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**Datasheet for the decision
of 23 May 2024**

Case Number: T 1465/22 - 3.2.07

Application Number: 16730292.6

Publication Number: 3307629

IPC: B65B31/02, B65B55/02, B65B1/46,
B65B3/00, B65B7/16

Language of the proceedings: EN

Title of invention:

METHOD AND MACHINE FOR FILLING AND SEALING BOTTLES,
CARTRIDGES, SYRINGES AND THE LIKE

Patent Proprietor:

I.M.A. Industria Macchine Automatiche S.p.A.

Opponent:

GRONINGER & CO. GMBH

Relevant legal provisions:

EPC Art. 52(2)(c), 56, 100(a)
RPBA 2020 Art. 12(6)

Keyword:

Patentable invention - method for performing mental acts - (no)
Inventive step - main request (yes)
Late-filed evidence - error in use of discretion at first
instance (no)

Decisions cited:

G 0002/88, T 2057/12



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Case Number: T 1465/22 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 23 May 2024

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 April 2022
rejecting the opposition filed against European
patent No. 3307629 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman G. Patton
Members: S. Watson
Y. Podbielski

Summary of Facts and Submissions

- I. An appeal was filed by the opponent against the decision of the opposition division rejecting the opposition against European patent 3 307 629.

The opposition was directed against the patent as a whole and based on Article 100(a) EPC (lack of inventive step).

- II. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 21 February 2024, which took into account the opponent's statement of ground of appeal as well as the patent proprietor's reply to the appeal.

The opponent responded to the preliminary opinion with submissions of 21 March 2024.

- III. Oral proceedings before the board took place on 23 May 2024.

At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.

- IV. The final requests of the parties are as follows:

for the opponent ("appellant"):

- that the decision under appeal be set aside, and
- that the patent be revoked;

for the patent proprietor ("respondent"):

- that the appeal be dismissed and the patent be maintained as granted (main request);
or if the decision under appeal is set aside, that the patent be maintained according to one of the sets of claims of auxiliary requests 1 to 4 filed with the reply to the statement of grounds of appeal.

V. The following documents are referred to in this decision:

D1: DE 10 2011 113 358 A1
D2: DE 10 2004 005 342 A1
D4: DE 10 2008 001 287 A1
D5: US 2003/0056466 A1
D6: US 2006/0136095 A1
D12: US 8,966,866 B2
D13: US 2002/0029543 A1.

VI. Independent claim 1 as granted reads as follows, the same feature labelling is used as in the decision under appeal:

- 1.1 A method for filling and sealing bottles, cartridges, syringes and the like, wherein said bottles, cartridges, syringes and the like, generally termed containers (A), said containers (A) being accommodated individually within respective seats of a first nest (B) which in turn is contained in a first transport tub (C), which consists in:
 - 1.2 - supplying said containers (A) which are accommodated individually within respective seats of said first nest (B) which in turn is associated with said first transport tub (C);
 - 1.3 - extracting at least one individual container (A) at a time from the nest (B) and

- 1.4 transferring it to a filling station (2) in order to fill said at least one container (A) with a substance;
- 1.5 - transferring said at least one filled container (A) to a crimp capping station (3),
 - 1.5.1 passing through a separating partition (4);
- 1.6 - crimp capping said at least one container (A) at said crimp capping station (3);
- 1.7 - inserting said at least one crimp capped container (A) in a respective seat of a second nest (D);
- 1.8 - juxtaposing, before the transfer of said at least one filled container (A) to a crimp capping station (3), passing through a separating partition (4), a closure stopper against an opening of said at least one container (A).

