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D E C I S I O N
of 28 September 1999

Case Number: T 0282/96 - 3.2.5

Application Number: 89119936.6

Publication Number: 0367123

IPC: B29C 45/16

Language of the proceedings: EN

Title of invention:

Multi-layer preform, method of forming preform, and container formed from the preform

Applicant:

Continental Pet Technologies, Inc.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

"Allowability of amendments (yes)"

Decisions cited:

-

Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T 0282/96 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 28 September 1999

Appellant: Continental Pet Technologies, Inc.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 8 November 1995
refusing European patent application
No. 89 119 936.6 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: H. P. Ostertag
Members: P. E. Michel
V. Di Cerbo

Summary of Facts and Submissions

I. The appellant lodged an appeal against the decision of the Examining Division refusing the application No. 89 119 936.6.

II. In response to a communication under Rule 51(4) EPC, the applicant filed an amended claim 12 and a new page 2a of the description and indicated that he approved of the text in its amended version. The examining division issued a communication objecting that the amendments did not comply with Article 123(2) EPC. The applicant then filed a further amended claim 12 and a new page 2a of the description. The examining division then rejected the application, withholding consent to the amendment under Rule 86(3) EPC on the grounds that the amendment did not comply with Article 123(2) EPC.

The applicant appealed against this decision, filing a main request for grant of a patent on the basis of the refused text, a first auxiliary request for grant of a patent on the basis of an alternative wording for claim 12 and a second auxiliary request for grant of a patent on the basis of the text proposed for grant under Rule 51(4). He also requested reimbursement of the appeal fee since the refusal does not comply with Article 113(1) EPC.

III. Oral Proceedings were held before the Board of Appeal on 28 September 1999.

IV. During the course of the oral proceedings, the applicant withdrew the main request as well as the

request for reimbursement of the appeal fee, requesting grant of a patent on the basis of the first auxiliary request as filed with a letter dated 26.08.99. Claim 1 of this request remains unchanged as compared with the claim as proposed for grant by the examining division and reads as follows:-

" An injection molded plastic preform for blow molding to form a plastic container, said preform including an open ended mouth forming portion, an intermediate body forming portion, and a closed base forming portion, said preform being of a laminated construction with said body forming portion including inner and outer layers and at least one intermediate layer of a plastic different from the plastic of said inner and outer layers, said intermediate layer terminating generally at said base, and there being a core layer replacing said intermediate layer in at least a bottom part of said base portion."

Claim 12 reads as follows, the proposed amendment as compared with the claim originally proposed for grant by the examining division being in italics:

"A plastics container which has been blow moulded from a preform according to any foregoing claim, said container including a bottom portion (64), a body (62) and a finish portion (42), said body being generally of a three layer construction comprising inner and outer layers (48,50) of said primary material and an intermediate layer (52) of said secondary material, at least a *centre part of said bottom portion (64) having been formed from the bottom part of the base forming portion (46) of the preform (20) where the core layer*

(54) replaces said intermediate layer (52) and being generally of a different three layer construction comprising said inner and outer layers (48,50) and the core layer (54)."

V. The applicant argued essentially as follows:

The expressions "base portion" and "bottom portion" are used interchangeably in the application. The term "base portion" as used in connection with the preform refers to the base forming portion, that is, the portion of the preform which will form the base of the blow moulded container.

The dimensions of the core layer are immaterial. The benefits of the use of a core layer are also obtained when the core layer only occupies a small central part of the bottom of the preform.

The use in the claims of the term "replacing" means that there is inevitably contact between the core layer and the intermediate layer.

In addition, a core layer in the form of an annular ring is not consistent with the teaching of the application. Claim 12 specifies that the claimed container is formed from the preform of claim 1. It would not be possible to produce an annular core layer when blow moulding from the preform of claim 1.

Reasons for the Decision

Admissibility of the amendments

1. Claim 12 of the first auxiliary request, now considered as the main request in view of the withdrawal of the original main request at the oral proceedings (see paragraph IV above) is restricted to the feature that at least a centre part of the bottom portion of the container has been formed from the bottom part of the base forming portion of the preform where the core layer replaces the intermediate layer. This feature is derived from claim 1 as filed, which refers to the core layer replacing the intermediate layer in at least a bottom part of the base portion. In the application as filed, claim 14, directed to the container relied entirely upon claim 1 for definition of the container. Thus, in contrast to the form of claim 12 refused by the examining division, claim 12 as presently under consideration does not rely in its definition of a bottom portion on a reference to the formed container, whose bottom portion may take any desired form, but on a reference to the bottom part of the base forming portion of the preform. This term is understood as referring to the portion of the preform furthest from the neck finish portion and is used in claim 1 of the application as filed.

The object of the invention is to avoid contamination of the material of the container which, in use, is in contact with the contents of the container by the material of the intermediate layer during injection moulding of the preform. Such contamination occurs by virtue of the fact that the last injected material inevitably remains in the injection moulding nozzle. According to the invention, this problem is solved by

ensuring that the last material injected into the mould when making the preform is not the material of the intermediate layer, but that of a core layer which can be selected so as not to be such as to contaminate the intended contents of the container. Thus, upon injection of the first material into a subsequent preform, the first material is not mixed with the second material which forms the intermediate layer, but with the third material, that is, the material of the core. This is ensured by the fact that core layer replaces the intermediate layer in at least a bottom part of the base portion of the preform, this feature being reflected in the container produced from the preform by the centre part of the bottom portion of the container having been formed from the bottom part of the base forming portion of the preform where the core layer replaces the intermediate layer.

The amendment to claim 12 is thus disclosed in the application as filed and the feature which it represents enables the stated object of the invention to be achieved.

The amendments made to the claims accordingly do not extend beyond the content of the application as filed and comply with the requirements of Article 123(2) EPC.

Clarity

2. References to the bottom portion of the container are dependant upon the form of the bottom of the container and may thus be unclear. Thus, for example, the bottom portion of the container as illustrated in Figure 2 of the present application may be regarded as an annular

element, excluding the raised central portion of the base including the thick central part (66). This potential lack of clarity is avoided in claim 12 as now amended by referring to the bottom part of the base portion of the preform.

No objections under either Article 84 or 123(2) EPC have been raised in respect of the remaining claims and the requirements of these Articles are regarded as being satisfied.

Novelty and Inventive step

3. The first auxiliary request, which, for the reasons set out above, is the subject of the present decision, has not been considered by the examining division. Therefore, in order to preserve the right of the applicant to be heard at two instances, the present case is remitted to the examining division for consideration of the questions of novelty and inventive step.

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 the order to carry out an examination as to the patentability of the invention pursuant to Article 52(1) EPC on the basis of the first auxiliary

request as filed with letter of 26 August 1999.

The Registrar:

The Chairman:

A. Townend

H. P. Ostertag