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**Datasheet for the decision
of 26 May 2025**

Case Number: T 0730/22 - 3.2.05

Application Number: 14773561.7

Publication Number: 2979842

IPC: B29C49/48, B29C33/02,
B29C33/04, B29C35/16

Language of the proceedings: EN

Title of invention:

Plastic bottle blow molding die

Patent Proprietor:

Dai Nippon Printing Co., Ltd.

Opponent:

Krones AG

Relevant legal provisions:

EPC Art. 54, 100(a), 111(1)
RPBA 2020 Art. 11, 13(2)

Keyword:

Grounds for opposition - lack of novelty (yes)
Amendment after summons - taken into account (no)
Appeal decision - remittal to the department of first instance
(yes)



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Case Number: T 0730/22 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 26 May 2025

Appellant: Kronos AG
(Opponent) Böhmerwaldstraße 5
93073 Neutraubling (DE)

Representative: Grünecker Patent- und Rechtsanwälte
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Respondent: Dai Nippon Printing Co., Ltd.
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Representative: Müller-Boré & Partner
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 18 January 2022
rejecting the opposition filed against European
patent No. 2 979 842 pursuant to
Article 101(2) EPC.**

Composition of the Board:

Chairman P. Lanz
Members: M. Holz
F. Blumer
B. Spitzer
B. Burm-Herregodts

Summary of Facts and Submissions

- I. The opponent (appellant) filed an appeal against the decision of the opposition division rejecting the opposition against European patent No. 2 979 842 (the patent).
- II. The patent proprietor (respondent) filed a reply to the appellant's statement of grounds of appeal including claim sets and description pages according to a first, second, third, fourth, fifth, sixth and seventh auxiliary request.
- III. In a communication pursuant to Article 15(1) RPBA issued on 5 February 2025, the board, *inter alia*:
 - provided its preliminary opinion on the case
 - expressed its intent to remit the case for further prosecution to the opposition division if the board concluded that a ground for opposition raised by the appellant prejudiced the maintenance of the patent as granted
 - invited the appellant to provide page 2/2 of document VB8 and pages 1/3 and 3/3 of document VB11 to allow an assessment of these documents in their context
- IV. By letter dated 24 March 2025, the appellant filed page 2/2 of document VB8 and pages 1/3 and 3/3 of document VB11.
- V. By letters dated 11 April 2025 and 13 May 2025, the respondent filed further substantive submissions.

VI. Oral proceedings before the board were held on 26 May 2025.

VII. The appellant requested that the decision under appeal be set aside and the patent be revoked. The appellant further requested that the first auxiliary request not be admitted in the appeal proceedings.

The respondent requested that the appeal be dismissed (main request) or, in the alternative, that the decision under appeal be set aside and the patent be maintained as amended on the basis of the claim sets and description pages according to one of the first, second, third, fourth, fifth, sixth and seventh auxiliary requests filed with its reply.

VIII. Claim 1 as granted reads (the feature references used by the board - corresponding to the references M1 to M10 used by the opposition division - are included in square brackets):

"**[1]** A *blow molding mold (30) for a plastic bottle (10), configured to blow-mold a plastic bottle (10) having a body portion (20), a bottom portion (25) below the body portion (20), a mouth portion (11) above the body portion (20), and a neck portion (15) located between the body portion (20) and the mouth portion (11), comprising:*

[2] *a body mold (31) corresponding to the body portion (20) of the plastic bottle (10);*

[3] *a bottom mold (35) corresponding to the bottom portion (25) of the plastic bottle (10);*

[4] *a neck mold (38) corresponding to the neck portion (15) of the plastic bottle (10), [5] wherein the neck mold (38) is provided with a first cooling mechanism (38A); [6] the body mold (31) includes an inner body*

mold (32) having an inner surface (32a) corresponding to the outer surface of the body portion (20), and an outer shell (33) located outside the inner body mold (32); [7] the inner body mold (32) of the body mold (31) can be attached/detached to/from the outer shell (33) when replacing the inner body mold (32) in conformity with the shape of the plastic bottle (10); [8] and the first cooling mechanism (38A) has a coolant flow passage (38c) which extends in the neck mold (38) and which overlaps the inner body mold (32) in a plan view; and [9] an enclosure (40) located outside the outer shell (33), characterized in that [10] the enclosure (40) is provided with a heating mechanism (40A)."

Claim 1 of the first auxiliary request differs from claim 1 as granted in that the following feature 11 is included at the end of the claim.

"[11] and the outer shell (33) is in engagement with the bottom mold (35)."

IX. The following documents filed in support of an alleged public prior use are cited in this decision.

VB1: Invoice by Kronen Inc. to Niagara Bottling LLC dated 27 June 2012, order No. 7016054

VB2: Screenshots of the SAP system at Kronen AG on order No. 7016054

VB3: Cargo list for shipment of order No. 7016054

VB5: Acceptance confirmation for production line C357621

- VB6: Affidavit by Mr Rico Gerlach,
23 April 2019
- VB7: Technical drawing "SZ Neckkühlung H",
0-901-633-350
- VB8: Technical drawing "Formträger kpl. VH,
Gen.2b", 0-902-315-543
- VB9: Technical drawing "Schalenpaket Krones
S/H, Gen.2", 0-900-911-031
- VB10: Technical drawing "Blasform -H- 20 oz",
0-902-706-575
- VB11: Technical drawing "Flieβschemata
Heatset", 0-902-790-017
- VB15: Screenshot of the SAP system at Krones
AG, concerning material number 0902706575

X. The parties submitted the following.

(a) *Ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC - novelty in view of the "Niagara Bottling" public prior use*

(i) *Appellant*

The subject-matter of claim 1 as granted was not new in view of the "Niagara Bottling" public prior use. Thus, the ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC prejudiced the maintenance of the patent as granted.

The "Formschale", the "Schalenpaket" and the "Formträger" shown in the documents provided in support of the public prior use could be considered an inner body mould, an outer shell and an enclosure as specified in claim 1 as granted. This three-layer structure included features 6 to 10, as was apparent

from documents VB2 and VB7 to VB11 (see also the edited versions of drawings from documents VB8 to VB11 submitted in the statement of grounds of appeal), the minutes of Mr Gerlach's witness hearing and his affidavit (see, in particular, pages 38 and 39 of the minutes of the witness hearing). In particular, features 6 and 7 were disclosed in view of documents VB9 and VB10; feature 8 was disclosed in view of documents VB10 and VB11; feature 9 was disclosed in view of documents VB8 and VB9; and feature 10 was disclosed in view of documents VB8 and VB11.

Document VB11 only stated a single date of when it was created, i.e. on 13 March 2012. No later changes and no further versions were noted in the document. This would have been expected if there had been any changes, as could be derived from a comparison with document VB8.

Document VB11 stated the same number 0-902-790-017 indicated in document VB2. This was the only version of this document. Document VB11 did not show the construction of a part of the apparatus but illustrated its use. There was no production release of the use illustrated in the document, and the corresponding date stated below the technical drawing was not relevant. The witness Mr Gerlach had confirmed that the "Relax-Cooling" flow scheme had been implemented in the apparatus sold. While he was not involved with the technical details of where the channels were provided in the mould components, as a project manager he was aware of the apparatus's external features and its design.

Page 15 of document VB2 listed two families of technical drawings in which two- and three-dimensional drawings had different document numbers ("Dok.Nr").

The public prior use involved the last version of technical drawing 0902315543, with version number 4 indicated as released for production ("Fertig. Freigabe") and shown in document VB8.

(ii) *Respondent*

The "Niagara Bottling" public prior use should not be admitted as prior art in the proceedings. Even if it was admitted, the subject-matter of claim 1 as granted would be new in view of the public prior use. The ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC did not prejudice the maintenance of the patent as granted. It was not disputed that there had been a "Niagara Bottling" public prior use and that some technical features involved in it could be derived from the documents filed in support of the public prior use. However, none of the documents showed the mould in an assembled state or disclosed features 6 to 10.

At the bottom of pages 1/3 to 3/3, document VB11 stated a production release date ("FF") of 11 May 2017. This was after the date of the public prior use. It could not be excluded that document VB11 had been changed since the date indicated as "Gez./drn.", i.e. 13 March 2012. There had perhaps been a different set of documents relating to the public prior use.

Page 15 of document VB2 listed nine different technical drawings. It could not be known whether the technical drawing VB8 submitted by the appellant was the one corresponding to the apparatus sold. Similarly, document VB15 listed four different technical drawings. Accordingly, it was unclear whether document VB10

showed one of the components mentioned in documents VB1 and VB2.

In the top view (top right) and in the side view (bottom left) of document VB10, the neck plate was clearly shown. In the side view, the neck plate rested on the body mould. The holes shown in the side view were arranged in the body mould. In the top view, the neck plate was not even shown. However, even if the neck plate was assumed to be visible in the top view, only the ports were shown to be at the top of the mould, not the passages. The passages visible in the top view did not extend through the neck plate but through the body mould.

The assumption that the passages shown in document VB10 were flow passages for cooling was only based on document VB11, which could not be relied upon for establishing technical details of the public prior use. The witness Mr Gerlach had not been able to identify where the passages extended but only referred to a cooling mechanism in the neck. His affidavit (document VB6) stated that the customer Niagara signed the acceptance confirmation on 19 November 2012. This was in contradiction to document VB5, stating a signature date of 16 November 2012.

Feature 10 was only derivable from document VB11, which had not been shown to form part of the public prior use. In document VB8, there were ports shown at the bottom of the mould carrier ("Formträger"). However, it was not disclosed for what purpose the ports were used. Also, the two bores in section D-D of drawing VB8 could be for anything, not only for heating. Heating the mould carrier was only disclosed in document VB11.

(b) *Admittance of the respondent's first auxiliary request and remittal to the opposition division*

(i) *Appellant*

The respondent's auxiliary requests should not be admitted in the proceedings under Article 12(3) and (5) RPBA. They had not been substantiated in either the opposition or appeal proceedings.

Since none of the auxiliary requests should be admitted, there was no reason for a remittal. A remittal would also lead to an excessively long duration of the proceedings.

(ii) *Respondent*

The auxiliary requests had been sufficiently substantiated in both the opposition proceedings and the reply to the statement of grounds of appeal. The appellant had first raised the issue of substantiation of the first, second and third auxiliary requests at a late stage of the oral proceedings before the board. This was also the first time it was requested that these auxiliary requests not be admitted in the proceedings. This amounted to an amendment to the appellant's appeal case that should not be admitted in the proceedings.

The case should be remitted to the opposition division for further prosecution, as also envisaged in the board's communication under Article 15(1) RPBA. The auxiliary requests, including the first auxiliary request, had not been examined by the opposition division.

Reasons for the Decision

1. Ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC - novelty in view of the "Niagara Bottling" public prior use

1.1 The appellant objected that the subject-matter of claim 1 as granted was not new in view of the "Niagara Bottling" public prior use.

1.2 The respondent was of the opinion that the public prior use should not be admitted as prior art in the proceedings.

In the decision under appeal, the "Niagara Bottling" public prior use had been considered state of the art for the assessment of novelty and inventive step (see points 8 and 11 of the Grounds for the decision under appeal). The board sees no legal basis for not taking into account the public prior use.

1.3 To corroborate the public prior use, the appellant submitted documentary evidence (see the documents indicated in point IX. above). Moreover, the opposition division heard Mr Gerlach as a witness (see minutes of the witness hearing). Document VB6 is an affidavit from Mr Gerlach.

1.4 The board evaluates the available evidence following the principle of the free evaluation of evidence (see also "Case Law of the Boards of Appeal of the European Patent Office", 10th edn., July 2022, (Case Law), III.G.4.1).

