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**Datasheet for the decision  
of 28 May 2021**

**Case Number:** T 0965/17 - 3.2.07

**Application Number:** 10736821.9

**Publication Number:** 2571791

**IPC:** B65G21/20, B65G47/68

**Language of the proceedings:** EN

**Title of invention:**

METHOD AND LINE FOR CONVEYING CONTAINERS, IN PARTICULAR  
BOTTLES

**Patent Proprietor:**

Gebo Packaging Solutions Italy SRL

**Opponent:**

Krones AG

**Headword:**

**Relevant legal provisions:**

EPC Art. 83, 52, 56

RPBA Art. 12(4)

**Keyword:**

Sufficiency of disclosure - (yes)  
Late-filed evidence - admitted (no)  
Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

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Case Number: T 0965/17 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 28 May 2021**

**Appellant:** Krones AG  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
10 February 2017 concerning maintenance of the  
European Patent No. 2571791 in amended form.**

**Composition of the Board:**

**Chairman** G. Patton  
**Members:** K. Poalas  
C. Brandt

## Summary of Facts and Submissions

- I. The opponent lodged, in due time and form, an appeal against the interlocutory decision of the opposition division maintaining European patent No. 2 571 791 in amended form.
- II. Opposition had been filed against the patent as granted based on Articles 100(a) EPC (lack of novelty and lack of inventive step) and 100(b) EPC (insufficient disclosure).
- III. The opposition division found that:
- the ground for opposition according to Article 100(b) EPC was unfounded
  - the then sixth auxiliary request met the requirements of the EPC.
- IV. The following documents submitted during opposition proceedings are mentioned in the following:
- E7: DE 296 17 148 U1  
E11: DE 1 902 978 U  
E17: DE 100 17 739 A1  
E18: US 5 682 976 A.

The following documents were submitted with the statement setting out the grounds for appeal:

- E26: US 3 340 676 A  
E27: US 3 353 331 A  
E28: US 2 679 309 A

E29: US 2007/0261943 A.

- V. In preparation for oral proceedings scheduled at the request of both parties, the Board communicated its preliminary assessment of the case by means of a communication pursuant to Article 15(1) RPBA 2020. The Board indicated that, *inter alia*, independent claims 1 and 7 of the patent as upheld in the impugned decision seemed to meet the requirements of Article 83 EPC, that it saw no reason to admit documents E26 to E29 into the appeal proceedings, and that the subject-matter of claims 1 and 7 of the patent as upheld in the impugned decision seemed to involve an inventive step.
- VI. The opponent responded by letter dated 1 April 2021, and the patent proprietor responded by letter dated 30 April 2021.
- VII. Oral proceedings before the Board took place on 28 May 2021. At the conclusion of the oral proceedings, the decision was announced. Further details of the oral proceedings can be found in the minutes.
- VIII. The following are the final requests of the parties:

The opponent requested that:

- the decision under appeal be set aside and
- the patent be revoked.

The patent proprietor requested that

- the appeal be dismissed,  
*i.e.* that the patent be maintained as upheld in the impugned decision (main request),

- or, in the alternative, when setting aside the decision under appeal, that the patent be maintained in amended form on the basis of one of the sets of claims filed as the first to fourth auxiliary requests submitted with the reply to the statement setting out the grounds of appeal.

IX. Independent claims 1 and 7 of the patent as upheld by the opposition division read as follows:

*Claim 1*

"1. A line for conveying containers (2), in particular bottles, the line comprising a feeding unit (11) defining a resting plane (P) for the containers (2); and a plurality of feeding channels (15) which are side by side and parallel to one another, each of which extends on the resting plane (P) in a first determined direction (5), and is defined on the sides by two side walls (20) parallel to the first direction (5), at least one of the side walls (20) of each feeding channel (15) being a mobile wall (20) mounted to be displaced in a second direction (7) substantially transversal to the first direction (5) as a function of the format of the containers (2); actuating means (28) to selectively displace the mobile walls (20) in the second direction (7) by respective laws of motion independent of one another; a guide device (18, 19) slidably engaged by the mobile walls (20); actuating means (28) comprising at least one motorised drawing device (28) mobile in the second direction (7) to displace the mobile walls (20) along the guide device (18, 19) in the second direction (7); and being characterised by also comprising locking means (21, 30, 34) which comprise, for each mobile wall (20), at least

one respective first locking member (24; 36) mobile between a locked position of the mobile wall (20) on the guide device (18, 19) and an unhooked position, and, for each drawing device (28), a respective second locking member (33) mobile between a hooked position of a mobile wall (20) and a released position, to selectively lock each mobile wall (20) on the guide device (18, 19) and on the drawing device (28)."

