



SUMMARY OF FACTS AND SUBMISSIONS

- I. European patent application No. 81 830 025.3 filed on 18 February 1981 and published on 16 September 1981 under No. 0 035 976, claiming priority from a prior application in Italy of 28 February 1980, was refused by a decision of the Examining Division 126 dated 11 February 1983. The decision was based on Claims 1 and 2 received on 22 October 1982.

The reason given for the refusal was that in view of the prior art disclosed by both GB-A-890 698 and GB-A-682 198 Claim 1 lacked novelty within the meaning of Article 54 EPC.

- II. On 5 April 1983 the appellant lodged an appeal against the decision by telex. A confirmation letter reproducing the contents of the telex was received on 28 April 1983, i.e. after the expiry of the two week period prescribed by Rule 36(5) EPC. The appellants were advised of this fact and as a consequence, they filed a request for re-establishment of rights pursuant to Article 122 EPC. Subsequently, the appellants were restored in their rights and their Notice of Appeal was considered as having been duly received on 5 April 1983, by decision of the Technical Board of Appeal 3.2.1 dated 21 November 1983. The appeal fee was paid on 9 April 1983 and the statement of grounds was submitted on 6 May 1983 together with a new single Claim. The appellants argued that a person skilled in the art could not deduce the subject matter from anything disclosed in the art.

Case Number: T 81 / 83

**DECISION**  
of the Technical Board of Appeal 3.2.1  
of 14 February 1984

**Appellant:** Techniplast Gazzada S.r.l.  
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**Representative:** Notarbartolo, Manfredi  
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**Decision under appeal:** Decision of Examining Division 126 of the European Patent  
Office dated 11 February 1983 refusing European patent  
application No 81 830 025.3 pursuant to Article 97(1)  
EPC

**Composition of the Board:**

**Chairman:** G. Andersson  
**Member:** M. Huttner  
**Member:** P. Ford

- III. By a communication dated 23 November 1983 the appellants were advised that the subject matter of the Claim lacked an inventive step in view of GB-A-682 198 and US-A-1 879 332.
- IV. Finally, on 12 January 1983, the appellant submitted a new Claim reading as follows:
- "A cage for laboratory animals comprising a container and a perforated lid (12) thereof as well a drinking vessel and a fodder trough consisting of a mobile hollow part (3), open at its upper end and closed at its lower end by a grid (17), and of a fixed complementary part (7) fastened to the lid (12), characterised in that the mobile part (3) is removable without removing the lid (12) and in that the fixed complementary part (7) is provided at its upper end with a door (8) acted by a spring (9) said door (8) automatically closing the opening when the mobile part (13) is withdrawn".
- V. For the original claims and description reference should be made to publication No. 0 035 976

#### REASONS FOR THE DECISION

1. The appellants have been restored in their rights pursuant to Article 122 EPC by a decision of this Board dated 21 November 1983. The appeal complies with Articles 106 to 108 EPC. Although in the notice of appeal the appellants do not explicitly state to what extent amendment or cancellation of the impugned decision is requested, it is clear from the circumstances of the case that the appellants are asking for cancellation of

the decision. Therefore, the appeal can be considered as complying with the provisions of Rule 64(b) EPC (cf. decision T 07/81, EPO OJ 3/1983, 98). For the foregoing reasons, the appeal is admissible.

2. The subject matter of the application as set forth in the effective Claim proves to be new (Article 54 EPC) in view of the fact that there is no cage for laboratory animals containing a container and a perforated lid thereon disclosed in the prior art having a fodder trough consisting of a mobile part which is open at its upper and closed at its lower end by a grid and being removable from the lid without removing the latter. There is likewise no complementary part fastened to the lid and equipped with a door for automatically closing the complementary part upon withdrawal of the mobile part as set forth in the Claim.
3. In the breeding cage known from GB-A-682 198, which has been acknowledged by the appellants as representing a cage for laboratory animals as set forth in the first part of the Claim, the container is provided with a lid and a trough dismountably fixed to its lower side exposed to the interior of the container. In order to refill the trough, the lid must be removed from the container and subsequently the trough slidably disengaged from the lid. Therefore, in order to give access to the fodder trough, the container has to be left uncovered until the reassembly has been completed, so that there are risks of possible animal escape and of their disturbance. The appellants consider these risks as disadvantageous.

Therefore, the problem to be resolved by the present application resides in the provision of a laboratory animal cage which enables the drawbacks associated with the prior art device to be overcome.

- 4.1 The device according to the Claim, which is alleged to resolve the problem involved, differs from the citation GB-A-682 198 merely in that there is a fixed complementary part in the lid for receiving the mobile part of the trough and said fixed part is provided with a spring actuated door for automatically closing the opening upon withdrawal of the mobile part.

Should, however, the skilled person fail to find a suitable solution to the problem stated among the known laboratory animal cages, it could be expected that he would extend his search to the closely related field of feeding devices for animals held in pens, such as represented by US-A-1 879 332. Therefore, this publication must be taken into consideration in assessing inventive step.

- 4.2 The insertion and withdrawal of a mobile fodder container from outside a fixed enclosure and holding the former in a pre-arranged position by a complementary guide and stop means associated with and fixed to the enclosure was known from US-A-1 879 332. Likewise, this citation shows a self-acting means for opening a door into an enclosure when the fodder trough is introduced and closing the enclosure when the container is withdrawn, thereby preventing animal escape.

Hence, the person skilled in the art readily learns from US-A-1 879 332 how to tackle the problem of animal escape by inserting a feeding device across an enclosure.

- 4.3 To make use of these teachings in the device according to GB-A-682 198 dealing with an animal cage covered with a lid by arranging for the mobile fodder trough to be inserted across the lid from the top into a fixed complementary tubular part in the lid for guiding and seating it in feeding position combined with a self-acting door closing the tubular part upon withdrawal of the mobile trough, as suggested by US-A-1 879 332, amounts to nothing more than mere workshop activity with no unexpected effect resulting.

This is particularly so, because the idea of inserting a beverage bottle into a deep recess representing a tubular part fixed to the lid of the container for guiding receiving and holding said bottle in supply position projecting from above into the container without the necessity of removal of the lid and thus not only avoiding the risk of escape but also that of disturbance of the animals occupying the cage has already been suggested to the skilled person by GB-A-682 198.

5. It follows that the subject matter of the Claim is obvious from the state of the prior art referred to above and thus lacks an inventive step as required by Article 52(1) EPC in conjunction with Article 56 EPC.

ORDER

For these reasons it is decided that:

The appeal against the decision of the Examining Division of  
the EPO dated 11 February 1983 is dismissed.

The Registrar:

*J. R. G.*

The Chairman:

*[Signature]*