- 1.5 It is undisputed that all evidence in support of the public prior use lies within the power and knowledge of the appellant, while it can be assumed that the respondent has barely any or no access to it. It is therefore incumbent upon the appellant to prove the alleged prior use beyond any reasonable doubt (see also Case Law, III.G.4.3.2b)).
- 1.6 The respondent did not dispute the "Niagara Bottling" public prior use or that some technical features involved in the public prior use can be derived from the documents submitted by the appellant.
- 1.7 However, the respondent questioned, *inter alia*, the probative value of document VB11. It referred to the production release date ("FF") of 11 May 2017 stated at the bottom of pages 1/3 to 3/3 of document VB11.

Document VB1 is an invoice for a sale by Kronos AG to Niagara Bottling LLC. It is this sale and the subsequent delivery (see also cargo list VB3 and acceptance confirmation VB5) that are the focus of the "Niagara Bottling" public prior use. It is undisputed that documents VB1, VB2, VB3 and VB5 relate to the "Niagara Bottling" public prior use.

Document VB1 states the order number 7016054. Document VB2 provides screenshots of the SAP system at Kronos AG for this order number (see, for example, page 1 of document VB2). According to page 1 of document VB2, order number 7016054 involved an item "CONTIFORM H24 HF-NitroHF K434178". Page 19 of document VB2 states that this item involved a "CONTIFORM" document ("Dokumentation") having material number 9109928892. According to page 20 of document VB2, this material number involved the Heatset

Relax flow diagrams ("Fließschemata Heatset Relax") having material number 0902790017. The same number is indicated on document VB11.

There is thus an unbroken chain linking document VB11 to the "Niagara Bottling" public prior use.

These considerations outweigh the respondent's concerns regarding the production release date of 11 May 2017 stated on document VB11. This date is stated outside the boundary line of the drawings. The relevance of this date for the public prior use is not evident. This holds even more true since document VB11 does not contain construction drawings of parts of the apparatus sold but describes a process for using the apparatus.

Document VB11 states a date ("Gez./drn.") of 13 March 2012, which undisputedly lies before the date of the public prior use. The respondent submitted that it could not be excluded that document VB11 had been changed since this date or that there had perhaps been a different set of documents relating to the prior use.

However, the respondent's submissions are purely speculative and not based on any evidence. Document VB11 and, most relevant to the issues at hand, its page 2/3 do not indicate any changes after 13 March 2012. For the reasons set out above, the number 0-902-790-017 stated in document VB11 unambiguously links document VB11 to the public prior use.

The board is therefore convinced that document VB11 is suitable for establishing technical features involved in the public prior use.

- 1.8 The respondent submitted that page 15 of document VB2 listed nine different technical drawings. It could not be known whether the technical drawing VB8 submitted by the appellant was the one corresponding to the apparatus sold.

The appellant set out that page 15 of document VB2 listed two families of technical drawings in which two- and three-dimensional drawings had different document numbers ("Dok.Nr."). The public prior use involved the last version of technical drawing 0902315543, with version number 4 indicated as released for production ("Fertig. Freigabe").

Document VB8 states a number, 0-902-315-543, which is identical to the document number of one of the two families of technical drawings indicated on page 15 of document VB2. Page 15 of document VB2 assigns versions ("Vs") 00 to 04 to this document number. On the same page, each of the versions 01 to 04 is furthermore assigned to a different change number ("Änderungsnr."), and version 04 is indicated as being released for production ("Fertig. Freigabe"). Document VB8 states the same versions 01 to 04 with corresponding change numbers. The latest version 04 is the same that is indicated as being released for production on page 15 of document VB2.

The board is therefore satisfied that document VB8 is suitable for establishing technical features involved in the public prior use.