*Claim 7*

"7. A method for conveying containers (2), in particular bottles, in a conveying line (4), which defines a resting plane (P) for the containers (2), and has a plurality of feeding channels (15) which are side by side and parallel to one another, each of which extends in a first determined direction (5), and is defined on the sides by two side walls (20), at least one of which is a mobile wall (20) mounted to be displaced in a second direction (7) substantially transversal to the first direction (5) as a function of the format of the containers (2); the method comprising the step of:

- selectively displacing the mobile walls (20) in the second direction (7) by respective laws of motion independent of one another;
- displacing the mobile walls (20) along a guide device (18, 19) by means of at least one drawing device (28);

the method being characterized by further comprising the step of

- selectively locking each mobile wall (20) along the guide device (18, 19) and on the drawing device (28);
- locking each mobile wall (20) along the guide device (18, 19) by means of a first locking member (24, 36) mounted on the mobile wall (20);

- locking each mobile wall (20) on the drawing device (28) by means of a second locking member (33) mounted on the drawing device (28); and
- unhooking the first locking member (24; 36) from the guide device (18, 19) by said second locking member (33)."

In view of the decision taken, there is no need to reproduce the independent claims of the auxiliary requests.

- X. The lines of arguments of the parties are dealt with in detail in the reasons for the decision.

## **Reasons for the Decision**

### *Main request*

#### 1. *Sufficiency of disclosure, Article 83 EPC*

- 1.1 The opponent argues that claim 7 does not disclose the claimed invention in a manner sufficiently clear and complete for it to have been carried out by the person skilled in the art for the following reasons.

a) There is a discrepancy between the first indent feature of claim 7 ("selectively displacing the mobile walls in the second direction by respective laws of motion independent of one another") requiring that the walls are displaceable independent of one another and the fifth indent feature of the same claim ("locking each mobile wall on the drawing device by means of a second locking member mounted on the drawing device") requiring that every wall, i.e. all walls, be locked on the drawing device.

b) The third indent feature of claim 7 ("selectively



locking each mobile wall along the guide device and on the drawing device") explicitly defines that each mobile wall has to be locked at the same time along the guiding device and on the drawing device whereas, in contrast to this, the two examples of the patent in suit show a locking of each mobile wall either along the guide device or on the drawing device.

c) The sixth indent feature of claim 7 ("unhooking the first locking member from the guide device by said second locking member") requires a specific locking and unlocking connection art, namely one which allows the hooking and unhooking of the mobile walls which as such is not represented in the two examples disclosed in the description.

1.2 The Board does not agree for the following reasons.

1.3 a) The Board considers that the person skilled in the art reading the invention as claimed in claim 7 with a mind willing to understand and in light of the whole disclosure of the patent in suit would not have found any discrepancy between the first and fifth indent features of claim 7. The first indent feature of claim 7 refers to a method step during which the mobile walls are selectively displaced independent of one another. The fifth indent feature of claim 7 refers to a (further) method step during which each mobile wall is locked on the drawing device by means of a second locking member mounted on the drawing device. The skilled person would have had no difficulty in executing these method steps one after the other. In the Board's view, the fifth indent feature of claim 7 does not require that all mobile walls are locked simultaneously, as argued by the opponent. But even if this were the case, the fifth indent feature of claim 7 concerns a method step which does not have to be

executed simultaneously with the method step according to the first indent feature. Furthermore, an alleged discrepancy between two features of a claim could perhaps be considered as a clarity issue which as such cannot support any insufficiency objection.

b) The opponent argues that the third indent feature of claim 7 would have provided the skilled person with the information that each mobile wall has to be locked at the same time along the guiding device and on the drawing device. The Board understands on the basis of this argument that the skilled person would have been provided, according to the opponent, with a clear technical teaching. This is all the more true since the skilled person would have immediately realised that this step in the way it is interpreted by the opponent cannot be performed simultaneously with the step according to the first indent feature. This teaching could have been technically carried out by the skilled person without undue burden. This was not disputed by the opponent. In this case, as the skilled person would have been provided with such a clear teaching, they would not have needed any further information from the description to carry out the third indent feature of claim 7 and correspondingly the invention according to claim 7. An alleged discrepancy between the invention according to claim 7 in light of its third indent feature and the two examples of the patent in suit, as argued by the opponent, is thus irrelevant for the assessment of sufficiency of disclosure of the invention as claimed in claim 7.

c) The opponent argues that the sixth indent feature of claim 7 would have provided the skilled person with the information that the first locking member is unhooked from the guide device by the second locking member. In this case, the skilled person would have been provided with a clear teaching that a releasable hook connection

exists between the first locking member and the guide device. The Board considers that the skilled person would have been in a position to make such a connection without undue burden since hooking and unhooking would have been a well-known locking and unlocking method for the person skilled in the art. In this case, as the skilled person would have been provided with such a clear teaching, they would not have needed any further information from the description to carry out the sixth indent feature of claim 7 and correspondingly the invention according to claim 7. An alleged discrepancy between the invention according to claim 7 in light of its sixth indent feature and the two examples of the patent in suit, as argued by the opponent, is thus irrelevant for the assessment of sufficiency of disclosure of the invention as claimed in claim 7.

- 1.4 The opponent argues that the reasoning presented under points 1.1.b) and 1.1.c) above apply *mutatis mutandis* also to features M10 ("for each mobile wall, at least one respective first locking member mobile between a locked position of the mobile wall on the guide device and an unhooked position"), M11 ("for each drawing device, a respective second locking member mobile between a hooked position of a mobile wall and a released position") and M12 ("to selectively lock each mobile wall on the guide device and on the drawing device") of claim 1.
- 1.5 The Board considers accordingly that its considerations presented under points 1.2.b) and 1.2.c) above apply *mutatis mutandis* also to features M10, M11 and M12 of claim 1.

1.6 Consequently, claims 1 and 7 meet the requirements of Article 83 EPC.

2. ***Admissibility of documents E26 to E29***

2.1 Documents E26 to E29 were mentioned in the statement setting out the grounds of appeal for the first time.

2.2 It is within the competences of a Board to perform a judicial review of the contested decision in accordance with Article 12(2) RPBA 2020 in conjunction with Article 12(4) RPBA 2007.

2.3 In view of the above, the appeal case should be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based.

2.4 The question of whether these documents should be admitted must be decided on the basis of Article 12(4) RPBA 2007, which gives the Board discretion not to admit, in appeal proceedings, documents that could and should have been presented in the opposition proceedings.

2.5 The Board notes that the claims of the main request were already filed with the letter dated 6 October 2016 as the third auxiliary request and that claims 1 and 7 of the main request correspond to claims 5 and 14 of the patent as granted. Accordingly, the discussion of these claims during the oral proceedings before the opposition division did not take the opponent by surprise.

2.6 The opponent argues that because the arguments with which the patent proprietor defended claim 1 according

to the main request against attacks based on E7 in combination with E11, E17 or E18 were presented for the first time during the oral proceedings and because the opposition division changed its preliminary opinion concerning insufficiency of disclosure during the oral proceedings, documents E26 to E29 have been filed together with the statement setting out the grounds of appeal in accordance with the opponent's right to be heard. Accordingly, these documents cannot be considered as being late filed and should be admitted into the proceedings. Furthermore, documents E26 to E29 are *prima facie* highly relevant.

- 2.7 The Board notes that it was up to the opponent to persuade the opposition division that E7 in combination with E11, E17 or E18 rendered the subject-matter of claim 1 not inventive. Even the presentation of "new" counter-arguments by the patent proprietor during the oral proceedings cannot establish a violation of the opponent's right to be heard. In the opposition proceedings at issue, the patent proprietor has argued against the above-mentioned document combinations since its reply to the notice of opposition.
- 2.8 Furthermore, the Board cannot see how the fact that the opposition division changed its preliminary opinion concerning insufficiency of disclosure during the oral proceedings can affect the opponent's right to be heard in respect of its lack of inventive step objections based on documents E7, E11, E17 and E18.
- 2.9 Therefore, the Board concludes that documents E26 to E29 should have been presented in the opposition proceedings and thus it does not admit documents E26 to E29 into the proceedings in accordance with Article 12(4) RPBA 2007.

3. *Claim 1 - Inventive step, Article 56 EPC*

*Closest prior art*

- 3.1 E7 is considered by the opponent to represent the closest prior art. The Board notes that the device known from E7 discloses a plurality of feeding channels which are side by side and parallel to one another, each of which being defined on the sides by two mobile side walls and also disclosing a single locking means ("Klemmeinrichtung 7") that fixes the position of all the mobile walls simultaneously.

*Differentiating features*

- 3.2 It is undisputed that the line for conveying containers according to claim 1 differs from the device known from E7 in that for each mobile wall at least one respective first locking member exists which is mobile between a locked position of the mobile wall on the guide device and an unlocked position.

*Problem to be solved*

- 3.3 The Board, concurring with the parties, considers that the problem to be solved by the above-mentioned differentiating feature is to be seen in improving the flexibility of the device known from E7 in view of the different formats of the containers to be treated (see also paragraphs 5, 11 and 12 of the patent in suit).

