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Case Number: T 207 / 84

**DECISION**  
of the Technical Board of Appeal 3.2.1  
of 10 June 1985

**Appellant:** Enviro-Spray Systems, Inc.  
200 Park Avenue  
New York, N.Y. 10017 (USA)

**Representative:** Patentanwaltsbüro Cohausz & Florack  
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**Decision under appeal:** Decision of Examining Division 082 of the European Patent  
Office dated 10 April 1984 refusing European patent  
application No 80107681.1 pursuant to Article 97(1)  
EPC

**Composition of the Board:**

**Chairman:** G. Andersson

**Member:** M. Huttner

**Member:** P. Ford

### Summary of Facts and Submissions

I European patent application No. 80 107 681.1 filed on 6 December 1980 and published under publication No. 0 033 377 was refused by a decision of Examining Division 082 of the European Patent Office dated 10 April 1984. The decision was based on Claims 1 to 12 received on 15 September 1983.

The reason given for the refusal was that in view of the prior art disclosed by US-A-3 718 236 the subject matter of Claim 1 did not involve an inventive step within the meaning of Article 56 EPC and the claim was thus not allowable under Article 52(1) EPC. Further Claim 1 was not allowable either because it was not properly delimited against the closest prior art, thus contravening Rule 29(1) EPC.

II On 8 June 1984 the appellants lodged an appeal against the decision. The appeal fee was duly paid and the statement of grounds was received on 7 August 1984 together with a new Claim 1 and new drawings.

The appellants argued that a person skilled in the art could not deduce the subject-matter of the invention from anything disclosed in the state of the art and that the new Claim 1 was properly limited over the most pertinent prior art.

III As a result of objections raised by the Board of Appeal during the procedure before the Board, on 4 May 1985 the appellants submitted new Claims 1 to 12 and a description accordingly amended. They requested that the impugned decision be set aside and a European patent be granted on the basis of the presently effective documents. The effective Claim 1 reads as follows:

"Self-pressurizing dispensing container with a manually actuatable atomizing and dispensing valve (14), a dispensable

medium (19) and internal expulsion means for developing and maintaining a relatively constant gaseous dispensing pressure for the product being dispensed, comprising an enclosed fluid impermeable flexible pouch (27) disposed within the container (10), a first and a second component (36 and 37) of a gas generation mixture disposed separately within the pouch (37) and being brought sequentially into contact for causing increasing gas generation in the pouch, characterized in that the pouch (27) sealingly encompasses first closure means including at least one first closure member (32) affixed to the interior (27c) of a first wall member (27a) of the pouch (27) and second closure means including at least one second closure member (33) affixed to the interior (27d) of a second wall member (27b) of the pouch (27) facing the first wall member (27a), the second closure means defining a plurality of pocket members (34) in spaced relation to one another, the first closure means releasably closing each of the pocket members (34), which contain one component (36) of the two-component gas generation mixture, the pocket members (34) being sequentially severable from said first closure means to empty their contents into admixture with the other component, whereby the second wall member (27b) is increasingly spaced from the first wall member (27a) to gradually expand the flexible pouch (27).

IV For the original claims, description and drawings, reference should be made to publication No. 0 033 377.

#### Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64EPC and is therefore admissible.
2. The features of Claim 1 find their support in the original Claims 1 to 12 and page 8, lines 25 to 30 of the description as filed. Thus the subject-matter of Claim 1 does not extend

beyond the content of the application as originally filed, nor does that of the amended description and the sheets of the drawings received on 7 August 1984 containing added reference numerals. The amendments are, therefore, allowable under the terms of Article 123(2) EPC.

3. The features of the first part of Claim 1 are in combination part of the closest prior art as represented by US-A-3 718 236. Thus Rule 29(1)(a) EPC is complied with.
4. As none of the citations uncovered by the search report reveals a self-pressurizing dispensing container with first and second closure members which are affixed to the interior of the pouch wall members and form a plurality of spaced pocket members and in which the pouch wall members are capable of being increasingly spaced to sequentially sever the closure members for emptying the contents of the pocket members, the subject-matter of the Claim 1 proves to be novel (Article 54 EPC).
5. In the self-pressurizing dispensing container known from US-A-3 178 236, there is a vertically elongated expansible pouch of plastic material, capable of being inflated, divided into a plurality of expansible compartments serially arranged and separated from each other by disruptable transverse partitions extending across the pouch from one wall to the other and each containing one component of a two-component gas generating mixture. One compartment begins to generate pressure gas after a predetermined period of time and expansion of that compartment disrupts the associated partition of the adjacent compartment to place the adjacent compartment in communication therewith, thus releasing a further portion of the one gas generating component to generate more gas to disrupt the next partition. In this way, one compartment after another becomes fully inflated and is maintained until the whole pouch is inflated and

substantially all of the product is displaced out of the container.

According to the appellants, this method of pressurization of a container has the serious drawback that it is very difficult to fabricate the expansible pouch with its transverse partitions subdividing the pouch into adjacent compartments, even if the partitions are in the form of adhered portions of the sidewalls of the bag as suggested in a further embodiment.

6. Therefore, the problem to be solved by the present application resides in the provision of a dispensing container with a pouch which can be produced more easily and more efficiently and has a wider range of uses than those known.
7. The problem underlying the application is solved by the features set forth in Claim 1 which thus does comprise the minimum features that are necessary to define the invention sufficiently.
8. It remains to be examined whether the subject-matter of Claim 1 involves an inventive step. From the assessment of the matter the following points emerge:
  - 8.1 From the facts summarized in paragraph 5, it becomes evident that the citation deals with a pouch subdivided into vertically disposed adjacent chambers which are sequentially brought into communication with each other by the successive rupture of the partitions forming them.

In contrast thereto, the appellants have departed from the known arrangement wherein compartments forming part of the pouch are expanded by the gas developed through admixture of the two gas generating components and have chosen the

entirely different concept of sequentially uncovering a plurality of separate pockets formed within the releasably adhered sheets of a flexible plastic enfoldment and whose sheets (wall members) are caused to be pulled apart by the expanding pouch due to the permanent attachment of the sheets to the respective interior sides of the pouch. Therefore, the US-A-3 718 136 teaches features that are pointing in a direction different from that of the invention. Consequently, no suggestion for arriving at the subject-matter of Claim 1 could possibly be derived from this prior art disclosure.

- 8.2 There is no doubt that by the provision of such separate enfoldment containing merely the second component confined in spaced pockets and to be introduced into and fastened to the pouch as a self-contained premanufactured unit, a decisively simpler production method of the pouch can be attained. The Board agrees with the appellants that this is so, because apart from simple introduction of the enfoldment, only one gas producing component must be filled into the pouch prior its sealing in unconfined form. In contrast, with the prior art pouch the two components have to be disposed in non-confined form into the pouch prior to sealing which undoubtedly involves a more cumbersome and more difficult operation if the danger of premature mixture of the two components is to be avoided.

The advantage of a simpler, more efficient and precise method of manufacture by the provision of spaced releasable packets within a separate enfoldment by far outweighs the disadvantage of the possibly more complex construction of the pouch made according to the invention, all the more since, by the same token, additionally enhanced reliability of operation is attained, because the proper exposure sequence of the contents of each of the spaced packets is ensured by the progressive pulling apart of the releasably adhered

enfoldment sheets, rather than the less reliable forcing of the partitions to disrupt, as employed in the prior art pouch. Therefore, a more complicated construction is not necessarily a persuasive argument in favour of obviousness as the Examining Division has maintained in its decision.

9. For the foregoing reasons, the technical problem of the application as set forth in the introductory portion of the description is solved by the features of Claim 1 in a non-obvious manner, thus involving an inventive step. Claim 1 is therefore allowable (Article 52(1) and Article 56 EPC).
10. The dependent Claims 2-12 having as subject-matter merely particular embodiments of the invention as claimed in Claim 1, on which they ultimately, depend are likewise allowable.
12. There can be no objection regarding changes effected in the description since the introductory portion thereof has been amended to acknowledge sufficiently the closest prior art and the other parts have been corrected as requested by the Board. It complies with Rules 27(1)(c) and (d) EPC. The requested corrections of the drawings are likewise not objectionable, since some reference numerals have simply been added.

ORDER

For these reasons

it is decided that

1. the decision of the Examining Division 082 of 10 April 1984 is set aside.
2. The case is remitted to the Examining Division with the order to grant a European patent on the basis of description with title as previously modified according to front page of the publication and Claims 1-12 both as received on 4 May 1985 and the drawings as received on 7 August 1984.

*PP.*  
The Registrar:

*[Handwritten signature]*

The Chairman:

*[Handwritten signature]*

Per Einschreiben zur Post am  
Posted by registered mail on 13. 06. 85  
Remis à la poste par recommandé le