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**Datasheet for the decision
of 21 November 2025**

Case Number: T 0193/23 - 3.2.01

Application Number: 12844818.0

Publication Number: 2773236

IPC: A45C7/00

Language of the proceedings: EN

Title of invention:

LUGGAGE COMPRISING A RATCHET-TYPE EXPANSION SYSTEM

Patent Proprietor:

Briggs & Riley Travelware LLC

Opponent:

Victorinox AG

Headword:

Relevant legal provisions:

EPC Art. 123(2), 84, 56

Keyword:

Amendments - Main Request - unallowable intermediate
generalisation (yes) - Auxiliary Request 41 - unallowable
intermediate generalisation (no)
Claims - clarity (yes)
Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0193/23 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 21 November 2025

Appellant: Briggs & Riley Travelware LLC
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
30 November 2022 concerning maintenance of the
European Patent No. 2773236 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: V. Vinci
S. Fernández de Córdoba
J. J. de Acha González
O. Loizou

Summary of Facts and Submissions

- I. Appeals were filed by the patent proprietor and the opponent against the interlocutory decision of the Opposition Division maintaining the European patent No. EP 2 773 236 in amended form.

In its decision, the Opposition Division found that the ground for opposition raised by the opponent under Article 100(c) in association with Article 123(2) EPC was prejudicial to the maintenance of the patent as granted, and that the auxiliary requests 1 to 40 did not comply with the requirements of Article 123(2) EPC. At the oral proceedings, the Opposition Division decided to maintain the patent in amended form based on the auxiliary request 41. No lack of novelty was objected by the opponent. Inventive step was positively assessed in view of the following prior-art documents:

D6: EP 1 649 772 A2

D17: US 6 575 272 A

Furthermore, the Opposition Division decided that since the priority of the contested patent was deemed to be valid, document

D3: EP 2 476 337 A2

represented a state of the art pursuant Article 54(3) EPC, that therefore could not be used for the assessment of inventive step.

- II. With the communication pursuant to Article 15(1) RPBA dated 7 August 2025, the Board informed the parties that - according to its preliminary assessment of the

case - both appeals were likely to be dismissed, and hence that the interlocutory decision of the Opposition Division maintaining the patent in amended form was likely to be confirmed.

With letters dated 5 September 2025 and 8 September 2025 respectively, the appellant (patent proprietor) and the appellant (opponent) conditionally withdrew their requests for oral proceedings, the condition being that the Board - in accordance with the preliminary conclusions notified with the communication pursuant to Article 15(1) dated 7 August 2025 - would decide in writing to dismiss both parties' appeals and hence to confirm the interlocutory decision of the Opposition Division.

Since following these submissions of the parties the case could be decided in writing, the oral proceedings dated 22 February 2025 are cancelled.

III. The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, in the alternative, that the patent be maintained in amended form according to one of the auxiliary 1 to 71 as filed during the opposition proceedings.

Furthermore, if any of the other objections raised by the appellant (opponent) against the main request which were not part of the decision under appeal were to be considered in the appeal proceedings, remittal to the department of first instance was requested.

The appellant (opponent) requested that the interlocutory decision of the Opposition Division be

set aside and that the patent be revoked.

IV. Independent claim 1 of the patent as granted (main request) reads as follows (labelling of the features according to the decision under appeal):

[1.0] *Article of luggage (100) comprising:*

[1.1] *a luggage main body (106) having a bottom surface and a cavity formed to receive articles for packing;*

[1.2] *an expansion body (104) having a perimeter defining a cavity;*

[1.3] *a foldable gusset (110) joining the luggage main body to the expansion body, the foldable gusset allowing the expansion body to move away and towards the luggage main body to vary a size of a volume formed by the cavity of the luggage main body and the cavity of the expansion body;*

[1.4] *an openable cover (112) attached to the expansion body, wherein*

[1.5] *an expansion and locking device (102) is disposed internally at opposite ends of the article of luggage,*

[1.6] *the expansion and locking device (102) being configured to allow free movement of the expansion body in a compression direction towards the luggage main body (106) and configured to allow locking movement of the expansion body in an expanding direction away from the luggage main body (106),*

[1.7] *wherein the expansion and locking device (102) is a ratcheting assembly*

[1.8] *comprising:*

a set of parallel teeth (408) affixed to one of the luggage main body (106) or the expansion body (104);

[1.9] a holding assembly main body (402) affixed to the other of the luggage main body (106) or the expansion body (104); and

[1.10] a latch structure (412) coupled to the holding assembly main body by a biasing member (422),

[1.11] the latch structure having disposed on its underside a pawl (502), the pawl configured to engage and disengage from the set of parallel teeth (408),

[1.12] the biasing member configured to maintain the pawl in an engaged state with the parallel teeth (408) in the absence of an actuating force applied normal to the surface of the latch structure."

Regarding the auxiliary requests 1 to 35, relevant for this decision is the fact that the respective independent claim 1 does not contain the "zipper features" introduced in feature 1.4 of independent claim 1 of the patent as maintained (see auxiliary request 41).

Compared to claim 1 of the main request, feature 1.4 of independent claim 1 of the auxiliary request 36 has been amended to recite (amendments emphasised):

[1.4] "an openable cover (112) attached to the expansion body and is sealable by way of engagement of two halves of a zipper (114) provided on at least a

majority of the perimeter of the cover (112) and the expansion body (104),"

Compared to independent claim 1 of auxiliary request 36, feature [1.8] of independent claim 1 of auxiliary request 37 was additionally amended to read (amendments emphasised):

[1.8] *"a sliding assembly including a set of parallel teeth (408) affixed to one of the luggage main body (106) or the expansion body (104);"*

Compared to independent claim 1 of auxiliary request 37, features [1.5] to [1.12] of independent claim 1 of auxiliary request 38 have been additionally amended to read (amendments emphasised):

"a pair of expansion and locking devices (102) are disposed internally, respectively mounted to opposed inner walls of the article of luggage at opposite ends of the article of luggage,

the expansion and locking devices (102) being configured to allow free movement of the expansion body in a compression direction towards the luggage main body (106) and configured to allow locking movement of the expansion body in an expanding direction away from the luggage main body (106),

wherein each expansion and locking device (102) is a ratcheting assembly comprising:

a base section being a sliding assembly including a set of parallel teeth (408) affixed to one of the luggage main body (106) or the expansion body (104);

a holding assembly main body (402) affixed to the other of the luggage main body (106) or the expansion body (104); and

a latch structure (412) being an opposed pawl section opposed to the base section and coupled to the holding assembly main body by a biasing member (422),

the latch structure having disposed on its underside a pawl (502), the pawl configured to engage and disengage from the set of parallel teeth (408) so as to slide over the teeth in an engaged state in the compression direction and to prevent movement in the engaged state in the expanding direction,

the biasing member configured to maintain the pawl in an the engaged state with the parallel teeth (408) in the absence of an actuating force applied normal to the surface of the latch structure to lift the latch."

Compared to independent claim 1 of auxiliary request 38, features [1.10] to [1.12] of independent claim 1 of auxiliary request 39 have been additionally amended to read (amendments emphasised):

"a latch structure (412) being an opposed pawl section opposed to the base section and coupled to the holding assembly main body by a biasing member (422), the latch structure having disposed on its underside a pawl (502) facing an upper surface of the base section on which the set of parallel teeth is formed, so as to slide over the teeth in an engaged state in the compression direction and to prevent movement in the engaged state in the expanding direction,

the biasing member configured to maintain the pawl in

an the engaged state with the parallel teeth (408) in the absence of an actuating force applied normal to the surface of the latch structure to lift the latch,"

Furthermore, the following feature has been added at the end of the claim:

[1.13] *"wherein a lower surface of the base section is arranged toward the inner wall of the article of luggage."*

Regarding the wording of independent claim 1 of the auxiliary request 40, the Board observes that according to the statement of grounds of appeal of the appellant (patent proprietor), the *"lift tab feature"* should have been additionally introduced. However, the Board notes that the wording of independent claim 1 of the auxiliary request 40 filed on 9 March 2022 is identical with the wording of claim 1 of the auxiliary request 39 and does not contain said *"lift tab feature"*.

Independent claim 1 of the patent as maintained in amended form according to the auxiliary request 41 dated 9 March 2022 reads as follows (labelling according to the decision under appeal):

[1.0] *Article of luggage (100) comprising:*

[1.1] *a luggage main body (106) having a bottom surface and a cavity formed to receive articles for packing;*

[1.2] *an expansion body (104) having a perimeter defining a cavity;*

[1.3] *a foldable gusset (110) joining the luggage main body to the expansion body, the foldable gusset*

allowing the expansion body to move away and towards the luggage main body to vary a size of a volume formed by the cavity of the luggage main body and the cavity of the expansion body;

[1.4] an openable cover (112) attached to the expansion body and is sealable by way of engagement of two halves of a zipper (114) provided on at least a majority of the perimeter of the cover (112) and the expansion body (104),

[1.5] wherein a pair of expansion and locking devices (102) are disposed internally, respectively mounted to opposed inner walls of the article of luggage at opposite ends of the article of luggage,

[1.6] the expansion and locking device (102) being configured to allow free movement of the expansion body in a compression direction towards the luggage main body (106) and configured to allow locking movement of the expansion body in an expanding direction away from the luggage main body (106),

[1.7] wherein each expansion and locking device (102) is a ratcheting assembly

[1.8] each ratcheting assembly comprising:

a base section being a sliding assembly including a set of parallel teeth (408) affixed to one of the luggage main body (106) or the expansion body (104);

[1.9] a holding assembly main body (402) affixed to the other of the luggage main body (106) or the expansion body (104), and the sliding assembly is insertable into a receiving opening of the holding assembly main body;

and

[1.10] a latch structure (412) being an opposed pawl section opposed to the base section, being a lift tab and coupled to the holding assembly main body by a biasing member (422),

[1.11] the latch structure having disposed on its underside a pawl (502) facing an upper surface of the base section on which the set of parallel teeth is formed, the pawl configured to engage and disengage from the set of parallel teeth (408) so as to slide over the teeth in an engaged state in the compression direction and to prevent movement in the engaged state in the expanding direction,

[1.12] the biasing member configured to maintain the pawl in the engaged state with the parallel teeth (408) in the absence of an actuating force applied normal to the surface of the latch structure to lift the latch,

[1.13] wherein a lower surface of the base section is arranged toward the inner wall of the article of luggage."

Reasons for the Decision

1. In view of the fact that the parties with their letters dated 5 September and 8 September 2025 respectively withdrew their requests for oral proceedings but did not make any further submissions following the Communication dated 7 August 2025, the Board has thus no reasons to deviate from its preliminary assessment of the case as presented in the above mentioned communication which is herewith confirmed and is as follows:

APPEAL OF THE PATENT PROPRIETOR - MAIN REQUEST

Ground for opposition pursuant to Article 100(c) EPC in association with Article 123(2) EPC

2. The ground for opposition pursuant to Article 100(c) in association with Article 123(2) EPC is prejudicial to the maintenance of the patent as granted, as found by the Opposition Division.
 - 2.1 In the decision under appeal, the Opposition Division found that the introduction of features 1.4 and 1.7 to 1.12 in claim 1 as granted resulted in an unallowable intermediate generalisation infringing Article 123(2) EPC. This conclusion was contested by the appellant (patent proprietor) with their appeal.

Feature 1.4 - Omission of the "zipper"

- 2.2 The appellant (patent proprietor) argued that the introduction of feature 1.4 in claim 1 as granted is supported by paragraph [0019] of the originally filed application. Under dispute is whether the omission in claim 1 of further features recited in paragraph

[0019], namely that the openable cover which according to feature 1.4 is attached to the expansion body *"is sealable by way of engagement of two halves of a zipper provided on at least a majority of the perimeter of the cover and expansion body"* results in an unallowable intermediate generalisation of the specific embodiment disclosed in the cited paragraph of the originally filed description as concluded by the Opposition Division.

2.2.1 The appellant (patent proprietor) criticised the Opposition Division for not having applied the principles of the decision G 2/10 when assessing compliance with Article 123(2) EPC of the amendment under discussion. They essentially alleged that the department of first instance erred in assuming that a positive/explicit teaching was needed in the application as filed to omit an element of an embodiment, thereby disregarding the decisive question whether a skilled person regarded the omitted element as being essential and inextricably technically linked to the features introduced in the claim. The appellant (patent proprietor) contested the argument of the Opposition Division that since no embodiment could be found in the original application in which the zipper was not present or was substituted by another component, the omission of the zipper in feature 1.4 of claim 1 infringed Article 123(2) EPC. The appellant (patent proprietor) argued that in the context of the specific embodiment of paragraph [0019] the skilled reader did not identify any technical effect associated with the specific choice to use a zipper seal rather than some other well known and functionally equivalent closure means. In their view, the person skilled in the art was well aware of the fact that other means for closing/sealing luggages existed and that the use of a

zipper in the embodiment of paragraph [0019] was purely exemplary rather than mandatory. The appellant (patent proprietor) asserted that a person skilled in the art reading paragraph [0019] promptly recognised that the attachment of the openable cover to the expansion body recited in claim 1 on the one side, and the sealing by means of a zipper on the other side, were two distinct and unrelated functionalities. Since the functionality of the zipper could only be associated with the sealing functionality, this feature could be considered to be intrinsically linked to the attachment of the openable cover to the expansion body already recited in feature 1.4 introduced in claim 1. For these reasons, the appellant (patent proprietor) concluded that contrary to the findings of the Opposition Division, the omission of the zipper in feature 1.4 of claim 1 did not result in an unallowable intermediate generalisation.

2.2.2 The Board is not convinced and follows the arguments of the Opposition Division and the appellant (opponent):

As correctly pointed out by the department of first instance and the appellant (opponent), the originally filed application does not indeed describe or even envisage an embodiment of the claimed luggage including an openable cover attached to the expansion body wherein these two elements are not sealable/openable by a zipper disposed along their perimeter. As a matter of fact, no embodiment can be found where a zipper is not present or replaced by another element. However, by omitting the zipper in feature 1.4, such an undisclosed embodiment is now encompassed by independent claim 1. The argument of the appellant (patent proprietor) that since the functionalities of attaching the openable cover to the expansion body and of closing and sealing

the article luggage by a zipper disclosed in paragraph [0019] were not inextricably linked no unallowable intermediate generalisation arose, is not convincing either. In this respect, the Board concurs with the Opposition Division and the appellant (opponent) that a functional overlap between these functionalities exists. In fact and to a certain extent, means to attach the openable cover to the expansion body and the zipper to seal the luggage article are required for the functionality of the luggage according to the application as filed.

Features 1.7-1.12 - Omission of the "sliding assembly"

- 2.3 Under discussion is the omission in claim 1 of the feature *"sliding assembly"* disclosed in paragraph [0022] of the originally filed application allegedly forming the basis for the amendments under discussion.
 - 2.3.1 In this regard, the appellant (proprietor) argued that the opposition division erroneously disregarded the fact that claim 1 as granted already recited a ratcheting mechanism comprising a set of parallel teeth (feature 1.8), a latch structure with a pawl (features 1.10 and 1.11) and a biasing member (feature 1.10). In their view, the presence of a ratcheting mechanism with these features inherently implied that the teeth slid against the pawl, thereby implicitly resulting in the provision of a *"sliding assembly"*. The appellant (patent proprietor) thus concluded that the fact that the sliding mechanism of the embodiment of paragraph [0022] was not explicitly recited in the claim did not result in an unallowable intermediate generalisation.
 - 2.3.2 The Board is not convinced and follows the arguments of the opposition division and the appellant (opponent):

As correctly pointed out in the decision under appeal, paragraph [0022], which relates to the embodiments of Figures 4a to 5b, discloses a specific construction of the expansion and locking device which is a ratcheting assembly in turn formed by (1) a holding assembly and (2) a sliding assembly insertable into a receiving opening provided on the surface of a holding assembly main body, wherein - according to paragraph [0022] - the set of parallel teeth recited in claim 1 are a part of the sliding assembly. The Board finds that the Opposition Division is correct in stating that the skilled person cannot find in the context of this specific embodiment any unambiguous and direct hint that the sliding assembly can be omitted, whilst still maintaining the holding assembly, the holding assembly main body and the set of parallel teeth. As also convincingly put forward by the appellant (opponent), a holding assembly main body (see feature 1.9) is only disclosed in the context of the specific embodiment of an expansion and locking device according to Figures 4a to 5b i.e. in combination with a separate element acting as sliding assembly. The appellant (patent proprietor) referred to the embodiment of Figures 6a to 8 and argued that it was deprived of a sliding assembly. However, this is a structurally different embodiment characterized by the use of a pivotable lever (see also dependent claim 2 as originally filed). The Board cannot see how the person skilled in the art looking at this structurally different embodiment could directly and unambiguously derive that the sliding assembly mentioned in paragraph [0022] and shown in Figures 4a to 5b can be omitted without affecting the functionality of the ratcheting assembly. The omission of the sliding assembly in claim 1 thus results in an unallowable intermediate generalisation infringing

Article 123(2) EPC as concluded by the Opposition Division.

- 2.4 In view of the above, the Board confirms the conclusion of the Opposition Division that claim 1 of the patent as granted does not comply with the requirements of Article 123(2) EPC.

Auxiliary Requests 1 to 40

- 2.5 The Board shares the view of the Opposition Division that none of the auxiliary requests 1 to 40 solve the issues raised above under Article 123(2) EPC against the main request (as acknowledged by the appellant (patent proprietor) during the first instance oral proceedings, see point 11.6 of the minutes) and makes as it own the reasoning given under points 5.1.1 and 5.1.2 of the contested decision.
- 2.6 In view of all above and since the auxiliary request 41 corresponds to the patent as maintained, the appeal of the appellant (patent proprietor) has to be dismissed.

APPEAL OF THE OPPONENT - PATENT AS MAINTAINED

3. The appeal of the appellant (opponent) is directed against the interlocutory decision of the opposition division maintaining the patent in amended form according to the set of claims of the auxiliary request 41 of 9 March 2022.

Article 123(2) EPC - Amendments

4. The patent as maintained complies with the requirements of Article 123(2) EPC as found by the Opposition

Division.

4.1 The appellant (opponent) held that - contrary to the conclusion of the opposition division - the amendments in feature 1.10 of claim 1 requiring that the latch structure is "an opposed pawl section opposed to the base section, being a lift tab and coupled to the holding assembly main body by a biasing member" (amendments with respect to feature 1.10 of claim 1 of the main request emphasized) resulted in an unallowable intermediate generalisation of a disclosed specific embodiment infringing Article 123(2) EPC. The appellant (opponent) argued that a lift tab is literally disclosed only in the context of the embodiment of Figure 9 which also included a biased holding assembly providing the engaging force via a rubber compound or rubber member molded on an indented region thereof. The appellant (opponent) put forward that claim 1 was silent regarding the biased holding assembly and the biasing member being a molded rubber member. In their view, these features were inextricably linked to the other features extracted from this embodiment and introduced in claim 1. Specifically, it was argued that there was an inextricable technical link between the claimed lift tab and the omitted molded rubber member justifying the objection of unallowable intermediate generalisation under Article 123(2) EPC. The appellant (patent proprietor) objected and argued that this was a new objection which was not dealt with in the decision and that, as such, had to be disregarded by the Board pursuant to under Article 12(4) RPBA.

4.1.1 Irrespective of the admissibility issue, the Board follows the arguments of the appellant (patent proprietor) in substance:

Firstly, the Board concurs with the appellant (patent proprietor) that from the wording of paragraph [0032] "*In addition to the biasing members disclosed with respect to FIGS. 4a through 8, alternative biasing members can be employed.*" the person skilled in the art directly and unambiguously derives that a molded rubber member is just a possible, but not mandatory way to embody the claimed "*biasing member*". This is confirmed by the content of paragraph [0024] of the application as filed also cited by the appellant (patent proprietor). It follows that - contrary to the view of the appellant (opponent) - no inextricable technical link can be seen between the lift tab and the molded rubber member which does not appear to represent a mandatory feature. Finally, the Board follows the view of the appellant (patent proprietor) that although the lift tab is mentioned "*expressis verbis*" only in the context of the embodiment of Figure 9, also the previous embodiments characterized by alternative biasing member (see paragraph [0024]) makes use of a lift tab. Such an element is in fact recognizable for example in Figures 4a and 5a.