- 1.9 Page 18 of document VB2 states a material number 0902706575 which is identical to the material number stated on document VB15. Document VB15 states a document number ("Dok.Nr.") 0902706575 with the highest

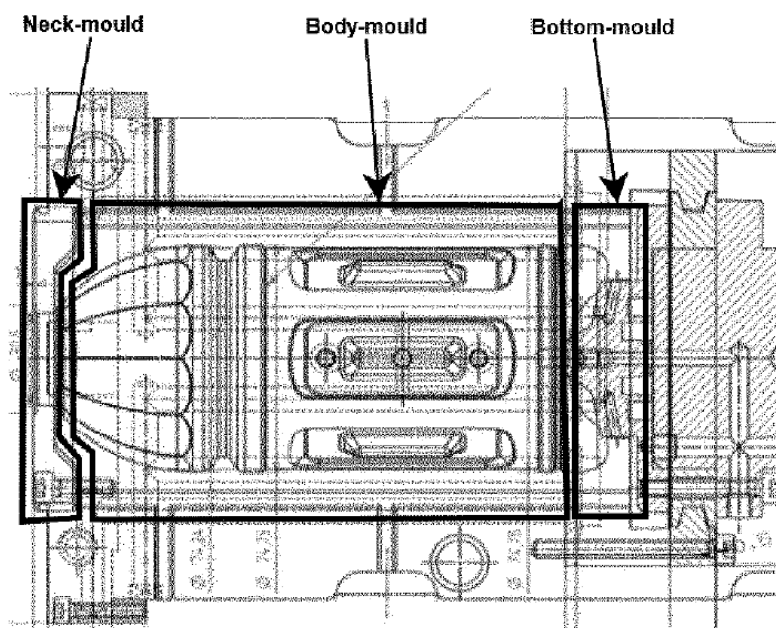
version number 01 being indicated as released for production ("Fertig.Freigabe") and having a change number ("Änderungsnr.") 5000723780. The same document number, version number and change number are stated on document VB10.

The board is therefore satisfied that document VB10 is suitable for establishing technical features involved in the public prior use.

- 1.10 In point 8 of the Grounds for the decision under appeal, the opposition division concluded that feature 8 had not been disclosed in the public prior use.

The respondent disputed that features 6 to 10 had been disclosed by the public prior use.

- 1.11 Regarding features 6 and 7, the blow mould shown in document VB10 includes a neck mould, an (inner) body mould and a bottom mould, as illustrated in the amended drawing included on page 19 of the Grounds for the decision under appeal and reproduced below.



The central section shown in the drawing corresponds to the inner body mould of claim 1 as granted and is to be placed in the outer shell shown in document VB9.

Document VB9 shows swivelling claws with which the inner body mould can be attached to and detached from the outer shell. The combination of the inner body mould shown, for example, in document VB10, and the outer shell shown, for example, in document VB9, constitutes a body mould within the meaning of claim 1 as granted.

The witness Mr Gerlach also described the detachable attachment of the blow mould halves in the shell in his affidavit (see eighth and ninth paragraphs on page 1 of document VB6).

The discrepancy between the statement in document VB6 that the acceptance confirmation was signed by the customer Niagara on 19 November 2012 and the statement in document VB5 that the customer signed the acceptance confirmation on 16 November 2012 does not alter this view. This discrepancy does not affect any technical