VII. Independent claim 5 as granted reads as follows, the same feature labelling is used as in the decision under appeal:

- 5.1 A machine for filling and sealing bottles, cartridges, syringes and the like, generally termed containers, said containers (A) being accommodated individually within respective seats of a first nest (B) which in turn is contained in a first transport tub (C), characterized in that it comprises
 - 5.2 a filling station (2) and a crimp capping station (3),
 - 5.3 between which a separating partition (4) is interposed,
 - 5.4 said filling station (2) comprising a first selective handling unit (6),
 - 5.4.1 designed to extract at least one individual

- container (A) at a time from said first nest (B),
- 5.4.2 align it with a dispenser (7) for filling it, and
- 5.4.3 juxtapose it against a transfer device (8) in said crimp capping station (3),
- 5.5 said crimp capping station (3) comprising, beyond said partition (4), a second selective handling unit (9),
- 5.5.1 for picking up said at least one container (A) from said transfer device (8),
- 5.5.2 aligning the container (A) with a crimp capping unit (10) for coupling a crimp cap (F) to the top of said container (A), and
- 5.5.3 delivering the crimp capped container (A) to a seat of a second nest (D), and in that it
- 5.6 comprises, downstream of said filling dispenser (7) and upstream of said transfer device (8), an automatic stopper fitting machine (16) for applying a stopper in the opening of said at least one container (A).

VIII. The wording of the claims of auxiliary requests 1 to 4 is not relevant to this decision so it is unnecessary to reproduce the claims here.

IX. The arguments of the parties relevant for the decision are dealt with in detail in the reasons for the decision.

Reasons for the Decision

1. *Claim 1 as granted - Article 100(a) EPC with Article 56 EPC - common general knowledge alone*

1.1 The appellant contested the opposition division's findings that although the method steps of claim 1 could be carried out manually, this did not render them non-technical, as the performance of a manual activity was not a purely mental act (see decision under appeal, point II.14).

According to the appellant, the method steps in features 1.2 to 1.8 of claim 1 were merely instructions to a user that could be carried out manually. In particular, features 1.5.1 and 1.7, did not require that the steps were actually carried out, so that they remained instructions which were purely mental acts. These features were therefore to be seen as non-technical (Article 52(2)(c) EPC) and could not contribute to an inventive step.

The appellant argued that only feature 1.1 could be considered to be a technical feature. This feature was however well-known from the skilled person's common general knowledge (as shown, for example, in D1, paragraphs [0011] and [0012]), so that the subject-matter of claim 1 of the main request was not inventive.

1.2 The board agrees with the opposition division that at least some of the method steps of claim 1 may be carried out manually, but that this does not lead to these method steps being "schemes, rules and methods for performing mental acts" as set out in Article 52(2)(c) EPC.

1.2.1 A method for performing mental acts requires that the method be performed entirely within the human brain. According to the established case law, subject-matter

is excluded from patentability if the claim is not restricted to physical, technical implementations, i.e. if it is not excluded that the claimed invention may be carried out mentally (see Case Law of the Boards of Appeal, 10th edition 2022 ("CLB"), I.A.2.5.2).

- 1.2.2 As the respondent argued, the features of claim 1 *inter alia* of "inserting, extracting, transferring, juxtaposing and capping" cannot be considered to be purely mental acts.

The method steps specified in claim 1 require concrete handling of containers, nests, a transport tub, a substance, a stopper and a cap. It cannot be seen how any of these steps could possibly be achieved purely through mental activity.

- 1.2.3 The appellant's further argument that a user might not actually carry out the steps of the method, as the method steps are merely instructions, is also not convincing.

The board notes that claims to methods are clearly allowed under the EPC (see CLB, II.A.1.2, G 2/88, Reasons 2.2). Any method claim requires that the steps are indeed carried out (whether manually, automatically or in a combination of both) and not just given to a user as instructions, otherwise the user would not be working within the scope of the claim. This applies also to method steps 1.2 to 1.8 of claim 1.

- 1.3 Therefore, the appellant has not convincingly demonstrated that the subject-matter of claim 1 is not inventive in view of the skilled person's common general knowledge alone.

2. *Claim 1 as granted - Article 100(a) EPC with Article 56 EPC - document D1 plus common general knowledge*

2.1 The opposition division found that the subject-matter of claim 1 was inventive in view of the teaching of document D1 and the skilled person's common general knowledge (see decision under appeal, point II.16.1.2.1 to II.16.1.2.3).

2.2 Distinguishing features

The opposition division found that features 1.5.1 and 1.7 were not disclosed in D1.

