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**Datasheet for the decision
of 14 November 2025**

Case Number: R 0012/24

Appeal Number: T 0597/21 - 3.2.01

Application Number: 15164122.2

Publication Number: 2933201

IPC: B65D1/02

Language of the proceedings: EN

Title of invention:
LIGHTWEIGHT PLASTIC CONTAINER

Patent Proprietor:
Plastipak Packaging, Inc.

Opponents:
MHT Mold & Hotrunner Technology AG
ALPLA Werke Alwin Lehner GmbH & Co. KG
Krones AG

Headword:
Petition for review

Relevant legal provisions:
EPC Art. 112a(4), 122, 164(2)
EPC R. 136(1)

Keyword:

Petition for review deemed not be filed
Re-establishment of rights - (no)



Große Beschwerdekammer
Enlarged Board of Appeal
Grande Chambre de recours

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Case Number: R 0012/24

D E C I S I O N
of the Enlarged Board of Appeal
of 14 November 2025

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Decision under review: **Decision of the Technical Board of Appeal 3.2.01
of the European Patent Office of
7 September 2023.**

Composition of the Board:

Chair C. Josefsson
Members: R. Romandini
 T. Häusser

Summary of Facts and Submissions

- I. The petition for review concerns decision T 0597/21 of Technical Board of Appeal 3.2.01, dated 7 September 2023, dismissing the petitioner's appeal against the opposition division's decision revoking European patent No. 2 933 201.
- II. The decision was notified to the petitioner on 21 November 2023. The petition was filed on 22 January 2024, within the time limit prescribed by Article 112a(4) EPC. The corresponding petition fee, however, was not paid within that period.
- III. By a communication dated 22 March 2024, the Enlarged Board issued a letter noting a loss of rights pursuant to Rule 112(1) EPC, in conjunction with Rules 109(1) and 100(1) EPC. In that letter, it was noted that the petition fee had not been paid within the prescribed time limit. The petition was therefore deemed not to have been filed pursuant to Article 112a(4), last sentence, EPC. On 17 May 2024, the petitioner filed a request for re-establishment of rights. The petition fee was paid on the same date.
- IV. By a communication dated 14 October 2025, the Enlarged Board informed the petitioner of its preliminary view that the request for re-establishment had not been filed in due time and was therefore inadmissible under Rule 136(1), second sentence, EPC.
- V. Oral proceedings were held on 14 November 2025. The petitioner's final request was that the re-establishment of rights under Article 122 EPC, as requested by letter of 17 May 2024, be granted. The

arguments relied upon are set out in the Reasons for this decision.

Reasons for the Decision

1. Introduction

1.1 Pursuant to Rule 136(1), second sentence, EPC, a request for re-establishment of rights in respect of any of the periods specified in Article 87(1) EPC and Article 112a(4) EPC must be filed within two months of expiry of that period. The expression "that period" refers to the relevant period mentioned in Article 87(1) EPC or Article 112a(4) EPC, namely the twelve-month priority period or, as relevant here, the two-month time limit for filing a petition for review and paying the corresponding fee.

1.2 In the case in hand, the decision under review was notified on 21 November 2023. The petition fee had to be paid within the two-month period prescribed by Article 112a(4) EPC. This period expired on 22 January 2024. Consequently, the two-month period for filing a request for re-establishment of rights under Rule 136(1), second sentence, EPC expired on 22 March 2024. The request for re-establishment of rights was filed and the prescribed fee paid on 17 May 2024. This was after the expiry of the time limit mentioned above. Accordingly, the request for re-establishment of rights was filed out of time and, as already explained in the Enlarged Board's communication, is inadmissible.

1.3 At the oral proceedings, the petitioner did not dispute that a strict and literal application of Rule 136(1), second sentence, EPC would lead to the above

conclusion. However, it submitted that the provision was not "correct" and could not be applied literally. Two reasons were put forward in this regard.

- 1.4 First, Rule 136(1), second sentence, EPC introduced unfair treatment for applicants requesting re-establishment of rights in respect of the period specified in Article 112a(4) EPC as compared with applicants requesting re-establishment of rights for periods subject to Rule 136(1), first sentence, EPC. In the latter, the two-month period for filing the request for re-establishment of rights ran from the removal of the cause of non-compliance, such as the receipt of a communication noting the loss of rights.

By contrast, for the purposes of filing a request for re-establishment of rights in respect of the period under Article 112a(4) EPC, Rule 136(1), second sentence, EPC placed that period under the same legal regime as the period for claiming a priority right under Article 87 EPC. According to the petitioner, equating, for those purposes, the period for filing a petition for review with the period for claiming the priority right, as done in Rule 136(1), second sentence, EPC, was not justified. The rationale underpinning Rule 136(1), second sentence, EPC in relation to the priority period was that patent offices could not notify the prospective applicant of the loss of the priority right. This rationale did not apply to the period for filing a petition for review and paying the relevant fee. The EPO was able to give notice of the loss of the right in that regard, as had occurred in the present case where the petitioner had been sent a notice of loss of rights. The petitioner maintained that there was no reason to treat the request for re-establishment of rights in respect of the period

specified in Article 112a(4) EPC any differently from the procedural deadlines of other EPC procedures.

1.5 Second, the petitioner submitted that Rule 136(1), second sentence, EPC contradicted the legislator's decision to make the remedy provided for in Article 122(1) EPC also available to parties filing a petition for review. The provision deprived Article 122 EPC of its effectiveness since it could result in situations in which the petitioner was not informed, through a notice of loss of rights, that it had missed the time limit under Article 112a(4) EPC until a date on which the period for filing a request for re-establishment of rights expired or had already expired. This had indeed occurred in the present case, in which the notice of loss of rights was sent on 22 March 2024.

1.6 In light of these two arguments, the Enlarged Board asked at the oral proceedings whether the petitioner was, in effect, requesting the Enlarged Board to ignore and disapply Rule 136(1), second sentence, EPC, and whether this was possible within the EPC framework.

The petitioner explained that it was not requesting the Enlarged Board to ignore the provision, but to interpret it and bring it in line with the spirit of the EPC.

2. Assessment

2.1 If the Enlarged Board were to follow the interpretation endorsed by the petitioner, Rule 136(1), second sentence, EPC would apply only to requests for re-establishment of rights concerning the period specified in Article 87(1) EPC. The period specified in Article 112a(4) EPC would, by contrast, be subject to

Rule 136(1), first sentence, EPC. The two-month period would then begin to run only after the removal of the cause of non-compliance. In the case in hand, this interpretation would have led to the conclusion that the request was filed in due time.

- 2.2 In the Enlarged Board's view, however, this would not amount to an interpretation of Rule 136(1), second sentence, EPC, but to its amendment. The Enlarged Board could not, through mere interpretation, delete the reference to Article 112a(4) EPC from Rule 136(1), second sentence, EPC, so as to subject that period - for the purposes of Article 122(1) EPC - to Rule 136(1), first sentence, EPC.

Within the framework of the EPC, a provision of the Implementing Regulations may be disapplied only if it conflicts with a provision of the Convention, in which case the Convention prevails pursuant to Article 164(2) EPC. No such conflict has been convincingly demonstrated in these proceedings. The petitioner relied on the spirit of the Convention (see point 1.6 above) but failed to identify any specific provision of the EPC with which Rule 136(1), second sentence, EPC was incompatible. Nor was the Enlarged Board able to identify any such provision.

This conclusion also applies to Article 122 EPC. The legislator's decision to make the remedy under Article 122 EPC available for the period laid down in Article 112a(4) EPC is not contradicted or deprived of its effect by Rule 136(1), second sentence, EPC. If a petitioner fails to pay the petition fee in due time, it can still avoid the petition being deemed not to have been filed by filing a request for re-

establishment within the two-month period provided for in Rule 136(1), second sentence, EPC.

2.3 Since Rule 136(1), second sentence, EPC does not conflict with any provision of the Convention, it must be applied according to its ordinary meaning. In the case in hand, the clear wording of that provision leads to the conclusion that the request for re-establishment of rights was filed out of time.

2.4 For the sake of completeness, the Enlarged Board notes that it is true, as argued by the petitioner, that Rule 136(1), second sentence, EPC introduces, for the priority period under Article 87(1) EPC and the time limit for filing a petition for review under Article 112a(4) EPC, a stricter regime for filing a request for re-establishment under Article 122(1) EPC than that applicable to all other time limits available for this remedy. As a general rule, Rule 136(1), first sentence, EPC provides for two time limits, namely an application period of two months from the removal of the cause of non-compliance, and an absolute exclusion period of one year from the expiry of the unobserved time limit. By contrast, in the two situations mentioned above, Rule 136(1), second sentence, EPC provides for only a single time limit: the request must be filed within two months of the expiry of the missed time limit. This two-month period runs irrespective of the removal of the cause of non-compliance.

The Enlarged Board does not agree, however, with the petitioner's view that the rationale underpinning the special regime under Rule 136(1), second sentence, EPC in respect of the priority period under Article 87(1) EPC is inapplicable or irrelevant to the time limit under Article 112a(4) EPC. On the contrary,

as shown by the relevant *travaux préparatoires*, the special treatment of both periods for the purposes of Article 122(1) EPC is based on the same policy consideration: an additional period of legal uncertainty of up to one year in respect of those two situations was considered to be inappropriate (see, with respect to the priority period, CA/PL 5/02 Rev. 1 Add. 1 e, page 33 (emphasis added): "*Under the new law, re-establishment of rights is also possible in respect of the priority period under Article 87(1) EPC. In view of this, and because of the central importance of the date of filing and/or priority for the valid claiming of priority, Rule 85b(1) EPC lays down a time limit specifically for such cases, **where there is an urgent need for clarity**. Any request for re-establishment of rights in respect of the priority period must be filed within two months of the expiry of that period (see also Article 13(2) and Rule 14(4) PLT)*"; see with respect to the proposal "to abridge, by an amendment to **Rule 136, paragraph 1, EPC**, the absolute time limit for requesting re-establishment of rights in the period for filing a petition for review under Article 112a EPC from the normal period of one year to two months after expiry of the two-month time limit referred to in Article 112a(4) EPC" (CA/PL 17/06, page 364), the following explanation: "[t]he reason underlying the present proposal is that, in virtually all appeal cases, the unrestricted possibility of re-establishment of rights into the time limits under Article 112a(4) EPC would entail an additional one-year period of uncertainty as to whether the decision of the Board of Appeal has final legal force. This uncertainty will affect the parties, the public at large and the first instance (e.g. in cases of remittal). In the context of the special procedure under Article 112a EPC the balancing of advantages and disadvantages of re-

*establishment of rights (justice in an individual case versus burdening the entire system with continued uncertainty as to the legal effect of decisions) requires an appropriate approach. The suggested amendment reflects **the overriding need for legal certainty in this late procedural stage** by providing for an absolute time limit of two months for requests for restitutio in the period for filing a petition for review", CA/PL 17/06, *ibidem*, emphasis added); see also the consolidated explanatory remarks included in OJ EPO 2007, Special edition No. 5, page 208).*

This approach is consistent with the specific nature of the petition for review as an extraordinary remedy against a decision intended to be final, a nature further reflected in the safeguards provided for persons acting in good faith under Article 112a(6) EPC.

3. Conclusions

Since the request for re-establishment of rights under Article 122(1) EPC was filed out of time, it is inadmissible. Since the petition fee was not paid within the time limit prescribed by Article 112a(4) EPC, the petition for review is deemed not to have been filed. The fee paid on 17 May 2024 is to be reimbursed.

Order

For these reasons it is decided that:

- The request for re-establishment of rights under Article 122 EPC is rejected as inadmissible.
- The petition for review is deemed not to have been filed.

- The fee for the petition for review is to be reimbursed.

The Registrar:

The Chair:



N. Michaleczek

C. Josefsson

Decision electronically authenticated