

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 22 October 2025**

Case Number: T 1900/23 - 3.2.07

Application Number: 15729281.4

Publication Number: 3145813

IPC: B65B3/02, B65B9/04, B65B37/00,
B65B39/14, B65B47/02,
B65B61/06, C11D17/04

Language of the proceedings: EN

Title of invention:
METHODS AND SYSTEMS FOR DISPENSING A COMPOSITION

Patent Proprietor:
The Procter & Gamble Company

Opponents:
KRAMER BARSKE SCHMIDTCHEN Patentanwälte PartG mbB
Henkel AG & Co. KGaA

Headword:

Relevant legal provisions:
EPC Art. 111(1)
EPC R. 124(1)
RPBA 2020 Art. 11, 13(1), 13(2), 13(3)

Keyword:

Amendment after summons - exceptional circumstances (yes) -
taken into account (yes)
Remittal - (yes)

Decisions cited:

R 0014/09, T 0263/05, T 1690/22

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1900/23 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 22 October 2025

Appellant: KRAMER BARSKE SCHMIDTCHEN
(Opponent 1) Patentanwälte PartG mbB
Landsberger Straße 300
80687 München (DE)

Representative: Kramer Barske Schmidtchen
Patentanwälte PartG mbB
European Patent Attorneys
Landsberger Strasse 300
80687 München (DE)

Appellant: Henkel AG & Co. KGaA
(Opponent 2) Henkelstrasse 67
40589 Düsseldorf (DE)

Representative: Henkel AG & Co. KGaA
CLI / Patente
40191 Düsseldorf (DE)

Respondent: The Procter & Gamble Company
(Patent Proprietor) One Procter & Gamble Plaza
Cincinnati, OH 45202 (US)

Representative: Elkington and Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks, Kent TN13 1XR (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 2 October 2023
rejecting the opposition filed against European
patent No. 3145813 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman G. Patton
Members: S. Watson
 S. Fernández de Córdoba

Summary of Facts and Submissions

- I. Appeals were filed by both opponents 1 and 2, within the prescribed period and in the prescribed form, against the decision of the opposition division to reject the oppositions against European patent No. 3 145 813.
- II. The opposition division found that the single ground for opposition raised by the opponents, namely Article 100(a) EPC with Article 56 EPC (inventive step), did not prejudice the maintenance of the patent as granted.
- III. The following documents which formed part of the decision under appeal are also referred to in this decision:
D1: US 2012/0139139
D5: US 2013/0219827.
- IV. In their respective grounds of appeal, the opponents maintained their objections regarding lack of inventive step which had been considered by the opposition division. Opponent 1 also raised objections of lack of novelty and lack of inventive step with respect to the following document, submitted with its statement of grounds of appeal:
D23: US 2,663,128.
- V. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 2 May 2025. The preliminary opinion of the board was that both appeals were likely to be dismissed, but the issue of determining the

objective technical problem to be solved by claim 1 of the patent as granted needed to be discussed at the oral proceedings.

- VI. Opponent 1 responded substantively with submissions of 20 August 2025 and the patent proprietor responded substantively with submissions of 19 September 2025. Opponent 2 did not respond in writing to the preliminary opinion of the board.
- VII. Oral proceedings before the board took place on 22 October 2025.
- VIII. At the start of the oral proceedings the requests of the parties were as follows.

Both opponents (appellants 1 and 2) requested that the decision under appeal be set aside and the patent revoked.

The patent proprietor (respondent) requested that both appeals be dismissed, or should the decision under appeal be set aside

- that the patent be maintained in amended form on the basis of one of the sets of claims of auxiliary requests 1 to 5, filed with the reply to the appeals, whereby admittance of auxiliary requests 3 to 5 was requested should document D23 be admitted into the appeal proceedings
- that the case be remitted to the opposition division should the board admit document D23.

- IX. At the oral proceedings before the board, appellant 2 put forward a new objective technical problem for claim 1 of the patent as granted. The respondent requested

that this new problem not be considered in the appeal proceedings.

The board decided to consider appellant 2's newly-formulated objective technical problem in its overall consideration of the main request.

The board indicated at the oral proceedings its conclusion that the subject-matter of claim 1 of the patent as granted was obvious in view of documents D1 and D5 together with the common general knowledge of the skilled person.

The same conclusion was made for the subject-matter of claim 1 of auxiliary request 1.

The respondent withdrew its main request and auxiliary request 1 and filed new auxiliary requests 2 and 7 (previous auxiliary requests 2 to 5 being re-numbered as auxiliary requests 3 to 6), it also requested remittal of the case to the opposition division for further prosecution.

X. At the conclusion of the proceedings the decision was announced.

Further details of the oral proceedings can be found in the minutes.

XI. In view of the changes in the parties' appeal cases at the oral proceedings, the final requests of the parties are as follows.

Both appellants requested that the decision under appeal be set aside and the patent be revoked. Both appellants also requested that new auxiliary request 2

and auxiliary requests 4 to 7 not be admitted into the proceedings.

Appellant 1 also requested that the case not be remitted, whereas appellant 2 requested remittal of the case, should new auxiliary request 2 be admitted.

Appellant 2 also requested that certain statements made by the respondent be added to the minutes of the oral proceedings.

The respondent requested

- that the decision under appeal be set aside,
- that the patent be maintained in amended form on the basis of one of the sets of claims of:
 - new auxiliary request 2, filed during oral proceedings before the board,
 - auxiliary requests 3 to 6, filed with the reply to the appeals as auxiliary requests 2 to 5, or
 - auxiliary request 7, filed during oral proceedings before the board, and
- that the case be remitted to the opposition division should new auxiliary request 2 be admitted into the appeal proceedings.

XII. Independent claim 1 of new auxiliary request 2 reads as follows (amendments with respect to claim 1 as granted indicated by the board):

"A method of dispensing a composition into cavities (110, 111) of a web (100) that continuously moves in a machine direction (MD), wherein said method comprises the steps of:

a) providing a web (100), preferably wherein said web (100) comprises water-soluble film, typically disposed on a moveable surface (116), that moves continuously in a machine direction (MD), wherein

said web (100) comprises a plurality of cavities (110, 111) disposed on said web (100), wherein said plurality of cavities (110, 111) comprises at least two cavities (110, 111) that are aligned in said machine direction, preferably wherein said cavities (110, 111) are formed by thermoforming the web (100), and wherein said web (100) is disposed on a rotary drum (150), preferably wherein said at least two cavities (115, 115') are spaced circumferentially on said drum (150);

b) providing a filling apparatus (200), wherein said filling apparatus (200) comprises a plurality of nozzles (210, 211, 212), wherein said plurality of nozzles comprises at least two nozzles (210, 211) that are positioned to dispense a composition (300);

c) dispensing said composition (300) from said at least two nozzles (210, 211) into said at least two cavities (110, 111) while said at least two nozzles (210, 211) move from a first position (FP) to a second position (SP); and

d) returning said at least two nozzles (210, 211) to said first position (FP),
wherein said plurality of nozzles (210, 211, 212) comprises at least two nozzles (210, 211) that are positioned to dispense a composition (300), preferably a household care composition, into said at least two cavities (110, 111), preferably wherein said at least two nozzles (110, 111) are aligned in said machine direction (MD), and ~~characterised in that~~ wherein said plurality of nozzles (210, 211, 212) are positioned on a reciprocating arm (235), wherein said plurality of cavities (110, 111, 112) further comprises at least two cavities (110, 112) aligned in a cross-machine direction (CD); and

wherein said plurality of nozzles (210, 211, 212) further comprises at least two nozzles (210, 212) positioned to dispense a composition (300) into said at least two cavities (110, 112) aligned in a cross-machine direction (CD)."

XIII. Auxiliary requests 3 to 7 do not form part of this decision so that it is unnecessary to reproduce their wording here.

XIV. The arguments of the parties relevant for the decision are dealt with in detail below in the reasons for the decision.

Reasons for the Decision

1. *Main request - patent as granted*

In the decision under appeal, the opposition division decided to reject the oppositions and maintain the patent as granted. At the oral proceedings before the board, the respondent however withdrew its main request (patent as granted).

As the decision is based on a request which no longer forms part of the proceedings, the decision under appeal must be set aside.

2. *Admittance of new auxiliary request 2 - Article 13 RPBA*

2.1 The respondent filed new auxiliary request 2 at the oral proceedings before the board. Both appellants requested that this request not be admitted into the appeal proceedings.

2.2 The respondent argued that under Article 13(3) RPBA it had the right to respond to the change of appellant 2's appeal case regarding the objective technical problem to be solved. The amendments to claim 1 of the new auxiliary request 2 consisted only of the introduction of features from dependent claims as granted and overcame the lack of inventive step objection raised for the withdrawn main request and auxiliary request 1.

2.3 According to appellant 1, irrespective of whether the request should be regarded as a late-filed request or not, it did not *prima facie* overcome the objection of lack of inventive step and should not be admitted for that reason.

In appellant 2's view, the request was filed late and should not be admitted. For appellant 2 it was made clear in the board's communication under Article 15(1) RPBA, point 8.7.5, that the objective technical problem to be solved was to be discussed at the oral proceedings such that there was no justification for filing new requests that late at the oral proceedings, in particular after having waited for the board to give its conclusion on the admittance of the new objective technical problem and lack of inventive step of the subject-matter of claim 1 of the main request and auxiliary request 1.

2.4 The board notes that when a new set of claims, which did not form part of the decision under appeal or the opposition proceedings leading to that decision, is filed for the first time at the oral proceedings before the board, this represents an amendment to the proprietor's appeal case. The admittance of such amendments is at the discretion of the board and is to be considered according to the third level of

convergence set out in the RPBA, namely Article 13(2) RPBA (see Case Law of the Boards of Appeal, 11th edition 2025 (CLB), V.A.4.2.1 and V.A.4.5.1a)).

- 2.5 According to Article 13(2) RPBA, an amendment to a party's appeal case will, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

In the present case, the board had admitted (at the oral proceedings) a new objective technical problem formulated by appellant 2 with respect to the main request.

The justification for the admittance of this amendment was that the board itself had given a preliminary opinion that none of the objective technical problems formulated by the parties appeared to be fully correct (see Article 15(1) RPBA communication, point 8.7, in particular point 8.7.5; see also point V above).

The board is of the view that the rejection in its preliminary opinion of all the previously posed objective technical problems, together with the admittance of the amendment to appellant 2's appeal case, could be considered to be an exceptional circumstance and the filing of a new request was a justified response to this circumstance.

In this respect the board cannot find any convincing reason why the respondent should have filed a new request before the discussion which was to take place at the oral proceedings, as announced by the board in its communication under Article 15(1) RPBA. This is all the more true since the board's preliminary opinion was

in favour of the respondent, albeit based on the previously formulated objective technical problems. At the oral proceedings the discussion on the formulation and admittance of the new objective technical problem and on inventive step of the subject-matter of claim 1 of the main request and auxiliary request 1 was performed without interruption, such that the respondent was able to file a new request only after the board announced its conclusion on said requests.

As the board is of the view that exceptional circumstances exist in the present case, it is unnecessary to consider the respondent's reliance on Article 13(3) RPBA. In any case, the respondent was legitimately entitled to react on the basis of this legal basis, which it did.

2.6 However, the existence of exceptional circumstances is not the sole criterion for admittance of an amendment at the third stage of convergence, it is rather only the first hurdle. A board, when exercising its discretion, may also apply the criteria applicable at the first and second levels of convergence in Articles 12(4) to 12(6) and 13(1) RPBA (see CLB, V.A.4.5.4e)).

2.6.1 Regarding the criteria of Articles 12(4) to (6) RPBA, the board notes that the opposition division rejected the oppositions. There was therefore no possibility for the respondent to have filed further auxiliary requests, which were also admitted by the opposition division, in the opposition proceedings.

Further, the parties did not indicate that the objective technical problem raised by appellant 2 formed part of the opposition proceedings and the board cannot find any reference to this problem in the

written submissions. Therefore the respondent could not have filed requests in reaction to this specific issue during the opposition proceedings.

2.7 Regarding the criteria to be considered under Article 13(1) RPBA, these include whether the amendment *prima facie* overcomes the issues raised without giving rise to new objections; whether the amendment is detrimental to procedural economy; and the complexity of the amendment (see CLB, V.A.4.4.5).

2.7.1 Appellant 1 argued that new auxiliary request 2 did not *prima facie* overcome the inventive step objection regarded as prejudicing maintenance of the patent as granted, as the subject-matter of claim 1 of new auxiliary request 2 was still not inventive.

2.7.2 In the board's view, it is not possible to conclude *prima facie* that the objection would not be overcome. The board and the parties would have for the first time to consider a combination of features which did not form part of the decision under appeal. They would have to consider whether these amendments further distinguished the claimed subject-matter from the closest prior art D1, i.e. were additional to the distinguishing features M4 (in view of M2-2) and M7, as set out in the board's preliminary opinion (see communication pursuant to Article 15(1) RPBA, point 8.6), and confirmed by the board with respect to the withdrawn main request. It might then need to be considered whether these features required a reformulated objective technical problem.

Although in general the onus is on the patent proprietor to demonstrate that its amendment overcomes the issues raised by the other parties (see CLB, V.A.

4.4.5b), first paragraph), the board in the present case was of the view that a *prima facie* assessment could not be done in order to formulate an appropriate objective technical problem based on possible new distinguishing features still to be decided upon, i.e. that the assessment should instead be done thoroughly so as to arrive at a sound decision.

- 2.7.3 Further, although the admittance of the request could be regarded as detrimental to procedural economy, the board is of the view that in the present case, the respondent had to be given the opportunity to react to the amendment to appellant 2's appeal case in order to ensure fairness between the parties.

The board is also of the view that the amendment itself is not complex since it concerns a further specification of the configuration of cavities and nozzles which has been part of the discussion throughout the proceedings.

3. *Remittal (Article 11 RPBA)*

- 3.1 Article 111(1) EPC sets out that a board, after examining the allowability of an appeal, may decide by either exercising any power within the competence of the department which was responsible or by remitting the case to that department. Which of these two options a board chooses will depend on the facts of the case and is at the discretion of the board (see CLB V.A. 9.1.1).

According to Article 11 RPBA, a board should not remit a case unless special reasons present themselves for doing so.

3.2 In the present case, the respondent and appellant 2 requested remittal of the case for further prosecution, whereas appellant 1 requested that the case not be remitted.

3.3 The board decides to remit the case for further prosecution in line with the requests of two of the three parties for the following reasons.

As set out in Article 12(2) RPBA, the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner. New auxiliary request 2 and the amendments made to claim 1 did not form part of the decision under appeal.

The introduction of these new features, together with the admittance into the appeal proceedings of the new objective technical problem formulated by appellant 2, changed the framework of the proceedings. Although there is no absolute right to have every matter examined at two instances, it is established case law that parties should, where possible, be given the opportunity to discuss important elements at two instances (see CLB, V.A.9.2.1, second paragraph).

The board takes the position that in the present case, the burden on the parties and the board to consider and deal with the new issues raised, including all objections and reactions to any new objections, outweighed any possible detriment to procedural economy and it was therefore justified to prolong the procedure in order to allow all parties the right to fully consider and react to the new request.

4. *Request of appellant 2 to record statement of the respondent in the minutes*

4.1 During the discussion on admittance of new auxiliary request 2 at the oral proceedings before the board, appellant 2 requested the inclusion in the minutes of the oral proceedings of a statement made orally by the respondent regarding whether certain embodiments of pouch design could be considered to be within the scope of the independent method claim.

4.2 The board notes that Rule 124(1) EPC requires that the minutes contain the essentials of the oral proceedings and the relevant statements made by the parties. What is "essential" or "relevant" lies within the discretion of the minute writer. It is to be determined by reference to what the board has to decide, and is thus what is essential or relevant for the decision to be taken (CLB, III.C.8.10.1; T 263/05, Reasons 8).

Statements which may be essential or relevant are, for example, an objection under Rule 106 EPC (R 14/09, Reasons 4); the requests of the parties on which a decision is required; and a relevant statement of surrender or abandonment of subject-matter (T 263/05 Reasons 8.5 to 8.8).

By contrast, the arguments of the parties on patentability, including the interpretation of the scope of protection of a claim, are usually not recorded. If such statements are relevant for a decision, they would in any case be apparent from the written decision.

In addition, there is no right of a party to have oral submissions recorded in the minutes (see, for example,

T 1690/22, Reasons 4.12 with reference to several decisions).

In the present case, the alleged statement made by the respondent was neither a request nor was it a statement of surrender or abandonment of subject-matter. It occurred in the context of the discussion on admittance and reflected the respondent's opinion on the scope of protection of the amended claim. The board cannot see that this is essential or relevant within the meaning of Rule 124(1) EPC.

Therefore, appellant 2's request to have a statement of the respondent regarding the scope of protection of claim 1 of new auxiliary request 2 recorded in the minutes of the oral proceedings is refused.

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:



G. Nachtigall

G. Patton

Decision electronically authenticated