Patents Act 1977 **Opinion Number** **12/20**

OPINION UNDER SECTION 74A

Patent	GB 2569042 B
Proprietor(s)	Alex Gort-Barten
Exclusive Licensee	
Requester	DLA Piper UK LLP
Observer(s)	Jensen & Son (on behalf of the proprietor)
Date Opinion issued	26 October 2020

The request

1. The comptroller has been requested under Section 74A of the Patents Act to issue an opinion on the validity of patent number GB 2569042 B (the "patent"). The patent was filed on 8 November 2018, claiming an earliest priority date of 8 November 2017, and was granted on 29 July 2020 in the name of Alex Gort-Barten (the "proprietor"). The patent is currently in force.

2. DLA Piper UK LLP (the "requester") submit that the claims of the patent as granted lack novelty and/or inventive step, and that amendments made to the claims as granted comprise subject matter that extends beyond the application as filed.

3. The request was filed on 20 July 2020 but, as the patent was not granted until 29 July 2020, the request is being treated as having been filed on that date. The request was accompanied by the following evidence:

   D1 EP 2443046 B1 (DOUWE EGBERTS B.V.) – published 16 September 2015;

   D2 EP 1700548 A1 (NESTEC S.A.) – published 13 September 2006;

   D3 "Nestlé Nespresso: Boosting the benefits of aluminium at Nespresso" (Internet article; https://www.nestle-nespresso.com/newsandfeatures/boosting-the-benefits-of-aluminium-at-Nespresso) – captured 10 June 2016;

   D4 EP 0512148 A1 (NESTLE S.A.) – published 11 November 1992.

4. Observations were received from the proprietor's representative, Jensen & Son, on 26 August 2020.

5. Observations in reply were received from the requester on 9 September 2020. The observations in reply were accompanied by further evidence:

EP 2364930 A2 (NESTEC S.A.) – published 14 September 2011;

"Aroma preservation without aluminium? EVAL™ EVOH for coffee packaging" – undated promotional leaflet by EVAL Europe N.V.;

"Enhancing the Coffee experience with a barrier capsule" – press release dated 21 October 2015 by EDV Packaging.

Matters to be considered by this opinion

6. I note that EP 1700548 is a divisional application to EP 1654966 (the disclosures of each document being identical), which was acknowledged as prior art in the patent application and was previously considered by the IPO examiner during pre-grant prosecution of the patent application. Requests that do no more than repeat arguments already considered pre-grant are deemed inappropriate under Section 74A(3) of the Patents Act and Rule 94(1) of the Patents Rules. However, in this request, I have been asked to consider this document in the light of new prior art documents, particularly EP 2443046, which were not considered during pre-grant prosecution. Therefore, I believe that it would be appropriate for me to include EP 1700548 in my consideration of the new questions raised in this request.

The patent

7. The granted patent has 10 claims. Claim 1 is the only independent claim defining (the subdivision of features as detailed in the request):

(a) A capsule for use in a high pressure espresso coffee machine,

(b) which machine has a capsule cage for retaining the capsule in an extraction position,

(c) wherein the capsule is formed from a ductile metal,

(d) the capsule having a generally frusto-conical form with an upper surface and a lower surface, an annular flange being provided at the lower surface,

(e) which annular flange is provided with sealing means on the surface facing towards the upper surface,

(f) wherein the sealing means comprises a ring formed from a cellulose material or paper,

(g) which ring deforms plastically in use when engaged by a capsule cage of a coffee machine to provide a seal,

(h) the seal being held in position on the flange.

8. Figures 1 and 2 of the patent, showing cross-sectional views of embodiments of the capsule, are reproduced below. In figure 1, a flange 7 comprises an upstanding wall 8, which thereby forms a gutter 9 between the wall of the capsule and the upstanding

wall 8. The gutter 9 receives a ring shaped seal. In figure 2, the capsule is provided with a flange 17 at the end of main body remote from the upper end 3 and is closed by a foil 20. The edge of flange 17 is bent rolled over and the seal 10 sits between the rolled edge and the main capsule wall 3.

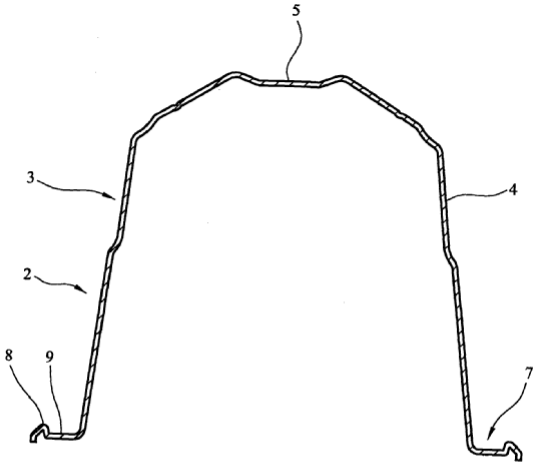

FIG. 1

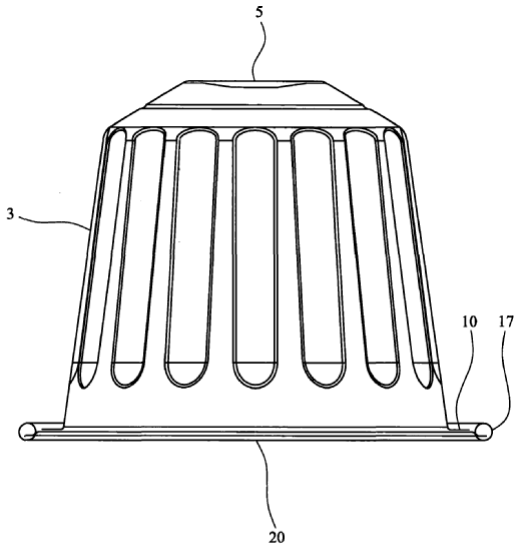

FIG. 2

9. Most significantly, in granted claim 1, the capsule is formed from a ductile metal, such as aluminium, and the ring-shaped seal is formed from a cellulose material or paper. Page 2 paragraph 2 of the patent states that aluminium capsules have the advantage of being "*oxygen and water impermeable, which means that the coffee in the capsules has a long shelf life*". Conversely, the patent also outlines the typical drawbacks of using aluminium, namely "*the aluminium is easily deformed during the filling and packing stage and it is difficult and expensive to produce a reliable seal on the capsule rim*". Therefore, according to the patent, the "*only known seal that works is a silicone elastomer*" – however, page 2 paragraph 4 of the patent states that "*the silicone seal means that the capsule cannot be recycled easily despite the significant ecological benefit in recycling aluminium and they are not recyclable in normal kerbside mixed collections*". Hence, according to page 3 paragraph 4 of the patent, the "*capsule of the invention facilitates the use of an aluminium capsule with a seal that can be recycled in common mixed recyclable kerbside collections*" and page 5 paragraph 2 of the patent states that the "*non elastic deformation of paper or other cellulose based material provides a sufficiently strong seal that there is no meaningful leakage in known capsule machines*".

Novelty, inventive step and added matter – the law

10. Section 1(1) of the Act reads:

> *A patent may be granted only for an invention in respect of the following conditions are satisfied, that is to say –*
> *(a) the invention is new;*
> *(b) it involves an inventive step…*

11. Section 2(2) of the Patents Act 1977 states:

> *The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.*

12. Section 2(3) of the Patents Act 1977 states:

> *The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied, that is to say -*
> *(a) that matter was contained in the application for that other patent both as filed and as published; and*
> *(b) the priority date of that matter is earlier than that of the invention.*

13. Section 3 of the Patents Act 1977 states:

> *An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).*

14. I note that, in relation to the patent, the state of the art comprises each of documents D1 to D4 accompanying the request by virtue of Section 2(2) of the Patents Act and so these documents are relevant for consideration of both novelty and inventive step.

15. Section 76(2) of the Patents Act 1977 states:

> *No amendment of an application for a patent shall be allowed under section 15A(6), 18(3) or 19(1) if it results in the application disclosing matter extending beyond that disclosed in the application as filed.*

Claim construction

16. Before considering the documents put forward in the request, I will first need to construe the claims of the patent. This means interpreting them in light of the description and drawings as instructed by Section 125(1) of the Act and take account of the Protocol to Article 69 of the EPC. Section 125(1) of the Act states:

> *For the purposes of this Act an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent shall be determined accordingly.*

17. I must interpret the claims in context through the eyes of the person skilled in the art.

Ultimately, the question is what the person skilled in the art would have understood the patentee to be using the language of the claims to mean. This approach has been confirmed in the recent decisions of the High Court in *Mylan v Yeda*[1] and the Court of Appeal in *Actavis v ICOS*[2].

