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CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

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File Number: T 780/91 - 3.2.1

Application No.: 86 308 937.1

Publication No.: 0 223 581

Title of invention: Package for hydrophilic contact lens

Classification: B65D 75/36, G02C 7/04

DECISION
of 5 October 1992

Applicant: Johnson & Johnson Vision Products, Inc.

Headword:

EPC Article 56

Keyword: "Inventive step (yes)"



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Boards of Appeal

Chambres de recours

Case Number : T 780/91 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 5 October 1992

Appellant : Johnson & Johnson Vision Products, Inc.
1417 San Marco Boulevard
P.O. Box 10157
Jacksonville
Florida 32207 (US)

Representative : Jones, Alan John et al
Carpmaels and Ransford
43 Bloomsbury Square
London WC1A 2RA (GB)

Decision under appeal : Decision of Examining Division 2.3.08.082 of the
European Patent Office dated 31 May 1991 refusing
European patent application No. 86 308 937.1
pursuant to Article 97(1) EPC.

Composition of the Board :

Chairman : F. Gumbel
Members : S. Crane
J-C. de Preter

Summary of Facts and Submissions

- I. European patent application No. 86 308 937.1 was refused by a decision of the Examining Division dated 31 May 1991.
- II. The reason given for the decision was that the subject-matter of independent Claims 1 and 14 according to both the main and auxiliary requests of the Appellants (Applicants) lacked inventive step with respect to the state of the art as disclosed in the following documents:
- (D1) GB-A-1 589 024
 - (D2) US-A-3 078 986
 - (D3) DE-U-1 725 270
 - (D4) DE-A-2 421 194
 - (D5) GB-A-1 046 146.
- III. The independent claims according to the main request (filed on 15 February 1991) read as follows:
- "1. A blister package for an optical lens comprising a base portion (11) and a cover sheet (12) characterized by, said base portion (11) including a cavity (13) in which is housed a hydrophilic contact lens (19) and sterile aqueous solution, said base portion also including a flange (16) extending outward around the periphery of said cavity (13),
- said cavity (13) being defined by a bottom surface, upstanding side walls (15) and a side wall surface inclined (14) away from said bottom surface,
- said cover sheet (12) being substantially flat and releasably sealed to said flange (16) around the perimeter of said cavity (13),
- and wherein the shape of the cavity (13) does not conform to that of the lens (19) and wherein the lens (19)

free within the cavity, normally rests on the bottom surface of the cavity (13) in which position its dimensions preclude it from being in contact with the cover sheet (12)."

"14. A process for making a blister package for a lens comprising a base portion (11) and a cover sheet (12) characterized by,

placing a hydrophilic contact lens (19) and sterile aqueous solution in the cavity (13) of said base portion (11), said base portion (11) also including a flange (16) extending outward around the periphery of said cavity (13), the cavity (13) having a shape which does not conform to that of the lens (19) and

said cavity (13) being defined by a bottom surface, upstanding side walls (15) and a side wall surface inclined (14) away from said bottom surface,

releasably sealing the cover sheet (12) to the flange (16), said cover sheet (12) being substantially flat, and wherein the lens (19) free within the cavity, normally rests on the bottom surface of the cavity (13) in which position its dimensions preclude it from being in contact with the cover sheet (12)."

Dependent Claims 2 to 13 relate to preferred embodiments of the package according to Claim 1 and dependent Claim 15 relates to preferred embodiments of the process of Claim 14.

Independent Claims 1 and 14 according to the auxiliary request differ from the corresponding claims of the main request solely in that the hydrophilic contact lens is specified to be completely submerged in the sterile aqueous solution.

- IV. In the contested decision the view was taken that from document D1 in particular, which related to a blister package for a lens for an eye-glass, the skilled man would have obtained the basic idea of using a blister package for a hydrophilic contact lens and its attendant sterile solution. The actual specific form of the blister package defined in the independent claims considered in the decision followed from document D3.
- V. An appeal against the decision of the Examining Division was filed on 22 July 1991, the appeal fee being paid on the same day. The Statement of Grounds of Appeal was filed on 25 September 1991.

The Appellants (Applicants) request that a patent be granted on the basis of the claims according to the main or auxiliary requests filed on 15 February 1991. As an auxiliary measure they request that oral proceedings be held.

- VI. The arguments of the Appellants in support of their requests can be summarised as follows:

The document D1 would not have been considered by the relevant skilled man of being of any significance to him as the problems involved with packaging hard, fragile eye-glass lenses were totally different to those involved with hydrophilic contact lenses which at least in their hydrated state are flexible and resilient. Furthermore, document D3 was in no way concerned with the problem of facilitating the removal of a solid product article from a solution in which it was stored. In any case, a combination of the teachings of documents D1 and D3 was on account of practical considerations wholly unrealistic.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC; it is, therefore, admissible.

2. Formal admissibility of the amended documents

Claim 1 of the main request comprises the features of Claim 1 as originally filed together with limitations concerning the presence of the sterile aqueous solution, the shape of the cover sheet and the relative shapes and sizes of the cavity and lens. The latter features are clearly derivable from the drawings in combination with page 5, paragraphs 2 and 3 of the original description.

Dependent Claims 2 to 13 correspond to, in essence, original Claims 2 to 13.

Independent Claim 14 has to all extents and purposes the same technical content as Claim 1 but is drafted in terms of a process. The original claims did not contain an equivalent process claim but the process defined in Claim 14 can be derived unequivocally from a consideration of the original particular description. Dependent Claim 15 imposes further limitations on the form of the package used in the process by reference back to the claims directed to the package.

3. State of the art

According to the introductory description of the application hydrophilic contact lenses were conventionally packaged for storage and shipping in individual stoppered glass bottles which contained, in addition to the lens, approximately 7 cm³ of a sterile aqueous solution. The bottle was sealed with a silicone stopper and provided

with a metal foil overcap. In use, after removal of the foil and the stopper, the lens is removed from the bottle with a pair of plastics tweezers.

Document D1 relates to the packaging of an eye-glass lens and proposes placing the lens on a flat base and securing thereover a pre-formed transparent film with a small space left between the film and the lens. This arrangement affords the lens good protection against damage and enables the lens to be observed without removal from its protective packaging.

Document D2 discloses a package comprising a base portion formed with a cavity and a detachable flat cover sheet. The cavity is particularly designed as a mould for directly receiving a product in liquid form which then sets or gels. To assist in removing the set product from the cavity the side walls thereof are inclined towards the bottom. In plan view the cavity is substantially triangular so that once the cover sheet has been removed one end of the base portion can be bent downwardly to expose a pointed front end of the product for gripping between the fingers.

Document D3 relates to a package for a liquid or pulverulent product comprising an elongate deep-drawn plastics tub-like portion with a cover sheet welded thereto. One end of the tub-like portion is flat and substantially perpendicular to the axis of the portion whereby the package can be stood on this end. The other end tapers to a point which can be severed by scissors or the like to enable the product to be dispensed.

Document D4 is concerned with means for facilitating the removal of the cover sheet from the base portion of a blister package. This is achieved by providing a frangible

connection between a section of the flange of the base portion, to which the cover sheet is attached, and the main body thereof. This section can therefore be broken off to provide a pulling tag for the cover sheet.

Document D5 relates to a one-off disposable blister package for shoe cleaner or the like wherein the removable cover sheet has on its inner side an applicator for the shoe cleaner.

4. Novelty

It is apparent from a consideration of the state of the art described above that the subject-matter of Claims 1 and 14 according to the main request is novel. Since this has not been at dispute during the proceedings further elucidations on this point are unnecessary.

5. Inventive step

In the opinion of the Board the most appropriate starting point for the evaluation of inventive step is the conventional means of packaging hydrophilic contact lenses as discussed in the introductory description of the application, see point 3 above.

In relation to this state of the art the technical problem to be solved by the claimed invention is to be seen in the provision of safe, inexpensive and easy to use packaging for a hydrophilic contact lens.

It is not in dispute that at the relevant filing date blister packages, which comprise in essence one part pre-formed with a cavity for receiving a product (solid, liquid or paste) and a second flat part removably secured to a flange surrounding the cavity, were well known.

Furthermore, in document D1 a blister package had already been proposed for a product, an eye-glass lens, which at least having regard to its ultimate purpose, is closely related to the product with which the present skilled man was involved.

However, as opposed to the Examining Division, the Board is not wholly convinced that document D1 would have given the skilled man the impetus to consider a blister package for a hydrophilic contact lens, since the problems involved with the packaging of a hard, fragile eye-glass lens are quite different to those associated with a flexible, resilient hydrophilic contact lens. Thus, the specific teachings of document D1 relating to the way the eye-glass lens is protected from damage, particularly in that the cavity of the package is a close fit to the shape of the lens, have no relevance to a hydrophilic contact lens for which the prime quality safeguarding requirement is that the lens is contacted by a sterile aqueous solution.

Nevertheless, even if it is assumed that document D1 could have prompted the skilled man to consider in general terms a blister package as a possible solution to the technical problem indicated above, the Board can find nothing in the cited state of the art that would have led him to the particular form of cavity in the base portion as required by present independent Claims 1 and 14 in which one of the side walls is inclined away from the bottom surface in order to facilitate removal of the contact lens from the sterile solution, it being remembered that the lens is virtually invisible therein. In the contested decision document D3 is relied on in this respect. However, the package of document D3 is not comparable to the blister package of the present application since it is not intended that in use the cover sheet be removed to open

Description: pages 1 and 4 to 7 as originally filed,
pages 2 and 3 filed on 15 February 1991;

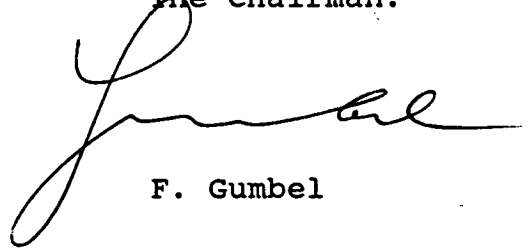
Drawings: sheets 1/2 and 2/2 as originally filed.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel

See.