- 4.2 Therefore, the Board confirms the assessment of the Opposition Division that the patent as maintained complies with the requirements of Article 123(2) EPC.

Article 84 EPC - Clarity

5. The patent as maintained complies with the requirements of Article 84 EPC, as found by the Opposition Division.
- 5.1 The appellant (opponent) objected to the conclusion of the department of first instance that the subject-matter of claim 1 of the patent as maintained met the

requirements of Article 84 EPC. They argued that it was unclear what was being lifted when the actuating force was applied to the latch structure, and to what surface this force had to be applied.

5.1.1 The Board does not agree and follows the arguments of the Opposition Division and the appellant (patent proprietor) that the skilled person construing the claim with a mind willing to understand realizes that the force applied by the user is used to lift the tab, thereby releasing the engagement of the latch structure between the biasing member and the teeth. This is the conclusion at which the person skilled in the art arrives when reading the claim as whole rather than focusing only on the objected wording "*to lift the latch*" taken in isolation.

6. The Board observes that lack of novelty was not objected by the appellant (opponent) at any time.

Inventive Step: Articles 52(1) and 56 EPC

7. The subject-matter of independent claim 1 of the patent as maintained is not rendered obvious by the cited prior art as found by the Opposition Division.

7.1 In their statement of grounds of appeal, the appellant (opponent) submitted two lines of inventive step attack starting from document D3 as closest prior art in combination with D4 or D6 respectively. In this context they assumed that - contrary to the assessment of the opposition division and the opinion of the appellant (patent proprietor) - the claimed priority was invalid - and thus that D3 represented a state of the art pursuant to Article 54(2) EPC.

- 7.2 The Board finds that none of these inventive step attacks are convincing in the substance, whereby the question of the validity of the priority of the contested patent can be left open.
- 7.2.1 The Board shares the view of the appellant (patent proprietor) that a combination of document D3 with the teaching of document D4 relating to a completely different technical context is not obvious. Specifically, it cannot be seen why a person skilled in the art, starting from the article of luggage of D3 and aiming to improve its luggage expansion system, would be motivated to look for a solution in document D4, which relates to a *"vivarium cover locking clip"*. For this reason alone, this line of argument cannot convince.
- 7.2.2 Regarding the combination of documents D3 and D6 and irrespective of the admissibility objection raised by the appellant (patent proprietor) under Article 12(4) RPBA against this allegedly new line of arguments, the Board - in accordance with the arguments submitted by the appellant (patent proprietor) - cannot see why a person skilled in the art should be motivated to extract the teeth (15) and the disabling device (9) in isolation from the luggage article of D6, and replace the co-operating lever and recesses of the luggage of D3 with them, especially since the solution proposed in this prior art document is described as being particularly advantageous.
- 7.3 Therefore, the Board confirms the view of the Opposition Division that the subject-matter of independent claim 1 of the patent as maintained is not rendered obvious within the meaning of Articles 52(1)

and 56 EPC by the cited prior art.

8. For the reasons above, also the appeal of the appellant (opponent) is to be dismissed and the interlocutory decision of the Opposition Division confirmed.

Partial reimbursement of the appeal fee

9. The Board issued the communication according to Article 15(1) RPBA on 7 August 2025. The one month period pursuant to Rule 103(4) (c) EPC thus expired on 7 September 2025. However, since the 7th of September 2025 was a Sunday, the period pursuant to Rule 103(4) (c) EPC is automatically extended until Monday the 8th of September 2025 (Rule 134(1) EPC).

- 9.1 The appellant (patent proprietor) and the appellant (opponent) withdrew the respective request for oral proceedings with their letter dated 5 September 2025 and 8 September 2025 respectively, i.e. both within the (extended) period pursuant to Rule 103(4) (c) EPC.

- 9.2 It follows that both parties are entitled to a reimbursement of the appeal fee at 25% according to Rule 103(4) (c) EPC.

Order

For these reasons it is decided that:

The appeals are dismissed.

The Registrar:

The Chairman:



H. Jenney

G. Pricolo

Decision electronically authenticated