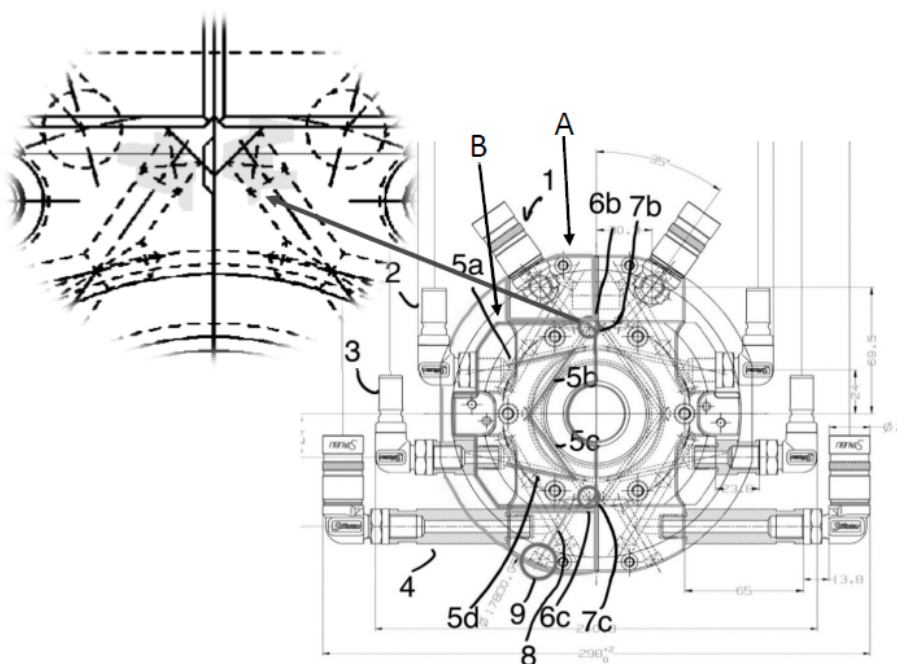
features of the mould involved in the public prior use. Since the public prior use as such is undisputed, this discrepancy is less relevant.

The board is therefore convinced that features 6 and 7 are disclosed by the public prior use.

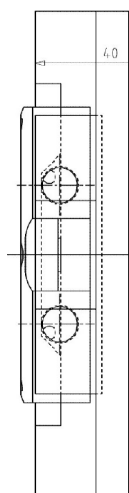
- 1.12 Regarding feature 8, it is undisputed that the top view of the mould illustrated in document VB10 shows W-shaped flow passages indicated by dashed lines. However, the respondent disputed that it could be unambiguously derived from document VB10 that these flow passages extended through the neck mould.

The top view of the mould illustrated in document VB10 shows six screws evenly distributed over the circumference which correspond to the screw shown in the longitudinal cut of document VB10. It can thus be derived that the top view shows a situation in which the neck mould (i.e. the neck plate) is installed.

The ports 2 and 3 indicated in the amended top view of document VB10 filed by the appellant on page 22 of the statement of grounds of appeal (reproduced below) are connected to these flow passages.



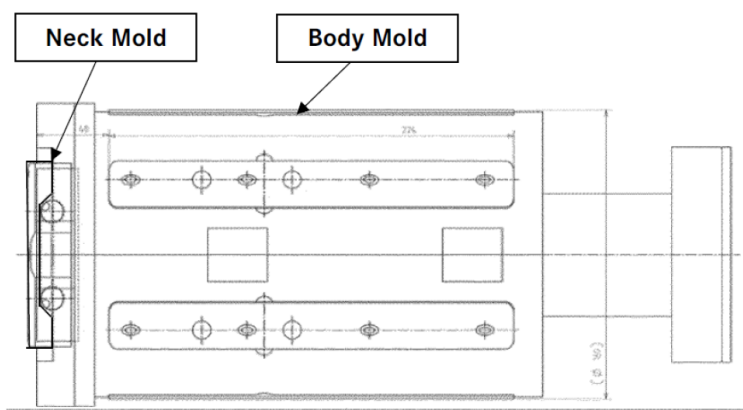
The ports 2 and 3 are indicated by solid lines and therefore extend above the outer circumference of the (inner) body mould. These ports are also indicated as large circles in the uncut side view illustrated in the bottom left drawing of document VB10 (see extract from the drawing reproduced below).



The ports 2 and 3 are connected to the start of the flow passages, which are indicated in the side view by small dashed circles. The longitudinal cut and the side view of document VB10 show that the neck mould is thicker at its periphery than in a central region. The

flow ports (large circles in the side view) extend through the thick peripheral region, and the flow passages (small dashed circles in the side view) extend through the central region of the neck mould.

