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Case Number: T 160/83

DECISION
of the Technical Board of Appeal 3.2.1
of 19 March 1984

Appellant: SITMA Società Italiana Macchine Automatiche S.p.A.,
Via Vignolese 85,
I-41057 Spilamberto (Modena) (IT)

Representative: Henke, Erwin
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Decision under appeal: Decision of Examining Division 080 of the European Patent
Office dated 29 April 1983 refusing European patent
application No 80 200 326.9 pursuant to Article 97(1)
EPC

Composition of the Board:

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

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SUMMARY OF FACTS AND SUBMISSIONS

I. European patent application No. 80 200 326.9 filed on 11 April 1980 and published on 29 October 1980 under No. 0 018 041, claiming priority from a prior application in Italy of 24 April 1979, was refused by a decision of the Examining Division 080 dated 29 April 1983. The decision was based on Claims 1 and 2 received on 13 August 1982 and 12 March 1982 respectively.

The reason given for the refusal was that in view of the prior art disclosed by US-A-3 126 431 Claim 1 lacked an inventive step within the meaning of Article 54 EPC.

II. On 13 June 1983 the appellants lodged an appeal against the decision. The appeal fee was duly paid and the statement of grounds was submitted on 5 August 1983. The appellants argued that a person skilled in the art could not deduce the subject matter from anything disclosed in the art.

III. By a communication dated 12 December 1983 the appellants were advised that the subject matter of Claim 1 could still involve an inventive step in view of the closest prior art as represented by US-A-3 126 431 and success of the appeal would be likely, provided that some formal inadequacies were remedied.

IV. Finally, on 28 January 1984, the appellant submitted a revised description, drawing, new Claims 1 and 2 and a new abstract and requested the grant of a European Patent on these documents.

The new claim 1 reads as follows:

1. In a packaging machine for applying a single thermoplastic film bearing symbols and/or scripts to individual articles, a device for correctly positioning the film (3), with respect to the articles (1), comprising first (41,42,43) and second (44) means for detecting the position of the articles (1) prior to their engagement by the film (3) and the position of the symbols located on sequential film sections prior to the engagement of said sections with the respective articles (1), comparison means (45) for comparing the indications of said first (41,42,43) and said second (44) detecting means, and a variable output speed differential (39) controlled by said comparison means (45) to provide the desired registration of said symbols with the articles (1) if the indications of said first (41,42,43) and second (44) detecting means do not coincide, characterised in that the variable output speed differential (39) operates to vary in both directions the relative speed at which the unstretched film (3) is fed and at which the articles (1) are forwarded to engagement by the film (3) to be wrapped around the articles.

V. For the original claims and description reference should be made to publication No. 0 018 041.

REASONS FOR THE DECISION

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

2. The features of the first part of Claim 1 are, in combination, part of the state of the art as represented by US-A-3 126 431 (Rule 29(1)(a) EPC). In the Board's view, no objection may be raised to a preamble of Claim 1 acknowledging, as the most pertinent prior art, a device for correctly positioning a single thermoplastic film bearing symbols with respect to individual articles to be packaged in a packaging machine disclosed in the publication referred to above for such apparatus is undoubtedly closer with respect to the salient features than that of US-A-3 758 366.

Likewise, the Board has no objection to the appellants' amendments of the characterising clause so as to include the function of "wrapping" of the articles, which feature was previously in the preamble, but is not shown in US-A-3 126 431. Since the subject matter of Claim 1 is sufficiently supported by the description, and it does not extend beyond the contents of the application as originally filed, Claim 1 is formally in conformity with the requirements of the Convention.

3. Accordingly, the subject-matter of Claim 1 differing from US-A-3 126 431 by the features set forth in the characterising portion proves to be novel (Article 54 EPC).

4. In the apparatus of the same kind known from US-A-3 126 431, there is a pair of draw rolls for controllably stretching the film of wrapping material and delivering said film to intermittently driven trays containing the articles to be wrapped. The delivery rate of the film is held constant but at a slight overfeed and the stretch for effecting the desired correction is determined by

a controlled feed roll unit at variable slower speed. In addition to this "standard correction" an additional stretch is superimposed if the detecting means signal a forward or backward displacement of the print on the film with respect to the trays. Once it has reached its position to be applied to the trays, the film is then secured to an intermittently advancing endless chain of the packaging trays by a pair of clamps and thus is advanced therewith in synchronism.

5. The appellants consider it as disadvantageous that, in order to produce the required accurate registration, the stretched film must retain its imparted elongation and is not allowed to creep back prior to the packaging operation, which severely limits the choice from readily available film materials. Furthermore, the non-uniform deformation of the indicia appearing on the film due to the varying stretch ratio is also undesirable and, still further, a thus stretched film would encounter difficulties during the operation of wrapping around the articles.
6. Therefore, the technical problem to be solved by the present application resides in the provision in a packaging machine for applying a single thermoplastic film bearing symbols and/or scripts to individual articles, especially for wrapping such a film around the articles, of a device for correctly positioning the film with respect to the articles to be wrapped and thereby overcoming the drawbacks referred to in paragraph 4 above.
7. The solution of this problem is based on the idea of imparting to the unstretched printed film the speed differential so as to match the position of the articles,

or vice-versa. As proposed in the application, this is done by a variable output speed differential operating to vary in both directions the relative speed between the film and the articles to be wrapped.

8. It remains to be examined whether the subject matter of Claim 1 involves an inventive step and the question now arises whether the publications cited would give the skilled person any indications how the speed of an unstretched film could be matched with that of the articles.
9. As disclosed in US-A-3 126 431, the film and the articles situated in the trays are, upon clamping, both caused to advance intermittently in unison at a constant average speed and for precisely this reason any suggestion of relative movement of a unstretched film with respect to the trays or the articles to be wrapped is inconceivable. Therefore this citation does not even hint at abandoning the principle of imparting corrections within the film by preceding stretching operations and resorting to correction of registration errors by the relative movement of the film with respect to the articles. It teaches away from using a variable speed drive for imparting a relative movement for the purpose of re-establishment of proper registration of the film print and the article in the manner set forth in Claim 1.

Furthermore, the extraction from the state of the art of a more general teaching concerning the stretching of the film, i.e. the variation of an available length of film

with respect to the distance between two articles, such as the variation of the relative speed of the film with respect to the article to be wrapped would be, would constitute an abstraction not to be expected of the average person skilled in the art. Such a person is merely oriented towards practicalities. The teachings addressed to him by a prior art document must remain limited in scope so that any abstract reasoning may be ruled out (cf. Decision T 05/81 of the Board of Appeal 3.2.2 dated 4 March 1982, EPO OJ 7/1982, 249).

10. For these reasons, the technical problem of the application as set forth in the introductory portion of the description is solved by the features of Claim 1 in a non-obvious manner, thus involving an inventive step. Claim 1 is therefore allowable (Article 52(1) and Article 56 EPC).
11. The subject matter of Claim 2 merely concerns a particular embodiment of the invention claimed in claim 1 and dependent thereon, is likewise allowable.
12. There can be no objection regarding changes effected in the description, once the introductory portion thereof has been amended to acknowledge sufficiently the closest prior art and the other parts have been corrected as requested by the Board. The corrections of the drawings are likewise not objectionable.

13. In the appellants' submission received on 28 January 1984, a request for the grant of the European Patent based on the documents mentioned therein is requested. These documents include a new abstract. However, since the appellants have received the approval of the abstract as originally filed, together with the search report dated 9 September 1980, and thereafter merely the description, claims and drawings may be amended by the appellants' own volition, but not the abstract, (Rule 86(2) EPC), the request must be refused. Furthermore, the published specification of a European Patent is not permitted to contain an abstract (Article 98 EPC).

ORDER

For these reasons

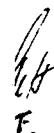
it is decided :

that the decision of the Examining Division 080 of the European Patent Office dated 29 April 1983 is set aside.

The application is remitted to the first instance with the order to grant a European patent on the basis of the following documents:

Description, pages 1-8, as received on 28 January 1984;
Claims 1 and 2, as received on 28 January 1984;
Drawing sheet 1/2, as received on 28 January 1984 and sheet 2/2 as originally filed.

The Registrar:



F.

The Chairman:

