

A		B		C	X
---	--	---	--	---	---

File Number: T 64/91 - 3.2.1

Application No.: 85 200 594.1

Publication No.: 0 167 183

Title of invention: Container, body and locking ring for same, and an apparatus for manufacturing said body for said container

Classification: B65D 45/30, B21D 51/26

D E C I S I O N  
of 28 October 1992

Proprietor of the patent: Thomassen & Drijver - Verblifa N.V.

Opponent: Blagden Industries plc

Headword:

EPC Articles 100(c) and 123(2)

Keyword: "Inadmissible extension of subject-matter (main request, yes; auxiliary request, no)"



Case Number : T 64/91 - 3.2.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.1  
of 28 October 1992

**Appellant :**  
(Proprietor of the patent)

Thomassen & Drijver - Verblifa N.V.  
Zutphenseweg 51  
NL - 7418 AJ Deventer (NL)

**Representative :**

Hoijtink, Reinoud  
Octrooibureau Arnold & Siedsma  
Sweelinckplein 1  
NL - 2517 GK den Haag (NL)

**Respondent :**  
(Opponent)

Blagden Industries plc  
Tonman House  
63-77 Victoria Street  
St Albans  
Herts AL1 3LR (GB)

**Representative :**

Plucker, Guy  
Office Kirkpatrick  
4 Square de Meeüs  
B - 1040 Bruxelles (BE)

**Decision under appeal :**

Decision of the Opposition Division of the  
European Patent Office dated 12 September 1990,  
and posted on 12 November 1990, revoking European  
patent No. 0 167 183 pursuant to Article 102(1)  
EPC.

**Composition of the Board :**

**Chairman :** F. Pröls  
**Members :** S. Crane  
W.M. Schar

## Summary of Facts and Submissions

- I. European patent No. 0 167 183 was granted with effect from 23 March 1988 on the basis of European patent application No. 85 200 594.1.
- II. The patent was opposed by the Respondents on the sole ground that its subject-matter extended beyond the content of the application as filed (Article 100(c) EPC).
- III. By its decision taken at oral proceedings on 12 September 1990, and issued in written form on 12 November 1990, the Opposition Division revoked the patent.

In the reasons given for the decision it was indicated that no means for locking the cover of the container to its body had been originally disclosed other than the locking ring as defined in original Claim 1, that this locking ring was an essential feature of the invention as originally presented and that accordingly the use of the term "locking means" in granted Claim 1 added subject-matter to the content of the application as filed.

- IV. The Appellants (Proprietors of the patent) filed an appeal against this decision on 8 January 1991 and paid the appeal fee on the same day. The Statement of Grounds of Appeal was filed on 11 March 1991.

In this Statement the Appellants alleged that the contested decision was taken without giving them the opportunity to comment on the grounds of revocation thus violating Article 113 EPC. Moreover, the Appellants requested reimbursement of the appeal fee pursuant to Rule 67 EPC on the grounds that the minutes of the oral proceedings before the Opposition Division were incomplete and that the Opposition Division took its decision without

giving its "preliminary standpoint" at the oral proceedings.

The Appellants filed a new Claim 1 in which the term "locking means" was replaced by "locking ring" and on the basis of which maintenance of the patent in amended form was requested.

- V. In communications of the Board pursuant to Article 110(2) EPC, dated 21 October 1991 and 4 February 1992, the Board indicated its provisional opinion that the objection under Article 100(c) EPC could only be satisfactorily overcome by including in Claim 1 the definition of the form of the locking ring as stated in Claim 1 of the original application documents.
- VI. By letter dated 20 December 1991 the Appellants withdrew their request for reimbursement of the appeal fee.
- VII. Oral proceedings were held on 28 October 1992.

The main request of the Appellants submitted at the oral proceedings was the maintenance of the patent in amended form on the basis of Claim 1 filed on 20 December 1991 with the deletion of the words "generally axial" in line 9, together with Claims 2 to 14 and the description substantially as granted subject to adaptation to the terms of Claim 1.

Claim 1 according to the main request therefore reads as follows:

"Container (1, 52), comprising: a tubular body (2) with at least one open end (3), and having a body part adjacent to the open end (3) which is provided with a curled body rim (8, 12, 21, 25); a cover (4) which closes

the open end (3) and having a cover rim (7) extends over the curled body rim (8, 12, 21, 25); a sealing medium (11) is interposed between the curled body rim (8, 12, 21, 25) and the cover rim (7); and a locking ring (6, 22, 53) which locks the cover (4) against a displacement relative to the body (2), characterized in that the curled body rim (8, 12, 21, 25) is additionally curled such that an end portion of the body (2) is positioned upwardly within the curled body rim (8, 12, 21, 25) and contacts the internal surface of the body rim (8, 12, 21, 25) at least at the point at which the radial outward or inward bending of the body rim curl commences."