On page 16 of its reply to the statement of grounds of appeal, the respondent provided the following amended drawing. In this amended drawing, a thick solid line was added to denote the neck mould.



However, the thick solid line combines lines shown as solid lines and lines shown as dashed lines in document VB10. The lines indicating a recess in the neck mould in the respondent's drawing are shown as dashed lines in document VB10, i.e. they cannot be seen by an observer in the side view. The recess in the neck mould is thus not formed on the perimeter but instead further within the mould as also shown in the longitudinal cut of document VB10. The extension of the neck mould on its outside is indicated in the side view of document VB10 by solid lines (see above) and thus includes the large circles indicating the ports and the small dashed circles indicating the start of the flow passages.

Document VB10 thus unambiguously shows flow passages extending through the neck mould and overlapping the inner body mould.

The neck mould is also shown on page 2/3 of document VB11. Its ports are connected to a cooling flow circuit of water having a temperature of 8 to 12°C. The flow passages indicated in document VB10 are thus used for a coolant and are therefore suitable and configured for cooling the neck mould, this being confirmed by the neck cooling ("Neckkühlung") illustrated in document VB7.

Feature 8 is thus disclosed by the public prior use.

This view is unaffected by the witness Mr Gerlach in his hearing not being able to clearly identify the exact positioning of the coolant flow passages in the mould (see pages 64 to 66 of the minutes of the witness hearing). The witness explained that he was not responsible for the construction details but for the interface between the apparatus sold and the client's part (see pages 38 and 66 of the minutes of the witness hearing). As set out above, the construction details defined in feature 8 can be established from the documentary evidence. The minutes of the witness hearing are thus less relevant in this regard.

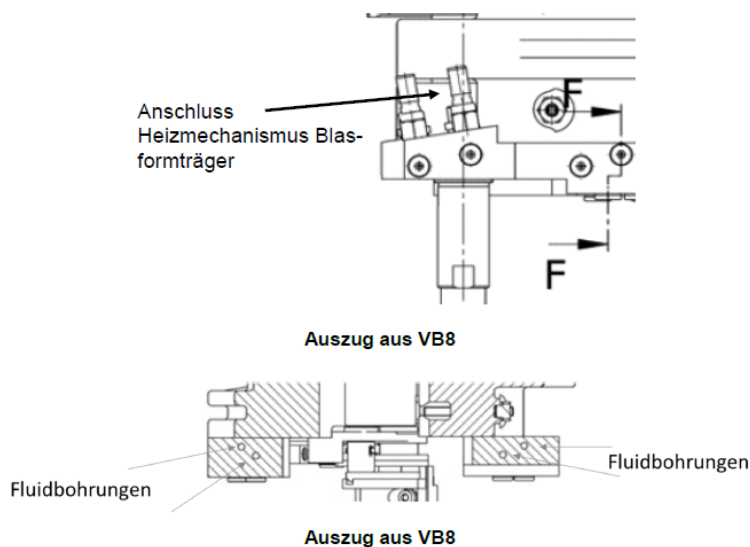
- 1.13 According to page 14 of document VB2, the mould carrier module ("Formträgermodul") involved in the public prior use includes a mould carrier ("Formträger") and a shell pack ("Schalenpaket"). The mould carrier is also shown in document VB8. It can be derived from the top view (bottom left drawing) of document VB8 that two screws enter the interior of the mould carrier to attach the shell pack shown in document VB9 (see the top view of

document VB9, which is rotated by 90 degrees relative to the top view of document VB8). In his affidavit, Mr Gerlach explained that the shell is held in place by a mould carrier (see eighth paragraph on page 1 of document VB6).

The mould carrier (see document VB8) thus constitutes an enclosure located outside the outer shell (i.e. the shell pack) within the meaning of feature 9.