It is common ground that features 1.1, 1.2, 1.4, 1.5 and 1.6 are disclosed in document D1, whereas feature 1.5.1 is not disclosed. The respondent however further contested whether features 1.3 and 1.8 were disclosed in document D1.

2.2.1 Feature 1.3

The respondent argued that feature 1.3 was not shown in document D1 because containers 12 were removed from the nest in batches or groups of four and fed to the filling station as batches in document D1, not one at a time.

The opposition division did not refer to feature 1.3 in its decision, however in the annex to the summons to oral proceedings before the opposition division it was reasoned that feature 1.3 was not restricted to the containers being extracted individually as the feature requires only that at least one individual container is extracted.

The board agrees with the opposition division that as feature 1.3 requires that "at least one individual container" is extracted, it is not limited to only a single container being extracted from the first nest at a time. Document D1 discloses feature 1.3 as it shows extracting a row of four containers from the first nest 13 and transferring them to a filling station 21 (D1, figure 1).

2.2.2 Feature 1.7

Regarding feature 1.7, the board agrees with the opposition division that D1 does not clearly disclose that the capped containers are inserted into a second nest, different from the first nest from which they were extracted.

The appellant argued that it was clear from figure 1 and paragraph [0020] of document D1 that as non-conforming filled containers may be rejected at a reject-discarding station 26 and sent along a separate track 36, the containers taken from the nests at removal station 31 will not all be replaced into the same nests at insertion station 32. Some containers will be inserted into an "earlier" nest in place of containers which have been rejected and sent along track 36.

It is established case law that for a feature to be disclosed it must be directly and unambiguously derivable from the prior art (see CLB, I.C.4.1, fourth paragraph).

It is not unambiguously disclosed in document D1 that the containers are inserted into a second nest. D1 describes that the nests 13 are transferred from the

removal station to the insertion station, where the containers are re-inserted (see D1, paragraphs [0017] and [0018]). It is however not clearly disclosed whether the containers are re-inserted into the same nest or a different nest.

2.2.3 Feature 1.8

Regarding feature 1.8, the board agrees with the respondent that as there is no separating partition in the method of document D1 feature 1.8 cannot be disclosed as it requires that the closure stopper is juxtaposed against the container opening, before passing through a separating partition.

2.3 Objective technical problem

2.3.1 The appellant argued that the objective technical problem should be considered as the avoidance of the spread of contaminants.

2.3.2 This objective technical problem is based solely on feature 1.5.1.

2.3.3 The opposition division used the reduction of contamination of the containers due to the crimping operation as the objective technical problem, citing paragraphs [0010] to [0012] of the contested patent (see decision under appeal, point II.16.1.2.2).

2.3.4 The appellant argued that this problem was incorrect as in paragraph [0013] of the contested patent, the aim of the invention is described as being to provide a method which prevents contamination of containers by suspended dust and/or volatile substances generated during the closing steps. Therefore, according to the appellant,

the objective technical problem of avoiding the spread of contamination corresponds to the problem posed in the contested patent. There is no indication that the object of the invention is specifically directed to contamination from the crimp capping station.

- 2.3.5 It is established case law that when formulating the objective technical problem to be solved, the starting point should be the problem described in the contested patent. Only if the problem disclosed was not solved or inappropriate prior art was used to define the problem, should a different objective technical problem be formulated (see CLB, I.D.4.2.2).

The board notes that paragraph [0013] of the contested patent starts by stating that the "aim of the present invention is to solve the above mentioned drawbacks", referring back, in particular, to dust created by the crimp capping.

Therefore, as argued by the respondent, the contested patent does clearly state that the problem is to reduce contamination of containers caused by the crimping operation, and the problem appears to be solved by the provision of a separating partition between the filling station and the crimp capping station, through which the container passes after a closure stopper has been juxtaposed against the container opening (features 1.5.1 and 1.8), regardless of the material of the crimp cap.

Therefore, the board regards the objective technical problem as the reduction of contamination of the containers by the crimping operation, as in the decision under appeal.

2.4 Obviousness

The appellant argued that the opposition division was incorrect in its reasoning that the subject-matter of claim 1 was inventive because there was no hint in document D1 that the crimping operation caused contamination problems and other ways of reducing contamination existed.

2.4.1 Although the board agrees with the appellant that no hint regarding contamination from crimp capping is required in document D1 (see CLB, I.D.3.3, third paragraph) and that the existence of a number of alternative solutions does not, in itself, lead to an inventive solution (CLB, I.D.5, final paragraph), the board concludes that the subject-matter of claim 1 is not obvious in view of the combination of document D1 and the skilled person's common general knowledge.

2.4.2 The arguments of the appellant that the skilled person is aware from their common general knowledge that partitions can be used to reduce contamination, do not take into account that the partition must be placed in a specific position between the filling station and the crimp capping station according to feature 1.8.

The appellant has not shown that the skilled person, using their common general knowledge, would place the separating partition specifically such that the filled container, with closure stopper juxtaposed, is passed through the separating partition before crimp capping.

In addition, the board agrees with the respondent's argument, that feature 1.7 could also add to the reduction in contamination, by requiring a different

nest for the crimp-capped, filled container compared with the empty container.

3. *Claim 1 as granted - Article 100(a) EPC with Article 56 EPC - document D1 combined with document D2*

3.1 The opposition division also found that the subject-matter of claim 1 as granted was not obvious in view of the combination of teachings of documents D1 and D2.

The opposition division reasoned that the skilled person would not combine documents D1 and D2 as document D2 did not refer to the type of pharmaceutical containers used in document D1; the systems used in the two documents were structurally very different to one another; and D2 did not show a solution to the objective technical problem posed as it did not have a crimp capping station (see decision under appeal, point II.16.1.2.4).

3.2 The appellant contested the findings of the opposition division, arguing that D2 mentions pharmaceutical containers so that the skilled person would consider the combination of the two documents. According to the appellant, the skilled person, trying to solve either the objective technical problem of avoiding the spread of contamination or the more specific problem of avoiding contamination caused by the crimp capping station, would turn to document D2 and find that there was a separating partition 19 between the filling 13 and closure 14 stations (D2, figure 3 and paragraph [0019]).

According to the appellant, the technical effect of such a partition wall, i.e. the prevention of contamination, was well known to the skilled person and

certain structural differences between prior art teachings were generally to be expected.

The appellant argued further that document D1 showed a crimp capping station 24 and the skilled person was aware of the contamination caused by crimp capping stations. As document D2 disclosed that there should be a separating partition between the filling station 13 and a general closure station 14, the skilled person would obviously place in D1 the separating partition upstream of the crimp capping station 24 as otherwise the objective technical problem of preventing the spread of contamination from the crimp capping station would not be solved, for example if the partition was placed between the filling station 21 and the capping station 23. In addition the skilled person was aware that the product in document D1 was volatile so that it would be detrimental to place the partition between the filling and capping station as the cap should be placed as quickly as possible onto the container, without requiring transport through a separating partition. Therefore the skilled person would end up placing the separating partition of D2 between the capping station 23, i.e. the closure stopper, and the crimp capping station 24 of D1 in an obvious manner.

- 3.3 The board is not convinced by the arguments of the appellant for the following reasons.
- 3.4 The skilled person would not combine the teaching of D1 and D2 because there is no indication in document D2 that contamination from a crimp capping station should be prevented. In addition, the purpose of the partition walls in document D2 is not clearly disclosed as being prevention of contamination.

3.5 Document D2 does not disclose a crimp capping station and therefore is not concerned with prevention of contamination from such a station. The skilled person would have no motivation to combine the teaching of document D2 with the method disclosed in document D1 in the expectation of solving the objective technical problem.

3.6 Further, as argued by the respondent, document D2 does not unambiguously disclose that the purpose of the partitioning walls 18 and 19 is to prevent the spread of contamination. As indicated in document D2, the area containing the rinser 12, filler 13 and closing station 14 in document D2 forms one single clean room 10.1 with a constant atmosphere (see D2, figure 1 and paragraphs [0015] and [0028]). The partition walls 18, 19 are open at the bottom to allow for air flow (D2, paragraph [0019]). Therefore, the skilled person would not be motivated to use such walls to prevent the spread of contamination in general.

3.7 The appellant argued that from claims 3 to 5 and paragraphs [0005] and [0019] of document D2, it was clear that the purpose of the partition walls was to separate the machines from one another in order to prevent contamination.

3.7.1 In the board's view however, document D2 does not unambiguously disclose that the partition walls 18, 19 have the purpose of reducing the spread of contamination between working stations.

Paragraph [0005] refers to how repair and maintenance work can be carried out on individual stations due to the shielding around the rinser and filler (figure 1, 12.1 and 13.1) without losing the clean room conditions

in the rest of the area, and it does not refer to the separating walls 18, 19.

Claims 3 to 5 describe the position of the separating walls and that each sub-area is provided with filtered, sterile air. However, as argued by the respondent, due to the openings at the bottom of the partition walls (D2, paragraph [0019], second sentence), the skilled person would understand that air flows between the stations. This would be counterproductive to reducing contamination.

Therefore the skilled person, when considering document D2 does not find any hint or motivation relating to the problem of preventing contamination whether in general, or from a crimp capping station in particular.

3.8 In addition, even if the skilled person were to combine the teachings of D1 and D2 they would not arrive at the subject-matter of claim 1.

As the respondent argued, in document D2 the partition wall 19 is placed between the filling machine 13 and the closing machine 14. The closing machine 14 is not a crimp capping station to which a container with closure stopper is passed through the partition, as required by feature 1.8.

The appellant argued that the skilled person was aware that it was important to close the container as soon as possible after filling, to avoid contamination and loss of product. Therefore, the skilled person would not consider placing a separating partition after the filling station before the capping station. The skilled person, trying to solve the problem to prevent contamination from the crimp capping station from

spreading would obviously place the partition, known from document D2, directly before the crimp capping station 24 in D1.

However, as argued by the respondent, there is no indication in D1 or D2 that the crimp capping station is a source of contamination.

Therefore, even if the skilled person modified the system of D1 with a partition wall according to D2, they would place the partition in D1 between the filling station 21 and closure station 23 of document D1, not after the closure station 23 and before the crimp capping station 24, as is required by feature 1.8.

- 3.9 Additionally, the system of document D2 does not use nests so that D2 cannot disclose feature 1.7.
- 3.10 The appellant has therefore not convincingly shown that the decision under appeal was incorrect in finding that the subject-matter of claim 1 was inventive in view of the combination of documents D1 and D2.
4. *Claim 5 as granted - Article 100(a) EPC with Article 56 EPC - D1 with D2 and with D4 or D5*
- 4.1 The appellant argued that the distinguishing features of claim 5 with respect to D1 as closest prior art do not have a synergetic effect but must be considered as solving two partial problems. The solution to both partial problems was obvious: for the first partial problem, based on feature 5.3, in view of the combination of documents D1 and D2; and for the second partial problem based on features relating to the transfer device and second selective handling unit

features, in view of the combination of document D1 with document D4 or D5.

The combination of D1 with the teaching of D6 in view of solving the second partial problem was explicitly withdrawn by the appellant at the oral proceedings before the board.

- 4.2 In the decision under appeal, the opposition division found when considering only the first partial problem, that the subject-matter of claim 5 was inventive.

The opposition division did not consider the second partial problem in detail (see decision under appeal, point II.16.2).

- 4.3 First partial problem

The board agrees with the appellant that claim 5 does not include the restrictions found in feature 1.8 of claim 1 relating to the exact positioning of the separating partition.

However, for the same reasons as given in points 3.6 and 3.7 above, the board finds the solution to the first partial problem to be not obvious. There is no clear disclosure in document D2 that the provision of separating partitions 18 and 19 is intended to prevent the spread of contamination.

- 4.4 Second partial problem

In addition, the board notes that the subject-matter of claim 5 is also inventive when considering the second partial problem.

- 4.4.1 In its written submissions of 21 March 2024 the appellant argued that features 5.4.2, 5.4.3, 5.5.1 and 5.5.2 are not disclosed in document D1.

At the oral proceedings before the board the appellant however argued that feature 5.4.2 was disclosed in document D1 together with 5.4.1 as the extracting station 31 and conveyor 17.

- 4.4.2 Irrespective of which features are regarded as distinguishing features for the second partial problem, the appellant formulated the problem as to provide an alternative means of transportation of the containers.

The appellant argued that the skilled person was aware that robotic arms rather than a continuous conveyor belt could be used as an alternative means for transporting containers between working stations.

According to the appellant, the features of the transfer device and second selective handling unit were disclosed in both document D4 (figure 1 and paragraph [0023]) and document D5 (figure 1).

The skilled person would therefore combine the system of document D1 with that of document D4 or D5. Document D1 itself indicated that a continuous conveyor belt was an improvement over using separate handling devices as it saved time and reduced damage due to handling (D1, paragraph [0002], final two sentences). The appellant argued that an inventive step could not be based on removing the improvement shown in the closest prior art.

- 4.4.3 The board is not convinced by the appellant's arguments.

Firstly the board agrees with the respondent that at least features 5.4.2, 5.4.3, 5.5.1 and 5.5.2 are not disclosed together in document D1.

It is noted that at the oral proceedings before the board the appellant regarded the removal station 31 together with the conveying device 17 in D1 as forming the first selective handling unit enabling extraction of at least one individual container at a time from said first nest (features 5.4 and 5.4.1).

In the board's view the skilled person interprets the feature of a selective handling unit as being one single unit, i.e. either the removal station 31 or the conveying device 17 but not a combination of both. As the conveying device 17 of D1 is not directly and unambiguously disclosed to be suitable on its own for extracting at least one container at a time from nests 13 it cannot be considered as the first selective handling unit of claim 1. The first selective handling unit is therefore considered to be the removal station 31 which is not directly and unambiguously disclosed as being suitable for aligning the container with a dispenser for filling (feature 5.4.2).

4.4.4 Secondly, the board does not see the formulation of the objective technical problem as being merely an alternative. As argued by the respondent, the use of the first and second handling unit and transfer device allows for a more compact system and one which is more flexible.

4.4.5 Thirdly, it is established case law that the assessment of inventive step must not be carried out using an *ex post facto* analysis. It has to be considered whether

the skilled person, without any knowledge of the claimed invention, would consider the claimed solution to the objective technical problem obvious. In particular, the skilled person would not seek to modify the closest prior art in a manner contrary to its stated purpose (see CLB, I.D.6 and T 2057/12, Reasons 3.1.4).

In the present case, the skilled person would not modify the system of D1 by removing the conveyor and replacing it with individual handling units as the objective of the system described in D1 is explicitly to reduce product damage by reducing handling. This objective is achieved by using a single conveying device transporting containers through the individual working stations (D1, paragraphs [0002] to [0004]).

- 4.4.6 Finally, documents D4 and D5 do not unambiguously disclose the distinguishing features, not disclosed in document D1.

In document D4, the appellant argued that the handling unit 2 is regarded as the second selective handling unit. However, this unit does not deliver the crimp capped container to a seat of a second nest as required by feature 5.5.3. The containers are instead carried on a star wheel 73 to an output conveyor 74 or guide rails 75 (D4, figure 1 and paragraph [0023]).

The appellant argued that as claim 5 related to a device, the handling unit was only required to be suitable for picking up a container from a transfer device, aligning it with the crimp capping unit and delivering it to a seat of a second nest. However, it is not apparent from D4 that the handling unit 2, without modification, is suitable for carrying out

these tasks. Therefore document D4 does not appear to disclose at least features 5.5.2 and 5.5.3.

In document D5 a number of handling units are located between the filling device 8 and plugging device 9 and between the plugging device and the output from the machine, such as robots R5, R6, R8 and R9 (see figure 1). The appellant did not clearly demonstrate which of these robots discloses the features of the transfer device and second selective handling unit, in particular features 5.5.2 and 5.5.3.

- 4.4.7 The subject-matter of claim 5 is therefore also inventive based on the solution to the second partial problem.
- 4.5 In light of the above conclusions regarding the respective solutions to the first and second partial problems, it is unnecessary to consider the respondent's arguments that the distinguishing features show a synergetic effect, or to decide on the requests of the respondent to not admit the objection of lack of inventive step of the subject-matter of claim 5, as well as documents D4 and D5, into the appeal proceedings.
- 4.6 The appellant thus has not convincingly demonstrated that the opposition division was incorrect in its finding that claim 5 of the patent as granted was inventive in view of document D1 together with D2 and D4 or D5.
5. *Admittance of documents D12 and D13 in the appeal proceedings*

5.1 The opposition division did not admit documents D12 and D13 into the opposition proceedings. The opposition division found that the documents were late-filed and *prima facie* not relevant (see decision under appeal, point II.15).

5.2 Documents D12 and D13 were filed after the nine month opposition period (Article 99(1) EPC). Documents filed after this period are regarded as late-filed unless the circumstances of the case are such that they could not have been filed earlier, for example, if they are filed in reaction to new aspects raised in the opposition division's preliminary opinion (see CLB, IV.C.4.3.2).

5.3 The appellant has not argued that new aspects were raised by the opposition division in its preliminary opinion and the board cannot see any.

Therefore, it appears that the opposition division had discretion not to admit documents D12 and D13.

5.4 It is established case law that a board should not overrule a discretionary decision of an opposition division unless the board considers that the opposition division took its decision according to the wrong principles, without taking into account the right principles or in an arbitrary or unreasonable manner (see CLB, V.A.3.4.1 b)).

In the present case, the opposition division used the criterion of *prima facie* relevance which is recognised as a decisive criterion for the admittance of late-filed documents (see CLB, IV.C.4.5.3a)).

The appellant essentially argued that the opposition division used their discretion unreasonably as in the

decision under appeal the opposition division reasoned that documents D12 and D13 were not more relevant than document D2 although, according to the appellant, the reasons given for claim 1 being inventive over the combination D1 and D2 did not apply to documents D12 and D13.

- 5.5 The board finds that the opposition division did not exercise its discretion unreasonably.

Although the opposition division did state that documents D12 and D13 were not more relevant than document D2, they also gave reasons why documents D12 and D13 were not *prima facie* relevant in their own right.

The opposition division reasoned that document D12 did not include a crimping station and that the filling station 64 and the sealing station 66 in document D12 (figure 12B) were situated in the same module so that no partition was present between the filling and sealing stations (see decision under appeal, page 6, first paragraph).

Regarding document D13, the opposition division stated that the capping stations 400 and 410 could not be considered crimping stations and the crimping station referred to in paragraph [0070] was shown in figures 3 and 13 as located within the same partition walls as the filling apparatus 160, so that D13 also did not provide any teaching to separate the crimping station from upstream stations (see decision under appeal, page 6, second paragraph).

The board therefore cannot see that the opposition division exercised its discretion unreasonably. In the

decision under appeal, it demonstrated why it found that the documents were not *prima facie* relevant as neither document showed a separating partition as required by features 1.5.1 and 1.8 in combination.

5.6 Therefore, there does not appear to be any reason for the board to overrule the discretionary decision of the opposition division not to admit documents D12 and D13.

5.7 According to Article 12(6), first sentence, RPBA, a board should not admit evidence into the appeal proceedings which was not admitted by the opposition division, unless the circumstances of the appeal case justify their admittance.

In the present case, documents D12 and D13 are used in objections against claim 1 of the contested patent as granted. The appellant did not indicate any circumstances of the present appeal case which would justify their admittance into the appeal proceedings and the board cannot see any.

Documents D12 and D13 together with objections based on them are therefore not admitted into the appeal proceedings (Article 12(6), first sentence, RPBA).

6. In conclusion, as none of the admissibly raised objections of the appellant prejudices the maintenance of the patent as granted, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Lichtenvort

G. Patton

Decision electronically authenticated