18. I note that, in relation to assessment of inventive step, the requester identifies the person skilled in the art as having "*direct knowledge of the design and construction of coffee beverage capsules. The person would be capable of making routine modifications and would have a commercial interest in producing better, cheaper and environmentally friendly coffee beverage capsules. The person would have knowledge of the capsule designs and inventions disclosed by larger companies active in the field of coffee beverage capsules*". The observer expresses agreement to the skilled person having these attributes and I, too, am happy with this identification.

19. Having identified the skilled person, I can now turn to construing the claims. The requester briefly comments on the meaning of the word "*seal*" in feature *(h)* identified above, suggesting that this "*seal*" only refers to the "*sealing member*" itself (it's my understanding that the requester intended to refer to the "*sealing means*" itself rather than "*sealing member*", which is not a defined feature of claim 1). The observer has made no comment regarding this construction.

20. Whilst I do not feel that this opinion hinges upon this feature, I do feel that feature *(h)* could have been more clearly defined and it does present some ambiguity. For example, I note that there is reference in feature *(g)* of claim 1 to "*a seal*" being provided by the "*ring*" of the "*sealing means*" being plastically deformed "*when engaged by a capsule cage*". According to page 5 paragraph 2 of the description, this "*seal*" prevents any "*meaningful leakage*". But, I don't think that it makes sense for this "*seal*", i.e. a production of the interaction between the "*capsule cage*" and "*ring*", to be "*held in position on the flange*" as required by feature *(h)*. Rather, as suggested by the requester, I believe that the skilled person would understand that the "*seal*" of feature *(h)* refers to the "*sealing means*", which is provided on the "*annular flange*", or the "*ring*" of the "*sealing means*" – this is supported by both the description, which refers to the "*ring shaped seal*" (e.g. page 4 paragraph 1) and the "*paper seal*" (e.g. page 4 paragraph 5), and by the dependent claims, which define various material compositions of "*the seal*".

Novelty

21. The requester primarily argues that the claims of the patent lack novelty over document D1. Figures 4 and 5 of D1 are reproduced below, figure 5 depicting the detail Q of figure 4.

1 *Generics UK Ltd (t/a Mylan) v Yeda Research and Dev. Co. Ltd & Anor* [2017] EWHC 2629 (Pat)
2 *Actavis Group & Ors v ICOS Corp & Eli Lilly & Co.* [2017] EWCA Civ 1671

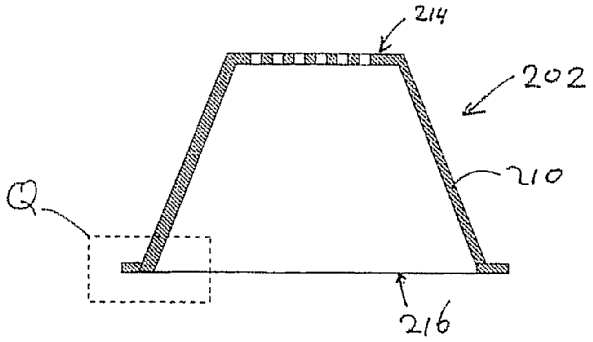

Fig. 4

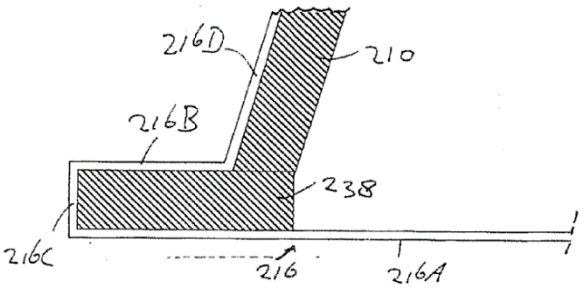

Fig. 5

22. Paragraph 0016 of D1 describes an apparatus comprising a receptacle (i.e. "*a capsule cage*") for holding a beverage capsule and the apparatus supplying fluid under pressure, e.g. 6 bars, to the capsule (i.e. "*a high pressure espresso coffee machine*"). The capsule comprises a circumferential wall 210 having an integral radial edge or flange 238. A ring-shaped sealing member 216B consisting of a fibrous and/or paper-like material entirely covers an outer surface of the radial flange 238 of the capsule (i.e. "*annular flange is provided with sealing means… the sealing means comprises a ring formed from a cellulose material or paper*"). The fibrous and/or paper-like sealing member can be configured to absorb water during operation and may be compressible when the capsule is held in the apparatus by the receptacle and a capsule holder being moved towards each other.

23. The requester notes that D1 makes reference to document D2. This reference is in paragraph 0019, which reads:

> "*The system 101 shown in Figs. 1 may be operated as follows for preparing a cup of coffee, wherein the extractable product is roasted and ground coffee (see also the content of EP1700548).*"

24. D2 also relates to a beverage capsule for insertion in a beverage production device in order to have a liquid under pressure enter the capsule. In particular, paragraph 0026 of D2 states that the "*capsule can be made of plastics or a metal such as e.g. aluminum*". So, based upon the reference to D2 in paragraph 0019 of D1, the requester argues that a person skilled in the art would recognise that the capsule embodiments of D1 are also made of aluminium. As such, the requester argues that document D1 discloses all of the features of claim 1.

25. The observer cites section 2.09 of the Manual of Patent Practice ("MoPP") to argue that an anticipatory disclosure must be entirely comprised within a single document. The case law in this section of MoPP indicates that the cumulative effect of the disclosures of more than one document cannot be taken into consideration (*Ammonia's Application*[3]) and that lack of novelty may not be established by forming a mosaic of elements taken from several documents (*British Ore Concentration Syndicate Ltd v Mineral Separation Ltd*[4]*; Lowndes' Patent*[5]). The observer also suggests that the reference to D2 in D1 relates to the coffee machine, not to the capsule, and that paragraphs 0037 and 0038 of D2 refer to a preferred material for the capsule being plastic so that there can be no implication that the capsule in D1 is

3 *Ammonia's Application,* 49 RPC 409
4 *British Ore Concentration Syndicate Ltd v Mineral Separation Ltd,* 26 RPC 124 at page 147
5 *Lowndes' Patent,* 45 RPC 48 at page 57

aluminium.

26. In reply, the requester notes that the last sentence of section 2.09 of MoPP states, "*However if a cited document refers to a disclosure in another document in such a way as to indicate that this disclosure is intended to be included in that of the cited document, then the two may be read together as though they were a single document.*" The requester argues that this situation applies in the present case.

27. I note that section 14.93 of MoPP discusses patent applications containing references to other documents. Two different types of reference are described in this section – firstly, a reference to further information in another document which is essential for there to be a clear and complete disclosure of the invention (e.g. the application may refer to another document or webpage "the contents of which are incorporated herein by reference") and, secondly, a reference to a document containing information which is not essential for sufficiency. In section 14.93.1 of MoPP, reference is made to Pumfrey J's decision in *Halliburton Energy Services Inc v Smith International (North Sea)*[6], which made clear that cross-referencing for the purpose of supplementing a disclosure is highly undesirable, stating that applications should be complete in themselves. The decision also indicates that, if the disclosure was essential to the patent, that fact should be made abundantly clear (see paragraphs 30 and 61-62).

28. It seems to me that, for the purposes of novelty, a reference to further information in another document would need to be of the type that is essential for there to be a clear and complete disclosure of the invention. However, I do not believe that this is the type of reference in document D1. I am of the opinion that the statement in D1, "*see also the content of EP1700548*", is a reference to a document containing information which is not essential for sufficiency. As such, I do not believe that it can be considered as an indication that "*this disclosure is intended to be included in that of the cited document*" (MoPP 2.09).

29. I would add that D1 has very little to say about the actual material used to form the capsule body. The only indication is in paragraph 0027, which states: "*The circumferential wall may e.g. comprise a plastics material and may be formed by e.g. injection moulding, vacuum-forming, thermoforming or the like.*" Additionally, I do note that, besides the reference in paragraph 0019, D1 does also discuss D2 as a prior art arrangement in introductory paragraphs 0002 to 0005. Notably, in these paragraphs, there is no reference to the material used to form the capsule of D2.

30. Hence, I am of the opinion that the patent is novel over document D1 since it does not disclose at least feature *(c) wherein the capsule is formed from a ductile metal*.

Inventive step

31. The requester asks that, if the patent is opined to be novel over D1, consideration should be given as to whether the Patent should not have been granted due to lack of inventive step on the basis of D1 and common general knowledge that coffee capsules can be made of aluminium.

6 *Halliburton Energy Services Inc v Smith International (North Sea) Ltd* [2006] RPC 2, [2005] EWHC 1623

32. To determine whether or not an invention defined in a particular claim is inventive over the prior art, I will rely on the principles established in *Pozzoli SPA v BDMO SA [2007] EWCA Civ 588*[7], in which the well-known *Windsurfing*[8] steps were reformulated:

> *(1)(a) Identify the notional "person skilled in the art";*
> *(1)(b) Identify the relevant common general knowledge of that person;*
> *(2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;*
> *(3) Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed;*
> *(4) Viewed without any knowledge of the alleged invention as claimed, determine whether those differences constitute steps which would have been obvious to the person skilled in the art.*

33. *Step (1)(a)* – the person skilled in the art was agreed in paragraph 18 above.

34. *Step (1)(b)* – There was some disagreement between the requester and observer about the common general knowledge of the person skilled in the art. To summarise the main issues, as I understand it, their arguments relate to the extent of the knowledge of the skilled person in relation to both plastic and aluminium coffee / beverage capsules – e.g. would the skilled person have knowledge of all designs of capsules on the market (and even in development) or just those publicly disclosed by major brands? Would the skilled person be of the view that there are no airtight plastic capsules on the market, as proposed by the observer (the requester filed the further evidence outlined in paragraph 5 above to counter this argument)? Much of the discussion of the common general knowledge of the skilled person revolved around the development of Nespresso^{RTM} brand capsules and capsules compatible with Nespresso^{RTM} coffee machines in comparison with other competitors' capsules.

35. I note that, within the agreed identification of the person skilled in the art outlined in paragraph 18 above, there is reference to "*knowledge of the capsule designs and inventions disclosed by larger companies active in the field of coffee beverage capsules*". I would say that this is a sufficient definition of the common general knowledge of the skilled person. Within this common general knowledge, I am of the opinion that, at the priority date of the patent, the skilled person would know that Nespresso^{RTM} capsules were being manufactured from aluminium (in fact, the patent acknowledges this at page 2 paragraph 1) – document D3 provided by the requester exemplifies this particular aspect of the skilled person's common general knowledge. Specifically, the skilled person would know that aluminium was being used for Nespresso^{RTM} capsules because it is airtight for protecting the ground coffee and that it could be recycled through dedicated collection channels (N.B. as opposed to kerbside domestic waste collection).

36. *Step (2)* – Taking into account suggestions from both the requester and the observer, I would say that the inventive concept of claim 1 is a capsule formed from a ductile metal and having a seal comprising a ring formed from a cellulose material or paper, which ring deforms plastically in use when engaged by a capsule cage of a coffee machine. Both requester and observer note that such a capsule may be

7 *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588
8 *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd,* [1985] RPC 59

recycled in kerbside domestic waste collection.

37. *Step (3)* – As already discussed, document D1 does not explicitly disclose the use of ductile metal, e.g. aluminium, for the capsule body. The observer also states that D1 does not disclose a ring that plastically deforms to provide a seal but, rather, the seal is formed by a mechanical clamping action of the coffee machine on the capsule. The observer also highlights that some of the other possible materials for the seal disclosed in paragraph 0055 of D1 include fabrics, both woven and non-woven, which will not plastically deform when wet. However, in response the requester points out that D1 does disclose a "*fibrous and/or paperlike sealing member 216B… configured to absorb water during operation*". The requester argues that this water absorption, in combination with compression, inherently leads to plastic deformation of the sealing member. I am inclined to agree with the requester on this point (in the patent, the plastic deformation of the paper or cellulose material is described, at page 4 paragraph 6, as being caused by contact with residual water – I consider that the same contact with residual water would cause the "*fibrous and/or paperlike sealing member*" of D1 to also plastically deform).

38. *Step (4)* – Therefore, I am left with the question, would the use of ductile metal, e.g. aluminium, for the capsule body of D1 constitute a step that would have been obvious to the person skilled in the art? The observer notes that the capsule in D1 is a rigid plastic capsule and is shown with a sharp edge on the flange (as illustrated in figures 4 and 5 under paragraph 21 above). The observer then states that this is not an edge that can be used in an aluminium capsule, where the edge is always rolled as a cut aluminium edge has no strength or rigidity. The requester argues that, given the aforementioned common general knowledge of the person skilled in the art, it would be an obvious choice to select aluminium as a material for the capsule body. Additionally, D1 includes a reference to D2 in which the capsule body may be made of aluminium.

39. In my view, the involved step requires more than simply substituting one material for another, even when the use of the other material is well-known to the skilled person. There are some elements of the disclosure of D1 that, I believe, would lead a skilled person away from selecting aluminium as a material for the capsule body. As already noted in relation to Novelty above, paragraph 0027 of D1 does indicate that the material of the capsule body may, "*e.g. comprise a plastics material and may be formed by e.g. injection moulding, vacuum-forming, thermoforming or the like.*" Although this is clearly not exclusive, it does suggest a preferred material to the skilled addressee and each of the suggested manufacturing processes is most commonly performed with plastic materials. Additionally, D1 refers to the capsule wall as being "*substantially rigid*" (paragraph 0027) and "*the radial edge 238*" of figure 5 above being "*made in one piece with the (preferably rigid) circumferential capsule wall 210*" (paragraph 0058). I think that these references, together with the apparent sharp edge on the flange in the figures of D1, would lead the skilled person away from considering aluminium as a suitable material for the capsule.

40. Of course, the requester is right to point out that the disclosure of D1 refers to D2, in which there is a suggestion that a capsule can be made from aluminium – this wouldn't surprise the skilled person since, as already established above, they would know that the Nespresso^{RTM} capsules were already being made of aluminium.

However, I still don't believe that the reference to D2 would be enough to lead the skilled person to consider forming the capsule of D1 from aluminium. First of all, the references to aluminium capsules in D2 are sparse. In their entirety, these are the references:

[0026] The capsule can be made of plastics or a metal such as e.g. aluminum.

[0048] In case the material of the sealing member is the same as the one used for the capsule (e.g. a metal such as aluminum or plastics), preferably the resilient nature of the sealing member is procured by the geometrical shape of the sealing member.

7. A capsule according to any of claims 1 to 6, wherein the capsule is made from aluminum.

41. In D2, there are actually more references to the capsule being made of plastics with one reference in paragraph 0049, in particular, stating that it would be preferable for the material of the capsule to be plastics.

42. Additionally, each of the embodiments of the capsules illustrated in the figures of D2 demonstrate a capsule structure that would provide more strength for an aluminium capsule. Figure 2 and figure 6 of D2 are reproduced below to illustrate this.

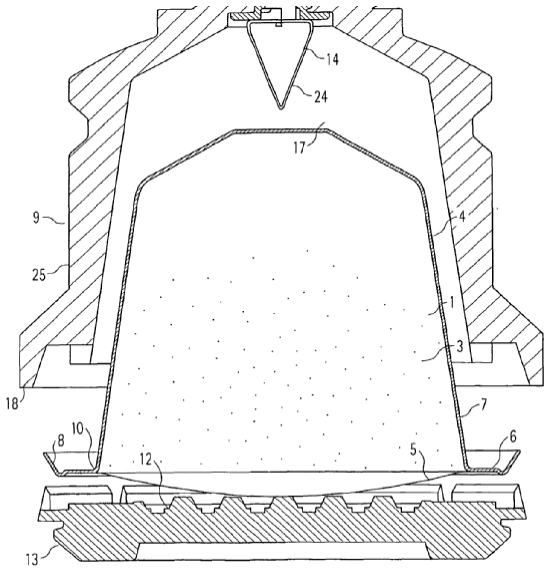

Fig. 2

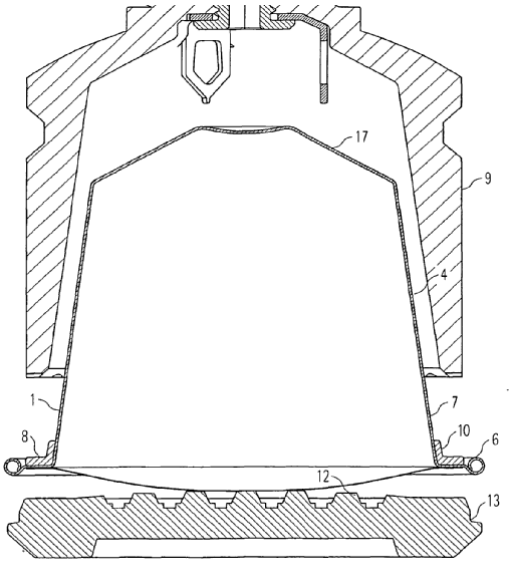

Fig. 6

43. In figure 2, a "*deflectable sealing member 8*" extends from "*the outer edge of the flange-like rim 6*" (paragraphs 0050 and 0051), which would provide additional strength for an aluminium capsule. Similarly, in figure 6, the "*sealing member 8… covers both a portion of the side wall 7 and the area between the outer end of the flange-like rim 6 of the capsule 1*" (paragraph 0059) – in this case, the "*outer end of the flange-like rim*" appears to be rolled. I believe that a skilled addressee would consider such structures to be suitable for aluminium capsules whereas the illustrated structures in D1 would not be considered suitable. Furthermore, I do not believe that a skilled person would consider it obvious to substitute the apparent sharp edge flange illustrated in D1 for a shaped or rolled flange, as illustrated in D2, since the "*sealing member*" of D1 needs to '*entirely cover*' and '*enclose*' the outer

surface of the radial flange (paragraphs 0058 and 0060). I believe that it would require an inventive step to adapt the "*fibrous and/or paper-like sealing member*" of D1 to be suitable for use with an aluminium capsule having a shaped or rolled flange.

Added matter

44. The requester suggests that the amended claims as granted comprise subject matter that extends beyond the application as filed. Specifically, the requester contends that the introduction of features from the description into the claims have added matter through intermediate generalisation. Sections 76.15.3-76.15.5 of MoPP discuss intermediate generalisation and highlight that, as discussed in *Nokia Corporation v IPCOM GMBH & Co KG (No. 3)*[9], it is not permissible to introduce into a claim a feature taken from a specific embodiment unless the skilled person would understand that the other features of the embodiment are not necessary to carry out the claimed invention.

45. In particular, the requester argues that claims 9 and 10 of the granted patent, which were added on 25 February 2020, have no basis in the application as filed. These claims read:

> *9. A capsule according to any one of Claims 1 to 8, wherein the seal comprises a triplex laminate.*
>
> *10. A capsule according to Claim 9, wherein the triplex laminate paper has an adhesive underside.*

46. Reference to "*triplex laminate paper*" appears in the original disclosure at page 6 paragraph 2:

> *A further material that is particularly suitable for use with the embodiment of Figure 1 where composability is desired is triplex laminate paper with a weight of 50gm^{-2}. An advantage of triplex laminate paper is that it has greater wet strength than conventional paper but remains compostable. The triplex laminate paper may have an adhesive underside and/or may be made with an internal diameter than the diameter of the flange so that it comes up the side of the capsule wall say 0.5mm and then is trapped under the rim on its outer edge.*

47. The requester argues that claiming "*triplex laminate*" in claim 9 is an intermediate generalisation of the features disclosed in the application as filed. I agree with the requester. First of all, the expression "*triplex laminate*" is only used in the original disclosure in reference to "*triplex laminate paper*" and so, in my view, cannot be used to refer to any other material, e.g. "*cellulose material*" (I note that, in contrast to the wording of claim 9, claim 10 does refer to "*the triplex laminate paper*"). Additionally, claim 9 is claimed as dependent upon "*any one of Claims 1 to 8*" – however, claims 2 to 7 appear to define features that would be incompatible with the "*triplex laminate paper*" as presented in the original disclosure. For example, it seems beyond the application as filed for the "*seal*" to comprise "*a first layer of cellulose material and a second layer of adhesive material*" (claim 2) and "*a further layer of a bioplastic*

9 *Nokia Corporation v IPCOM GMBH & Co KG (No. 3)* [2013] R.P.C. 5

material" (claim 3) and "*a triplex laminate"* paper (claim 9).

Opinion

48. It is my opinion that the patent is for an invention that is novel over EP 2443046 B1.

49. Additionally, it is my opinion that the patent is for an invention that involves an inventive step over EP 2443046 B1.

50. Finally, I am of the opinion that the features of dependent claim 9 and dependent claim 10 (by its dependence upon claim 9) result in the application disclosing matter extending beyond that disclosed in the application as filed.

Application for review

51. Under section 74B and rule 98, the proprietor may, within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.

Dan Hickery
Examiner

NOTE

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.