The auxiliary request of the Appellants was the maintenance of the patent in amended form on the basis of Claims 1 to 14, description and drawings submitted at the oral proceedings. Claim 1 according to the auxiliary request reads as follows:

"Container (1, 52), comprising:

a tubular body (2) with at least one open end (3) and having a body part adjacent to the open end (3) which is provided with a curled body rim (8, 12, 21, 25);

a cover (4) which closes the open end (3) and having a cover rim (7) extends over the curled body rim (8, 12, 21, 25);

a sealing medium (11) is interposed between the curled body rim (8, 12, 21, 25) and the cover rim (7);  
and

a locking ring (6, 22, 52) which encircling the cover rim (7) and the curled body rim (8, 12, 21, 25), locks the cover (4) against a displacement relative to the body (2),

characterized in that the curled body rim (8, 12, 21, 25) is additionally curled such that an end portion of the body (2) is positioned upwardly within the curled body rim

(8, 12, 21, 25) and contacts the internal surface of the body rim (8, 12, 21, 25) at least at the point at which the radial outward or inward bending of the body rim curl commences."

Dependent Claims 2 to 10 relate to preferred embodiments of the container according to Claim 1. Independent Claim 11 relates to apparatus for manufacturing a body for a container according to any one of Claims 1 to 10, and dependent Claims 12 to 14 relate to preferred embodiments of the apparatus of Claim 11.

VIII. In support of their requests the Appellants put forward in essence the following arguments:

A locking ring which functioned to lock the cover of the container against displacement relative to the body was clearly disclosed in the original application, in particular on page 5, lines 16 to 18 and page 7, line 37 to page 8, line 1, so that the use of this term in Claim 1 of the main request could not represent an addition of subject-matter.

Although all of the preferred embodiments of the container shown in the drawings utilised a locking ring which encircled the cover rim and the curled body rim, the last paragraph of the description of the original description referred to an alternative construction in which the body end is curled inwardly which would be incompatible with such an encircling locking ring and therefore implicitly disclosed a locking ring not of that form. It was therefore apparent that the particular form of the locking ring was not essential to the performance of the invention, only its function mattered. As was clear from page 3, lines 7 to 11 of the original description the essence of the invention lay in the additional curl of the

body rim so that to restrict the scope of Claim 1 by the incorporation of the features relating to the form of the locking ring would be unjust.

It would seem therefore that the only possible objection to the formulation of Claim 1 of the main request was lack of clarity through the use of a functional definition of the locking ring. It had however been established in several decisions of the Boards of Appeal, for example T 204/90 of 30 July 1991, that a functional definition was wholly appropriate in cases such as the present one, since the skilled man would have no difficulty in conceiving any number of locking ring configurations for achieving the required effect. Accordingly, Claim 1 was not objectionable in this respect.

The objection of the Respondents to the use of the term "end portion" in Claim 1 to define that portion of the body which forms the critical section of the outer curl was not understood. Although, admittedly, this term was not to be found as such in the original application documents, it was clearly supported by what was shown in the drawings.

IX. In reply the Respondents presented essentially the following arguments:

The feature that the locking ring encircled the cover rim and the curled body rim was presented consistently throughout the application documents as originally filed as being an essential element of the invention and no other form of locking ring had been suggested. The reference of the Appellants in this respect to the last paragraph of the description was misleading since this paragraph said nothing at all about the form of the locking ring to be used and in any case there was nothing

inconsistent in the use of an encircling locking ring with an inwardly curled body rim.

According to page 2, paragraph 4, of the original description the extent of the additional curl was defined by reference to the "end wall edge" of the body. However, in Claim 1 according to both the main and auxiliary requests of the Appellants, an "end portion" which did not necessarily include the "end wall edge" was referred to in this respect, so that these claims extended to arrangements not originally disclosed and were therefore objectionable.

#### Reasons for the Decision

1. The appeal complies with the requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC; it is therefore admissible.
2. Main request

According to the introductory paragraph of the description as originally filed the invention relates to a container comprising a body with a bent or curled rim, a cover with a rim extending over the body rim, and a locking ring "encircling the cover rim and the bent body rim which assures against a relative displacement of the cover in relation to the body". The preamble of original Claim 1 is worded in similar terms. The question to be answered with respect to Claim 1 of the main request is therefore whether through the omission of the statement that the locking ring encircles the rims of the container body and cover the subject-matter of the patent extends beyond the content of the original application (Article 100(c) EPC).



In this respect it is to be noted, as was clearly pointed out to the Appellants at the oral proceedings, that the issue at hand is not, as the Appellants maintain, whether and to what extent the definition of features in a claim in functional terms is as such allowable. The arguments and jurisprudence adduced by the Appellants in this respect do not therefore need to be considered.

In Decision T 514/88 (OJ EPO 1992, 570) a detailed analysis is made of several earlier decisions concerning the question of whether amendment by omission or deletion of a feature can lead to an objectionable addition of subject-matter under Article 100(c) or 123(2) EPC. In particular the various "tests" and auxiliary criteria that are suggested as appropriate tools for analysing specific cases, such as "essentiality" (Decision T 260/85, OJ EPO 1989, 105), "inessentiality" (Decision T 331/87, OJ EPO 1991, 022), the "novelty test" (Decision T 201/83, OJ EPO 1984, 481, point 3) and the "novelty test applied to generalisations" (Decision T 194/84, OJ EPO 1990, 59) are compared and contrasted. As stated in its earlier Decision T 527/88 of 11 December 1990 (unpublished), this Board concurs with the conclusion reached in T 514/88 that the above considerations are not necessarily contradictory but in fact can be subsumed under the common principle that the subject-matter of an amended application or of a granted patent must be directly and unambiguously derivable from, and consistent with, the original disclosure. The basis for the amendment need not be presented in express terms in the original disclosure but it must be sufficiently clear to a person skilled in the art to be directly and unambiguously recognisable as such and not of a vague and general character.

Bearing the above-established principle in mind, it is now necessary to determine what the original application taught the skilled person.

Following the introductory paragraph mentioned above, the description states that in the prior art forces exerted in the area of the cover rim, such as when the container is dropped, can lead to sufficient deformation of the container to render it no longer leak-tight. This problem is to be solved in that "the assembly formed by the body rim, cover rim and locking ring acquires such a bending rigidity that the forces affecting the container, for example as a result of it being dropped, lead to deformation in another part of the container where deformation leads less quickly to the occurrence of open contact between the interior of the container and the environment". Since a locking ring which encircles the body and cover rims will to a significant extent determine the overall bending rigidity of the assembly, the Board cannot see how the passage quoted above could not but indicate to the skilled person that this form of ring was essential to achieving the stated aim.

Contrary to what has been argued by the Appellants the Board can find nothing in the parts of the introductory description following the passage quoted above or in the particular description which could lead the skilled man to the conclusion that the form of the locking ring was not in fact of importance.

In this respect the Appellants have firstly pointed to page 3, paragraph 3 of the original application, which begins "Because the assembly of additionally curled body rim and the cover gripping onto it has a greater rigidity ...", as indicating that the provision of the additional curl in the body rim was the only essential feature of the

invention and that the form of the locking ring was irrelevant. This paragraph of the description is, however, specifically directed to what is said in the preceding one about how the bending rigidity can be additionally increased by having the cover rim extend down over the body rim for at least half the height of the latter and then goes on to say how this feature can be combined with a locking ring of relatively great wall thickness to increase the bending rigidity even further. There is therefore nothing here that points away from the exemplified form of locking ring.

Secondly, the Appellants have pointed to two passages in the particular description on page 5, lines 15 to 18 and page 7, line 35 to page 8, line 1, wherein the locking ring is mentioned as assuring against axial displacement of the cover with respect to the body without it being stated that the locking ring encircles the rims. In each case, however, the locking ring is identified by the corresponding reference number with the particular locking ring shown in the relevant drawing, that locking ring, as is the case in all the illustrated embodiments, being one that encircles the rims of the cover and the body of the container. The fact that this feature of the locking ring is not specifically stated in the relevant parts of the description referring to the embodiments involved can in no way be interpreted that the locking ring does not possess this feature.

Lastly, the Appellants placed great emphasis on the last paragraph of the description wherein it is stated that "Although only a curl form is shown in the drawings, where the body end is, in the first instance, bent in a radial outward direction, a curl form can also be applied within the framework of the invention, whereby the body end is bent in a radial inward direction". In the Appellants'

view such an arrangement would clearly be recognised by the skilled person as being incompatible with the use of a locking ring which was to encircle the curled rims of the container body and cover, so that this statement implicitly discloses a locking ring of some other form. The Board cannot accept this view since although the container rim may be formed by inward curling this does not necessarily mean that the rim as a whole must lie within the perimeter of the adjacent body part of the container and therefore be unavailable for cooperation with an encircling locking ring. In fact the last sentence of the description, which follows the passage quoted above, suggests how such an arrangement may be achieved by forming an inwardly directed groove in the container body below such an inwardly curled rim.

Having regard to the above considerations the Board comes to the conclusion that the feature that the locking ring should encircle the body and cover rims was consistently portrayed throughout the original disclosure as being an essential feature of the invention and that the original disclosure contains no indication that such a locking ring could be replaced by a locking ring not having such a form. Claim 1 of the main request, insofar as it relates to locking rings of any configuration suitable for performing the function of preventing relative displacement of the cover and body, therefore contains subject-matter extending beyond the content of the application as filed and is accordingly not allowable (cf. for example Decision T 416/86, OJ EPO 1989, 308). The main request of the Appellants must therefore be refused.

2. Auxiliary request

Claim 1 according to the auxiliary request differs from granted Claim 1 in that the locking means is now specified

to be a locking ring encircling the cover rim and the curled body rim. This is a clear limitation of the scope of the granted claim so that there is no objection to it under Article 123(3) EPC. Furthermore, the objection considered above with respect to Claim 1 of the main request has been overcome.

Claim 1 of the auxiliary request comprises the features of Claim 1 as originally filed together with the feature relating to the provision of a sealing medium, to be found in the preamble of the claim, and a definition, in the characterising clause, of the extent of additional curl in the body rim. The feature relating to the sealing medium is supported by page 5, lines 25 to 27 and the drawings of the original application and is not in dispute. The Respondents contend, however, that the definition of the extent of the additional curl by reference to an "end portion" of the body goes beyond the original disclosure wherein only an "end wall edge" is referred to in this context. From the relevant passage of the original description, on page 2, lines 14 to 22, taken in conjunction with the figures of the drawings mentioned there, it can be seen that the end wall edge of the body has a position within the curled body rim lying within the range extending between "3 o'clock" and "9 o'clock". However, it is not this edge itself which contacts the internal surface of the body rim but rather an end portion of the body. In other words the definition in Claim 1 of the extent of the additional curl in terms of an end portion of the body is a fair and accurate description of what was actually originally disclosed and cannot be seen as constituting an addition of subject-matter. Furthermore, the Board can see no justification for specifying in Claim 1, as suggested by the Respondents, that the end portion referred to extends to the end wall edge since no indication can be found in the original

disclosure that such a feature is in any way necessary for achieving the desired result of increasing the bending rigidity of the assembly of rims and locking ring.

Claims 2 to 14 all have corresponding counterparts in the claims of the original application and have only been amended to the extent necessary to bring them into conformity with the terms of Claim 1. The amendments to the description are restricted to an evaluation of the most relevant prior art and adaptation to the terms of the claims.

Accordingly there are no objections under Article 100(c) or Article 123(2) EPC to the documents according to the auxiliary request.

The novelty and inventive step of the subject-matter of the claims has not been challenged at any stage during the opposition and appeal proceedings and the Board sees no reason, on the basis of the state of the art cited in the search report, to investigate this matter of its own motion. The patent can therefore be maintained in amended form on the basis of the documents according to the auxiliary request.

3. Procedural questions; reimbursement of the appeal fee

By letter dated 20 December 1991 the Appellants withdrew their request referring to a reimbursement of the appeal fee. This request concluded point 1 of their Statement of Grounds of 8 March 1991 wherein they had made observations concerning alleged procedural violations by the Opposition Division (see point IV above). In view of that the Board considers that the Appellants no longer wish to pursue these allegations.

Although Rule 67 EPC provides that reimbursement of the appeal fee shall be ordered where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation, whereby Rule 67 EPC is applied on the Board's own motion, the file contains nothing which could substantiate the alleged procedural violations. Therefore no reimbursement of the appeal fee is to be made.

**Order**

**For these reasons, it is decided that:**

1. The contested decision is set aside.
2. The main request is rejected.
3. The case is remitted to the first instance with the order to maintain the patent on the basis of the documents filed at the oral proceedings according to the auxiliary request.

The Registrar:



S. Fabiani

The Chairman:



F. Pröls