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Aktenzeichen / Case Number / N° du recours : T 140/86 - 3.2.1

Anmeldenummer / Filing No / N° de la demande : 81 902 777.2

Veröffentlichungs-Nr. / Publication No / N° de la publication : WO 82/02034

Bezeichnung der Erfindung: Apparatus for containing and dispensing fluids under pressure and method of producing same
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : B 65 D 37/00; B 65 B 7/02

ENTSCHEIDUNG / DECISION
vom / of / du 12 September 1988

Anmelder / Applicant / Demandeur : Katz, H.

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Dispensing fluids/Katz

EPÜ / EPC / CBE Article 54 (3) EPC

Schlagwort / Keyword / Mot clé : Novelty (Yes)

Leitsatz / Headnote / Sommaire

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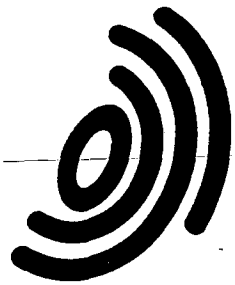

Case Number : T 140/86 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 12 September 1988

Appellant : Katz, Hyman
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New York, NY 10012 (US)

Representative : Mc Callum, William Potter
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Decision under appeal : Decision of Examining Division 081 of the European Patent Office dated 3 December 1985 refusing European patent application No. 81 902 777.2 pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : P.E.M. Delbecque
Members : C.T. Wilson
R. Schulte

Summary of Facts and Submissions

I. European patent application No. 81 902 777.2, filed on 24 September 1981 as an international application No. PCT/US81/01295 claiming priority from a national US application of 16 December 1980 and published under the international publication No. WO 82/02034, was refused by a Decision of the Examining Division of the European Patent Office dated 3 December 1985. The Decision was based on the original Claims 1 to 40.

The reason given for the refusal was that in view of the disclosure of WO 82/00780, which was published on 18 March 1982 and claims a priority date of 28 August 1980, the subject-matter defined by at least independent Claims 1 and 32 lacked novelty, contrary to the requirements of Article 52(1) EPC, having due regard to the provision of Article 54(1)(3)(4) EPC, when read in conjunction with Articles 80, 89 EPC as well as Articles 22(1) or 39(1) PCT.

II. A notice of appeal was filed on 31 January 1986, the appeal fee having been paid on 30 January 1986. The Statement of Grounds was filed on 29 March 1986 together with two new independent claims, Claims 1 and 32, stating that Claim 1 has been amended at line 15 to indicate that said relatively rigid receptacle is of sufficient rigidity to solely support the valve means. Similarly, Claim 32 had been amended at paragraph (b) to indicate that said flexible container is attached to said valve means solely by said relatively rigid integral receptacle which is of sufficient rigidity to solely support said valve means.

III. In a communication from the Board dated 24 July 1987, it was pointed out that these amendments appeared to

constitute added subject-matter. This objection was maintained in a second communication dated 1 June 1988 issued in response to new Claims 1 and 32 received on 29 January 1988. A further letter from the Appellant dated 1 August 1988 was accompanied by new pages 4 and 8 of the description and new Claims 1 to 3 and 32. Claims 1 and 32 are to be read as follows:

1. An apparatus for containing and dispensing a fluid medium under pressure comprising a substantially inert flexible container defining an inner region for containing the fluid medium under pressure and capable of being folded about one axis in its empty condition and expanded at least in directions substantially transverse to said axis when filled with the fluid medium under pressure, said substantially inert flexible container means having relatively rigid means integral therewith which function as a relatively rigid valve receptacle for connecting valve means thereto, said relatively rigid valve receptacle defining an aperture and including a relatively thick-walled neck portion and a radial flange; a resilient tubular member positioned so as to extend at least over the length of said substantially inert flexible container means and being expandable in directions substantially transverse to said axis when said flexible container means is filled with the fluid medium under pressure; and valve means connected to said valve connecting means and adapted to substantially prevent evacuation of said flexible container means under normal conditions and capable of selectively providing communication between said inner region of said flexible container means and the outside atmosphere thereby to permit selective amounts of the pressurized fluid medium to exit said flexible container means due to the generally inward forces provided by said resilient member in its generally expanded condition.

32 A method for manufacturing an apparatus for containing and dispensing a fluid under pressure comprising:

(a) molding a moldable material into an elongated flexible container having a relatively flexible portion which defines an inner region for containing the fluid and having at one end relatively rigid means integral therewith, which function as a relatively rigid valve receptacle defining an aperture and including a relatively thick-walled neck portion and a radial flange;

(b) positioning valve means within said aperture and neck portion and attaching said flexible container to said valve means so as to form a substantially sealed molded container defining an inner region for containing fluid;

(c) folding said flexible container inwardly along a longitudinal axis extending through said valve means;

(d) positioning a resilient tubular member outwardly of and surrounding said flexible container, said resilient member extending at least over the length of said relatively flexible container portion and capable of being expanded at least in radial directions as said flexible container means is filled with the fluid medium under pressure so as to provide sufficient potential energy within said resilient member such that selectively actuating said valve means provides communication between the inner region of said flexible container and the outside atmosphere while said expanded resilient tubular member causes expulsion of said fluid from the inner region of said flexible container through the valve means to the outside atmosphere.

IV. The Appellant requests that the contested decision be set aside and that a European patent be granted on the basis of the new claims and amended description.

Reasons for the Decision

1. The appeal is admissible.

2. The wording of Claims 1 and 32 at present on file differs essentially from that of the like-numbered claims rejected by the Examining Division in that it is made clear in both claims that the relatively rigid valve receptacle includes both a relatively thick-wall neck portion and a radial flange. The amendments to the description bring this into line with the claims. This construction of the valve receptacle was clearly disclosed in the original description and drawings, and no formal objections arisein respect of these amendments.

3. On the question of novelty, it is pointed out that the present invention relates to a container assembly for containing and dispensing fluids under pressure, and to a method of making this assembly.

3.1 In the co-pending application WO 82/00780 falling in the Article 54(3) EPC field and having the same Applicant is described a container assembly of the type comprising an outer rigid or semi-rigid container housing and an inner flexible expandible container surrounded by a resilient expandible sleeve, and a valve assembly for dispensing the contents of the inner container under the contracting force of its surrounding resilient sleeve. In particular, the valve assembly is connected to the inner container by means of a valve body inserted into the neck portion of the inner container around which is then applied a locking ring. It is clear from Figures 7 and 10 that the neck portion is not

thickened but is provided with a radially extending flange at its free end.

3.2 From the Statement of Grounds for the Appeal it appears that the object of the invention is to eliminate the need for an external locking ring.

This is achieved by forming the upper end of the inner container as a relatively rigid valve receptacle including a relatively thick-walled neck portion and a radial flange.

3.3 Since in the original Claims 1 and 32 only referred to the inner container "having relatively rigid means integral therewith for connecting valve means thereto" (Claim 1) and "having at one end, a relatively rigid valve receptacle integral therewith and defining an aperture for reception of valve means" (Claim 32), the Board is of the opinion that the Examining Division were correct to reject the application on the ground of lack of novelty in the light of the radial flange (and hence rigid part relative to the thinner walls) of the inner container of WO 82/00780.

However, the new claims are now clearly restricted to a thick-walled neck portion and a radial flange. The subject-matter of Claims 1 and 32 is therefore new.

4. Since the Examining Division has not had the opportunity to express any opinion about the possible presence of an inventive step in the subject-matter of Claims 1 and 32, the Board finds it inappropriate to decide the issue and makes use of its power under Article 111(1) EPC to remit the case to the Examining Division for further prosecution.

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 for completion of the examination on the basis of the new Claims 1 and 32 accompanying the letter dated 1 August 1988.

The Registrar: The Chairman:

S. Fabiani P.E.M. Delbecque