*Inventive step*

*Teaching of E7 alone*

- 3.4 The opponent argues that the skilled person seeking to solve the above-mentioned problem would have been encouraged by the teaching of E7 to use respective locking means for each mobile wall as claimed in claim 1. This is because the last paragraph on page 3 of E7 refers to a separation of displacing and locking means for a single mobile wall. Thus, according to the opponent, the aforementioned paragraph implicitly refers to a separation of functions which can be applied to each wall individually and thus would lead to a selective locking of each mobile wall on the guide means.
- 3.5 The Board does not agree for the following reasons.
- 3.6 The whole of page 3 of E7 refers to the solution according to claim 1 (see last paragraph of page 2). The last paragraph of page 3 of E7, referred to by the opponent, only states that it is beneficial to separate the two functions of "displacing" and "locking" of a mobile wall by different assembly groups of the device, thus providing the displacing means with an adjusting element only used to set a new position of the mobile wall and by which the side wall position is fixed via locking means controlled independently from the displacing means. According to claims 1 to 6 and the example of E7, the displacing means 3 having an adjusting element 4 is independently controllable from the locking means 7, this single locking means ("Klemmeinrichtung 7") fixing in this way the position of all the mobile walls simultaneously. There is no further information concerning the locking means

derivable from the last paragraph of page 3 of E7 and, moreover, there is no information concerning an individual locking of each side wall derivable from the last paragraph of page 3 of E7.

- 3.7 As E7 does not disclose the feature of claim 1 that for each mobile wall at least one respective first locking member exists which is mobile between a locked position of the mobile wall on the guide device and an unlocked position, the teaching of E7 lacking a model of or prompt towards this missing feature, E7 could not have rendered the subject-matter of claim 1 obvious to the person skilled in the art.

*Teaching of E7 in combination with the teaching of E11 or E18*

- 3.8 The opponent argues further that the teaching of E7 in combination with the teaching of one of E11 or E18 renders the subject-matter of claim 1 not inventive.

- 3.9 The Board does not agree for the following reasons.

- 3.10 E11 discloses a single feeding conveyor channel with individually displaceable walls 5 to adapt quickly the width of the conveyor channel to different sized objects via the actuating lug 12 (see page 2, first paragraph; page 4, first paragraph, figures 1, 2). E18 discloses a similar single conveyor channel with individually displaceable walls 20 comprising first locking means 40 for locking the mobile walls on the guide device 21 (see column 4, line 48, to column 5, line 14; figure 1).

- 3.11 The Board, in accepting the corresponding arguments of the patent proprietor, considers that the specific



locking means (securing lug 12 and locking member 40) foreseen for the single conveyor channels known from E11 and E18 correspondingly cannot be considered applicable in a straightforward way to the multiple conveyor line known from E7 for the following reasons, contrary to the opponent's view.

First, applying this specific locking means (securing lug 12 and locking member 40) on the smooth cylindrical rod 21 of E7 would require a total redesigning of the rod (provision of indentation for cooperating with the securing lug 12 or provision of a gear system for cooperating with the locking member 40). This redesigning would not only have gone beyond the ordinary skills of the person skilled in the art, it would also have gone against the teaching of E7 to use a smooth cylindrical rod 21 for smoothly gliding the mobile walls 2 along this rod. Second, due to the presence of this locking means (securing lug 12 and locking member 40) on the outer side of the mobile walls, an interference between each locking means and the walls of the neighbouring channels cannot be avoided. Accordingly, the application of the locking means (securing lug 12 and locking member 40) foreseen for the single conveyor channels known from E11 and E18 corresponding to the multiple channel line known from E7 could not have been achieved without the exercise of an inventive activity.

*Teaching of E7 in combination with the teaching of E17*

3.12 The opponent argues finally that the teaching of E7 in combination with the teaching of E17 renders the subject-matter of claim 1 not inventive.

3.13 The Board does not agree for the following reasons.

3.14 E17 relates to the displacement of individual conveyors 1 and 2 to adapt to different sizes of objects transported via them (see paragraph 6) achieved by first and second locking means 6 and 30 which allow selectively displacing and locking each conveyor (see paragraph 16, figure 1).

3.15 The Board is convinced, contrary to the opponent's view, that the skilled person seeking to improve the flexibility of the device known from E7, this device disclosing a plurality of feeding channels which are side by side and parallel to one another, each of said channels being defined on the sides by two movable side walls, would not have taken E17 into consideration, since said last is not directed to a conveying machine with channels being defined on the sides by two movable side walls but to a conveying machine using multiple displaceable conveyors. Therefore, the teachings of E7 and E17 cannot be combined with each other without using hindsight to obtain a line for conveying containers according to claim 1.

3.16 For the above-mentioned reasons, the subject-matter of claim 1 involves an inventive step.

4. ***Claim 7 of the main request - Inventive step, Article 56 EPC***

4.1 The opponent argues that the reasoning presented under point 3 above concerning inventive step of the subject-matter of claim 1 applies *mutatis mutandis* to claim 7.

4.2 The Board considers accordingly that its considerations presented under point 3 above apply *mutatis mutandis* also to claim 7.

4.3 Therefore, the subject-matter of claim 7 also involves an inventive step.

5. In **conclusion**, the Board finds that the opponent has not convincingly demonstrated the incorrectness of the decision under appeal and that the appeal is to be dismissed.

### Order

#### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated