

OPINION UNDER SECTION 74A

Patent	EP 3277598 B1
Proprietor(s)	Michael Maguire
Exclusive Licensee	
Requester	Greg Sach
Observer(s)	
Date Opinion issued	11 December 2020

The request

1. The comptroller has been requested by Mr Greg Sach (“the requester”) to issue an opinion on the validity of Patent EP 3277598 B1 (“the Patent”) in the name of Michael Maguire (“the proprietor”). In particular, the requester has argued that the Patent is not novel based on prior three prior art documents: CN 1631740 A (D1), JP 2011-111192 A (D2), and US 2012/0298666 A1 (D3), and that claim 1 of the Patent contains added matter.
2. No observations have been received.

Preliminary Matters

3. During pre-grant processing of the Patent at the European Patent Office (EPO) US 2012/0298666 A1 was cited by the examiner. Furthermore, a number of Third Party Observations (TPO’s) were received. Specifically, on the **3 February 2020** TPO’s were received regarding JP 2011-111192 A (lack of novelty), US 2012/0298666 A1 (lack of novelty), and added matter (see esp. 6.1 – which refers to the same part of claim 1 as the request) and lack of clarity in claim 1. On the **5 February 2020** TPO’s were received regarding a lack of clarity and/or lack of support in the description for claim 1, JP 2011-111192 A (lack of novelty), and US 2012/0298666 A1 (lack of novelty). On the **11 May 2020** TPO’s were received regarding CN 1631740 A (lack of novelty).
4. In a letter issued by the EPO on the 4 May 2020 stating an intention to grant a European Patent, the following statement was made at paragraph 1.3:

“The third party observations received on **30/01/2019, 01/02/2019, 04/12/2019, 03/02/2020, 05/02/2020** were examined but not considered to be relevant”

5. The established practice of the Office¹ is that an opinion request must raise something new, rather than merely seeking to cover old ground. In particular the opinion request should raise a new question. It is not appropriate to revisit in an opinion any question that has clearly been considered during examination.
6. The fact that US 2012/0298666 A1 was cited by the examiner, and based (at least) on the letter issued by the EPO on the 4 May 2020, I think it is reasonable to conclude that JP 2011-111192 A (D2), US 2012/0298666 A1 (D3), and the issue of added matter in claim 1 have been considered during the pre-grant examination process at the EPO and raise no new question. Furthermore, there does not appear to be any exceptional circumstances which warrant re-consideration of the issues raised in the TPO's received and documents cited at the EPO.
7. As the observations filed on the 11 May 2020 were filed after the issuance of the intention to grant letter dated 4 May 2020, it is reasonable to conclude that CN 1631740 A (D1) has not been considered in the pre-grant process and therefore raises a new question.
8. Consequently, in this opinion I will only consider whether the Patent is not novel in light of CN 1631740 A (D1).

The Patent

9. The Patent was filed on 25 March 2016, claiming an earliest priority date of 2 April 2015, and was granted on 10 June 2020. It relates to a cap for a container, such as bottle, which remains connected to the container whilst in an open state – see figure 3 reproduced below. In particular, the Patent discloses a cap 10 including a main body 1 with a top plate 11 and circular sidewall 12. A ring member 2 of cap 10 is separated from the main body 1 by a first incision line 3. Connecting portions 5 connect the ring member 2 to the main body 1. Second incision lines 4 are also provided. The Patent has a number of embodiments shown in the figures, with figures 2A & 2C being reproduced below as examples.

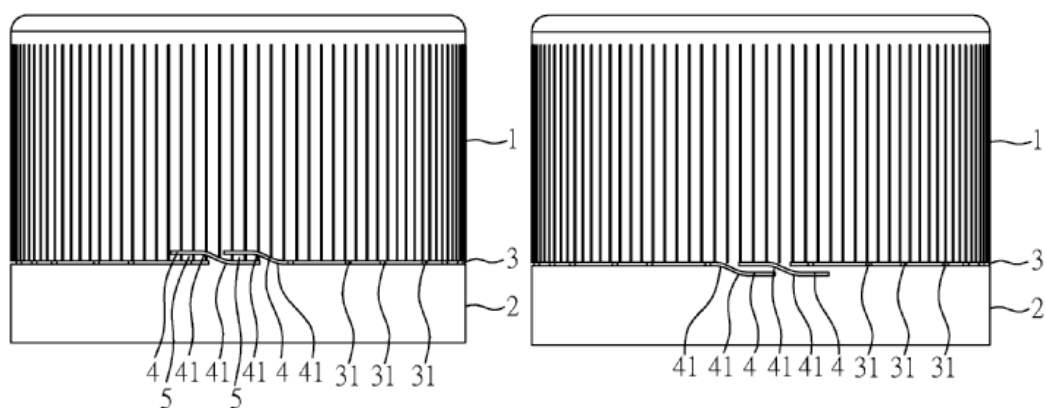


FIG. 2A

FIG. 2C

¹ See decisions BL O/370/07, BL O/289/07 and BL O/298/07

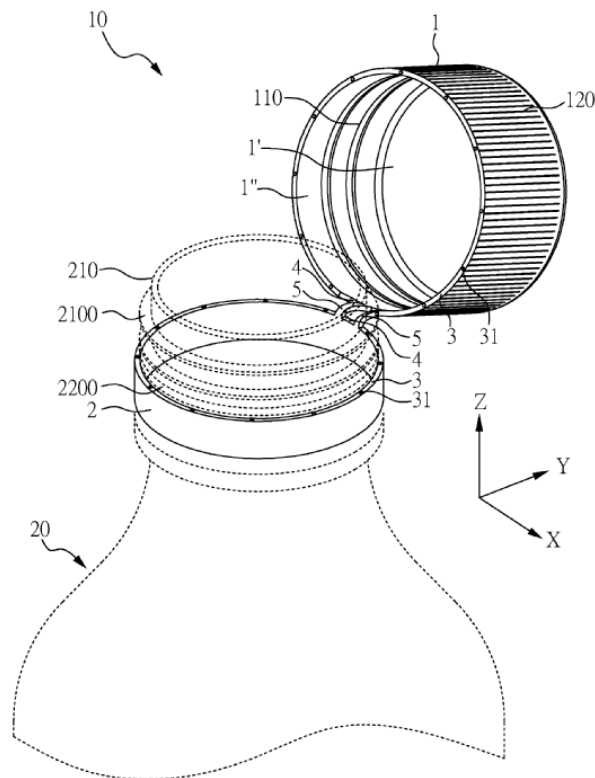


FIG. 3

10. The Patent has a single independent claim 1 which reads:

A cap (10) for a container, comprising:

A main body (1) having a top plate (11) and a circular sidewall (12), wherein two opposite sides of the circular sidewall (12) circularly connect to each other, one periphery of the circular sidewall (12) connects to one surface of the top plate (11) forming a closed end (1') and the other periphery of the circular sidewall (12) at the opposite side of the closed end (1') forms an opening end (1'') and

a ring member (2), which is located at the opening end (1'') of the main body (1), separated from the main body (1) by a first incision line (3) in between the opened end (1'') of the main body (1) and the ring member (2),

wherein a plurality of connecting pins (31) locate along the first incision line (3), the plurality of connecting pins (31) connect the main body (1) and the ring member (2) at the two sides of the first incision line (3),

characterised in that

two ends of the first incision line (3) are separated by a plurality of connecting portions (5) connecting the ring member (2) to the main body (1);

wherein the plurality of connecting portions (5) are formed in between the first incision line (3) and a plurality of second incision lines (4) located on the main body (1) or the ring member (2) and located at one side of the plurality of

connecting portions (5),

wherein each of the plurality of connecting portions (5) is separated by parts of the plurality of second incision lines (4),

wherein the plurality of second incision lines (4) are not connected to each other,

wherein one of the plurality of second incision lines (4) is connected to parts of the first incision line (3).

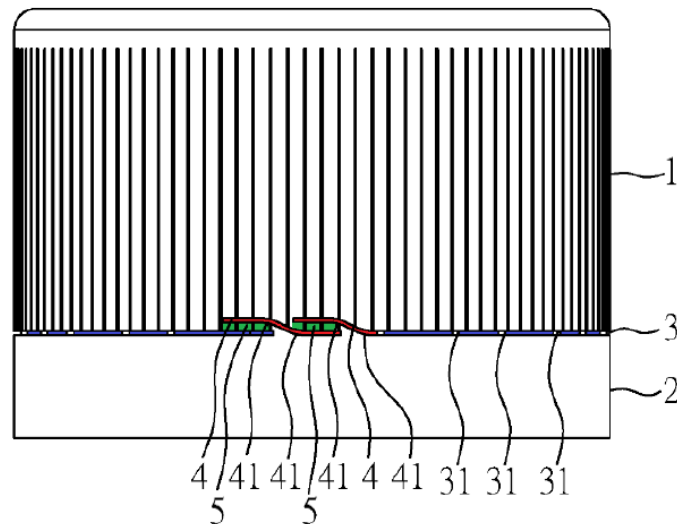
Claim Construction

11. Before considering D1 I need to construe claim 1 of the Patent, that is to say I must interpret it in the light of the description and drawings as instructed by Section 125(1). In doing so 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 Yeda² and the Court of Appeal in Actavis v ICOS³.
12. I consider the person skilled in the art to be a designer and/or manufacturer of caps for containers.
13. As a preliminary point I think it is clear that the person skilled in the art would consider the embodiment shown in Figure 2D to fall outside the scope of the invention (see paragraph 28 of the Patent).
14. There are a number of points of claim construction which have been discussed in the request. In particular, the requester highlights the following features in claim 1:

“wherein the plurality of connecting portions (5) are formed in between the first incision line (3) and a plurality of second incision lines (4) located on the main body (1) or the ring member (2) and located at one side of the plurality of connecting portions (5)”
15. The requester submits that the “plurality of connecting portions (5) are formed in between the first incision line (3) and a plurality of second incision lines (4)” is not reflected in the embodiment of the Patent, and should be interpreted broadly. The requester refers to an annotated version of Figure 2A, with the assumed connecting portions 5 highlighted in green, the first incision line 3 in blue, and the second incision lines 4 in red:

² Generics UK Ltd (t/a Mylan) v Yeda Research and Development Co. Ltd & Anor [2017] EWHC 2629 (Pat)

³ Actavis Group & Ors v ICOS Corp & Eli Lilly & Co. [2017] EWCA Civ 1671



16. The requester states that “one connecting portion 5 is located between the first incision line 3 and one of the second incision lines 4 and the other connecting portion is located between two second incision lines 4”. The requester has also referred to a letter of September 16 2019 from the proprietor to the EPO (which actually appears to be dated 10 February 2020) which refers to the “in between” feature. This letter is not considered to be relevant to the interpretation of the claims of the Patent.
17. The requester also states that the feature: “a plurality of second incision lines (4) located...at one side of the plurality of connecting portions (5)” is unclear and in contradiction to with the disclosed embodiments. With reference to the annotated Figure 2A the requester states that “the left hand incision line 4 has connecting portions 5 located on both sides not one side as stated in claim 1”.
18. Looking at the description (e.g. paragraph 22) and figures 2A-C&E-G I think that the person skilled in the art would understand claim 1 to mean that the connecting portions 5 are collectively formed in between the incision line 3 and second incision lines 4. Furthermore, looking at figures 2A-C&E-G the person skilled in the art would understand that in figures 2A,E,F&G the incision lines 4 are located to *the right hand side* of the connecting portions 5, and that in figures 2B&C the incision lines 4 are located to *the left hand side* of the connecting portions 5. The description, at paragraph 21, also states

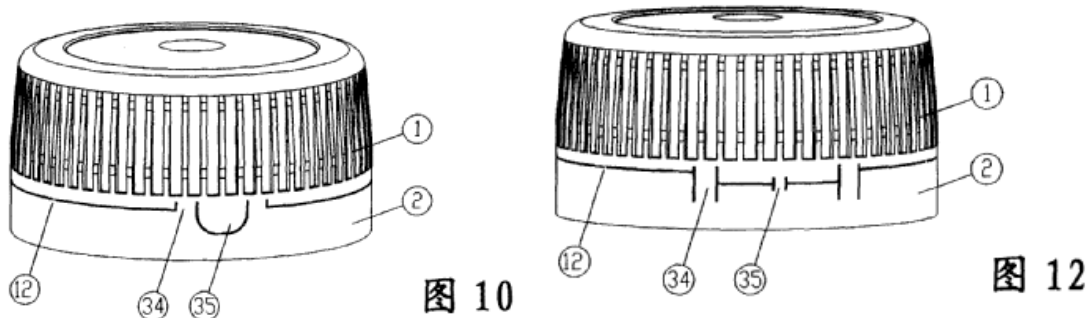
“Located at one side of the plurality of connecting portions 5 is a plurality of second incision lines 4”
19. Thus, I believe that person skilled in the art would also construe claim 1 to mean that the plurality of second incision lines 4 are each located at one particular side of a respective connecting portion 5 of the connecting portions 5.
20. The requester has also noted that claim 1 “does not state only one of the plurality of second incision lines (4) is connected to parts of the first incision line (3)”. Interpreting the “wherein one of the plurality of second incision lines (4) is connected to parts of the first incision line (3)” feature of claim 1 – in light of figures 1,2A-C&2E-G and the description (in particular paragraph 23) – there is nothing to indicate that *more than one* of the second incision lines 4 is connected to parts of the first incision

line 3, and I believe the person skilled in the art would construe claim 1 in such a manner. In other words the person skilled in the art would construe claim 1 as meaning that *just one* of the plurality of second incision lines is connected to parts of the first incision line.

21. Furthermore, this construction of “one of the plurality of second incision lines (4) is connected to parts of the first incision line (3)” is considered to be consistent with the construction of “a plurality of second incision lines (4) located...at one side of the plurality of connecting portions (5)” – as having the second incision lines at one side of a respective connecting portion of the connecting portions appears to necessitate that there is no more than one second incision line connected to the first incision line.

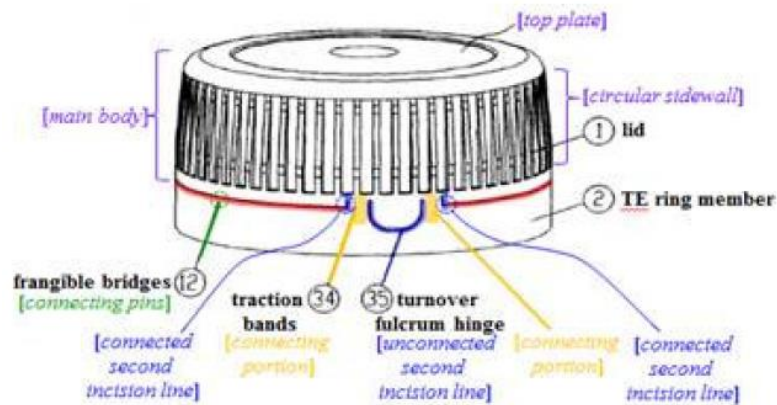
Prior art – D1

22. CN 1631740 A (D1) relates to a safety bottle cap including a cap body 1 and a ring 2 linked under the body. The requester has specifically referred to figures 10&12 in which the cap is provided with band(s) 34 which links the body of the cover 1 and the ring 2. The cap is also provided with a fulcrum 35. Figures 10&12 are reproduced below.



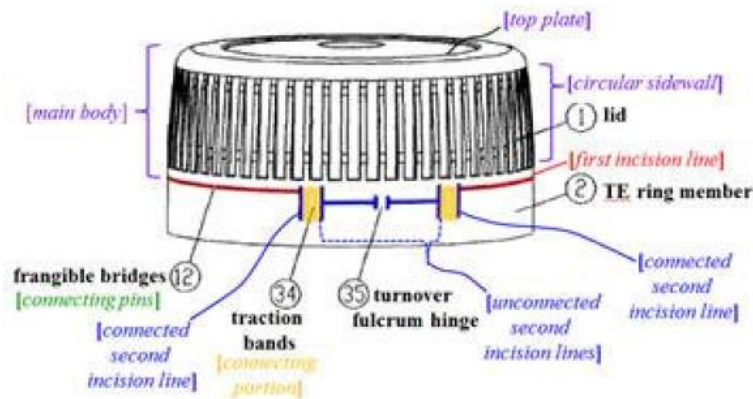
Novelty

23. In order for a claim to lack novelty, a prior art disclosure must clearly and unambiguously disclose all of the features of the claim. The requester has argued that D1 discloses all the features of claim 1. In particular, based on their annotated figure 10 (shown below), the requester states that D1 discloses a lid 1 constituting a top plate portion, a main body portion, and a circular sidewall portion. The lid 1 is separated from a ring member 2 by a first slit/incision line (highlighted in red) which substantially, but not completely, surrounds the circumference of lid and has endpoints that terminate proximate to bands 34 (highlighted in yellow), located on either side of a U-shaped fulcrum 35, which connect ring member 2 to the lid 1 (corresponding to the claimed “two ends of the first incision line are separated by a plurality of connecting portions connecting the ring member to the main body”). The endpoints of the first incision line also connect with vertical (second) slits or incision line segments that extend upwards towards lid (highlighted in blue). Furthermore, it is said that frangible bridges 12 (i.e. “connecting pins” of claim 1) are spatially disposed to connect lid 1 and ring member 2.



CN '740 Pub: FIG. 10 (annotated)

24. The requester also states that the bands 34 (highlighted in yellow) are located between endpoints of the first incision line 12 (highlighted in red), the vertical second connected incisions (highlighted in blue) and the second incision of the fulcrum hinge 35 (highlighted in blue). The requester argues that this corresponds to “the plurality of connecting portions (5) are formed in between the first incision line (3) and a plurality of second incision lines” and the “each of the plurality of connecting portions (5) is separated by parts of the plurality of second incision lines” in claim 1.
25. The requester notes that there are second incisions (highlighted in blue) which connect to and are perpendicular to the first incision line (highlighted in red), and a second unconnected incision line(s) forming the U-shaping fulcrum 35 (highlighted in blue). These second incisions correspond to the “plurality of second incision lines located on the main body located or ring member located at one side of the plurality of connecting portions” of claim 1. Furthermore, the second incision of the U-shaped fulcrum 35 (highlighted in blue) is sandwiched on both sides by the bands 34 (highlighted in yellow), and the vertical second incisions (highlighted in blue) are separated from each other and from the U-shaped fulcrum 35 (highlighted in blue) by the bands 34 (highlighted in yellow) – which corresponds to “the plurality of second incision lines (4) are not connected to each other” in claim 1.
26. The requester also states that the left and right vertical second incisions (highlighted in blue) are connected to respective ends of the first incision line (highlighted in red) – which corresponds to “one of the plurality of second incision lines (4) is connected to parts of the first incision line (3)”.
27. The requester further notes that there are similar considerations with respect to claim 1 of the Patent and figure 12 of D1. The requester’s annotated version of figure 12 is shown below:



CN '740 Pub: FIG. 12 (annotated)

28. Does D1 disclose all the features of claim 1? Figures 10&12 of D1 disclose a cap with a main body 1 and ring member 2 separated by a first incision line. Whilst figures 10&12 do not explicitly show “connecting pins”, I think that it is implicit that the lid 1 and ring member 2 in figures 10&12 are connected using connecting pins – particularly in light of the use of “frangible bridges 12” discussed in the description. Therefore D1 discloses the features in the ‘preamble’ of claim 1 (i.e. the features before ‘characterised in that’)
29. Figures 10&12 of D1 also disclose two ends of the first incision line (highlighted in red) separated by connecting portions in the form of bands 34 (highlighted in yellow). Furthermore, D1 discloses the connecting portions/bands are formed in between the first incision line and a plurality of second incision lines in claim 1, in the form of incisions (highlighted in blue) which connect to and are perpendicular to the first incision line and incision line(s) forming the U-shaping fulcrum 35. D1 also discloses the features in claim 1 that each of the connecting portions/bands 34 is separated by parts of the second incision lines (highlighted in blue) and that the second incision lines are not connected to each other.
30. Claim 1 states that “the plurality of connecting portions are formed in between the first incision line and a plurality of second incision lines located on the main body located or ring member located at one side of the plurality of connecting portions”. Whilst D1 has second incision lines to the sides of the connecting portions 34, it is my opinion that D1 does not disclose “a plurality of second incision lines...located at one side of the plurality of connecting portions” in claim 1, as properly construed (see paragraphs 18&19 above), as figures 10&12 of D1 also have a (extra) second incision line – defined by one of the vertical second incision lines connected to the first incision line – not located *at one side* of the plurality of connecting portions. In particular, in figures 10&12, as one of the second incision lines connected to the first incision line is to *the left hand side* of both connecting portions (and not to the right hand side of any of the connecting portions), and one of the second incision lines connected to the first incision line is to *the right hand side* of both connecting portions (and not to the left hand side of any of the connecting portions) – the second incision lines are not located at *one side* of the connecting portions.
31. Furthermore, in figures 10&12 of D1 there are *two* second incision lines connected to the first incision line. Therefore, D1 discloses *more than one* second incision line

connected to first incision line, and therefore D1 does not in my opinion disclose “one of the plurality of second incision lines is connected to parts of the first incision line” in claim 1 as properly construed (see paragraph 20 above).

32. Therefore D1 does not disclose all of the features of claim 1.

Opinion

33. It is my opinion that claim 1 of the Patent is novel in light of D1.

Benjamin Widdows
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.