- 1.14 Regarding feature 10, the "Relax-Cooling" flow diagram on page 2/3 of document VB11 shows that heating channels are provided in the mould carrier which are supplied with hot water at a temperature of 50 to 55°C ("Vorlauf Formträger Wasser: 50 - 55°C" and "Rücklauf Formträger Wasser: 50 - 55°C"). The heating channels constitute a heating mechanism within the meaning of feature 10.

As indicated in the amended drawings provided on page 19 of the statement of grounds of appeal (reproduced below), the ports for connecting the channels in the mould carrier to the heating circuit are also visible in document VB8 at the bottom left of the left side view. Section D-D of drawing VB8 depicts the channels in the mould carrier.



Feature 10 is thus disclosed by the public prior use.

1.15 The respondent submitted that none of the documents filed as evidence for the public prior use showed the mould in an assembled state.

However, in view of the available documentary evidence, in particular, document VB2, the minutes of the witness hearing of Mr Gerlach and his affidavit (document VB6), the board is satisfied that the public prior use involved the combination of the components discussed above, in particular, the mould carrier (i.e. the enclosure within the meaning of claim 1), the shell pack (i.e. the outer shell within the meaning of claim 1), the mould (including the neck mould, (inner) body mould and the bottom mould) and the documentation (including document VB11).

1.16 The subject-matter of claim 1 as granted is thus not new in view of the "Niagara Bottling" public prior use. The ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC therefore prejudices the maintenance of the patent as granted.

2. **Admittance of the respondent's first auxiliary request**

It was only at a late stage of the oral proceedings before the board that the appellant first requested that the respondent's first auxiliary request not be admitted in the proceedings in view of an alleged lack of substantiation.

The appellant's request constitutes an amendment to its appeal case within the meaning of Article 13(2) RPBA. In accordance with Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA must, in principle, not be taken into account unless there are exceptional circumstances justified with cogent reasons by the party concerned.

It is undisputed that the claim set of the first auxiliary request submitted with the reply had previously been submitted in the opposition proceedings. In the statement of grounds of appeal, the appellant raised an objection of lack of inventive step against the first auxiliary request as a measure of precaution. However, the appellant did not raise the question of admittance of the first auxiliary request prior to the oral proceedings before the board. In the communication under Article 15(1) RPBA, the board expressed its intent to remit the case to the opposition division for further prosecution should the respondent's main request not be allowable. The appellant responded to the board's communication in its letter dated 24 March 2025. However, in this letter, it did not question the admittance of the first auxiliary request. At the beginning of the oral proceedings

before the board, the appellant submitted its requests. These did not include a request that the respondent's first auxiliary request not be admitted.

There are no exceptional circumstances, which have been justified with cogent reasons by the appellant, that justified the admittance of this request that was filed only at a late stage of the oral proceedings before the board.

Exercising its discretion under Article 13(2) RPBA, the board, therefore, did not admit the appellant's request that the respondent's first auxiliary request not be admitted. The first auxiliary request therefore is in the proceedings.

3. **Conclusions and remittal**

The ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC prejudices the maintenance of the patent as granted. The decision under appeal therefore has to be set aside.

In accordance with Article 111(1) EPC, the board may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

In the decision under appeal, the opposition division did not decide on the respondent's first auxiliary request. This was not necessary since the opposition division concluded that none of the grounds for opposition raised by the appellant prejudiced the maintenance of the patent as granted. In view of the

primary object of the appeal proceedings to review the decision under appeal in a judicial manner (see also Article 12(2) RPBA), the board considers that special reasons present themselves within the meaning of Article 11 RPBA for remitting the case to the opposition division.

The respondent was in favour of a remittal of the case to the opposition division, while the appellant was against it. The appellant's view was based on its opinion that the respondent's auxiliary requests should not be admitted in the proceedings and that there was thus no reason for a remittal. However, as set out above, at least the respondent's first auxiliary request is in the proceedings. The appellant also considered that a remittal would lead to an excessively long duration of the proceedings. However, the board considers that the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner and that when further prosecution is needed, the case is to be remitted to the opposition division.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairman:



N. Schneider

P. Lanz

Decision electronically authenticated