 123(2) EPC, because they correspond with the respective statements of the description as filed.

7. The Board is satisfied that the aforesaid problem is solved by the subject-matter of Claim 1, which in view of the cited documents representing the relevant state of the art is novel (cf. also paragraph 3).

8. On the question of whether or not the cited prior art could suggest the container according to Claim 1 the following should be observed:

8.1 As already mentioned in paragraph 6, the part-problem (possibility to place lidded containers contiguous to each other) is solved according to GB-A-1 207 017 in principle by straitening the body of the container in the neighbourhood of the mouth. Consequently, the perimeter of the mouth completely undercuts the body. The person skilled in the art learns from this document furthermore that the longitudinal portions of the body inset relative to the

protruding portions should be shaped with inwardly curved stacking recesses in order to transmit the stacking loads without buckling.

Having regard to all these disclosures, they could not suggest the idea that the whole problem underlying the invention could be solved by a body at which only the protruding portions permit a contiguous stacking and, therefore, transmit the stacking load between adjacent containers and that the inset portions can be arranged so that the inner surface lies not outside the perimeter of the mouth and can, therefore, be constructed plane because they are protected against stacking pressures by the overhanging part of the lidding mouth.

- 8.2 At the open-mouth containers disclosed in the other cited documents (GB-A-1 025 316, GB-A-1 152 096, US-A-3 107 838, US-A-3 133 662), the lid overhangs the container along its whole perimeter. They are, therefore, more remote from the subject-matter of Claim 1 than GB-A-1 207 017.
- 8.3 Consequently, the teachings of the citations could, neither individually nor in combination, lead the person skilled in the art to an open-mouth one-piece container as characterised in Claim 1.
- 8.4 The subject-matter of this claim involves, therefore, an inventive step within the meaning of Article 56 EPC.
9. Hence, this claim is allowable (Article 52 EPC).
10. Dependent Claims 2 to 8 concern particular embodiments of the container according to Claim 1 and are thus likewise allowable.

11. Concerning Claims 9 to 12, the Board came, in its first decision (T 26/81), to the conclusion that they are allowable. It is, therefore, not necessary to discuss their allowability once more.
12. The description is adapted to the wording of the independent claims and deals in more detail with the state of the art from which the invention starts. The amendments are, therefore, not open to objection.
13. In a letter dated 13 April 1983, the Appellant requested that a set of questions of law be submitted to the Enlarged Board of Appeal.

The Board has found no reasons to accede to this request.

As far as these questions concern the present case (amendments of the problem, problem and solution approach), the approach adopted by the Board does not depart from the well established jurisprudence of the Boards of Appeal. The other questions are not considered to be relevant for the decision. They appear to relate to specific cases which cannot be examined isolated from the facts. They can, therefore, not be submitted to the Enlarged Board of Appeal (Article 112(1) EPC).

Consequently, the request is rejected.

#### Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with order to grant a European patent on the basis of the following documents:

Claim 1, submitted on 28 September 1987;

Claims 2 to 12, submitted on 10 March 1980;

page 1 of the description, submitted on 24 December 1985;

pages 2 and 3 of the description, submitted on 28 September 1987;

pages 4 to 11 of the description, submitted on 10 March 1980;

drawing sheet 1/12, submitted on 17 November 1979;

original drawing sheets 2/12 to 12/12.

The Registrar

The Chairman

F.Klein

C.Maus