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**Datasheet for the decision  
of 27 November 2025**

**Case Number:** T 2044/23 - 3.2.07

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**Language of the proceedings:** EN

**Title of invention:**

CONVEYOR DEVICE FOR CONVEYING FLEXIBLE CONTAINERS ALONG A  
PACKAGING LINE

**Patent Proprietor:**

Mespack, S.L.

**Opponent:**

Pi, Rafael

**Headword:**

**Relevant legal provisions:**

EPC Art. 56, 111(1)  
RPBA 2020 Art. 11

**Keyword:**

Inventive step - main request (no) - auxiliary request (no) -  
defining the technical problem  
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**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

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Case Number: T 2044/23 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 27 November 2025**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
18 October 2023 concerning maintenance of the  
European Patent No. 3744649 in amended form.**

**Composition of the Board:**

**Chairman** G. Patton  
**Members:** V. Bevilacqua  
S. Fernández de Córdoba

## **Summary of Facts and Submissions**

I. Appeals were filed by the patent proprietor and by the opponent against the decision of the opposition division to maintain European patent No. 3 744 649 in amended form.

II. The patent proprietor (appellant) initially requested

- that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, alternatively,
- that the appeal of the opponent be dismissed and the patent be maintained in amended form on the basis of auxiliary request 1 on which the decision under appeal is based,

as a further alternative

- that the case be remitted to the opposition division for further prosecution on the basis of auxiliary requests 2 to 7 filed during opposition proceedings.

The patent proprietor also initially requested that the case be remitted to the opposition division for further prosecution,

if claim 1 of auxiliary request 1 is interpreted as not requiring that the linear guide is coplanar with the vertical axes of the left and right articulations

or

if the objection of added subject-matter raised against auxiliary request 1 is admitted into the appeal proceedings.

The opponent (also appellant) initially requested

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

Since both parties to the proceedings are each both appellant and respondent, they are referred to below, for the sake of better readability, as the patent proprietor and opponent.

III. The following documents, mentioned in the decision under appeal, will be referred to in the present decision:

D1: JP 2018-172140 A  
D1': Translation into English of D1  
D2: US 2016/0176659 A1  
D3: EP 3 321 195 A1.

IV. In preparation for oral proceedings, the board issued a communication pursuant to Article 15(1) RPBA, in which it gave its preliminary opinion that

- the appeal of the patent proprietor was likely to be dismissed,
- the decision under appeal was likely to be set aside,
- the case was likely to be remitted to the opposition division for further prosecution.

V. In response to the board's communication, the patent proprietor submitted a letter dated 22 November 2024 in which they contested the preliminary opinion of the board on the issue of inventive step.

VI. Oral proceedings before the board took place on 27 November 2025.

The final requests of the patent proprietor were

- that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, alternatively,
- that the appeal of the opponent be dismissed and the patent be maintained in amended form on the basis of auxiliary request 1 on which the decision under appeal is based,

as a further alternative

- that the case be remitted to the opposition division for further prosecution on the basis of auxiliary requests 2 to 7 filed during opposition proceedings.

The opponent confirmed its initial requests as final.

At the end of oral proceedings, the final decision was announced.

VII. Granted **claim 1 (main request)**, with the feature numbering used in the decision under appeal (see point II.10 thereof), reads as follows:

1.1 "A conveyor device for conveying flexible containers

- along a packaging line, comprising: a track (1) defining a closed path;
- 1.2 at least one pair of movers (2a, 2b) including a left mover (2a) and a right mover (2b) movably mounted on the track (1) for moving along the path;
  - 1.3 active and reactive (29, 30) elements associated with the track (1) and the left and right movers (2a, 2b) and configured for independently driving and controlling the left and right movers (2a, 2b) along the path;
  - 1.4 at least one pair of gripper arms (3a, 3b) including a left gripper arm (3a) connected to the left mover (2a) and a right gripper arm (3b) connected to the right mover (2b);
  - 1.5 at least one pair of clamps (4a, 4b) including a left clamp (4a) mounted on the left gripper arm (3a) and a right clamp (4b) mounted on the right gripper arm (3b), the left and right clamps (4a, 4b) being configured for gripping a flexible container (5) at opposite side edges thereof with the flexible container (5) in a vertical position
  - 1.6 wherein the closed path defined by the track (1) lays in a horizontal plane and includes straight and curved sections; and
  - 1.7 the left gripper arm (3a) is pivotally connected to the left mover (2a) by a left articulation (6a) about a vertical axis and the right gripper arm (3b) is pivotally connected to the right mover (2b) by a right articulation (6b) about a vertical axis;

the conveyor device being characterized in that:

- 1.8 the left and right gripper arms (3a, 3b) are linked together by a parallelism-keeping mechanism configured for keeping the left and right gripper arms (3a, 3b) mutually parallel and with the left and right clamps

(4a, 4b) facing each other in both the straight and curved sections of the path even when a distance between the left and right articulations (6a, 6b) is varied due to the relative movements of the left and right movers (2a, 2b)."

VIII. **Claim 1 of auxiliary request 1** corresponds to claim 1 of the main request with the following features added at the end of the characterizing portion thereof:

1.9 and in that wherein the parallelism-keeping mechanism comprises a linear guide (8) perpendicular to the left and right gripper arms (3a, 3b) attached to one of the left and right gripper arms (3a, 3b) and a guide follower (9) attached to the other of the left and right gripper arms (3a, 3b) and slidingly coupled to the linear guide (8),

1.10 the linear guide (8) being perpendicular to the vertical axis of the left articulation (6a) and to the vertical axis of the right articulation (6b).

IX. **Claim 1 of auxiliary request 2** corresponds to claim 1 of the main request with the following features added at the end of the characterizing portion thereof:

"and in that a plurality of pairs of clamps (4a, 4b) are provided for gripping a plurality of flexible containers (5), each pair of clamps comprising one left clamp (4a) mounted on the left gripper arm (3a) and one right clamp (4b) mounted on the right gripper arm (3b)".

X. **Claim 1 of auxiliary request 3** corresponds to claim 1 of the main request with the following features added at the end of the characterizing portion thereof:

"and in that the parallelism-keeping mechanism comprises a linear guide (8) perpendicular to the left and right gripper arms (3a, 3b) attached to one of the left and right gripper arms (3a, 3b) and a guide follower (9) attached to the other of the left and right gripper arms (3a, 3b) and slidingly coupled to the linear guide (8), the linear guide (8) being perpendicular to, and intersecting, the vertical axis of the left articulation (6a) and to the vertical axis of the right articulation (6b),"

XI. **Claim 1 of auxiliary request 4** reads as follows  
(features added with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A conveyor device for conveying flexible containers **hanging in a vertical position** along a packaging line, comprising:

a track (1) defining a closed path;

at least one pair of movers (2a, 2b) including a left mover (2a) and a right mover (2b) movably mounted on the track (1) for moving along the path;

active and reactive (29, 30) elements associated with the track (1) and the left and right movers (2a, 2b) and configured for independently driving and controlling the left and right movers (2a, 2b) along the path;

at least one pair of gripper arms (3a, 3b) including a left gripper arm (3a) connected to the left mover (2a) and a right gripper arm (3b) connected to the right mover (2b);

at least one pair of clamps (4a, 4b) including a left clamp (4a) mounted on the left gripper arm (3a) and a right clamp (4b) mounted on the right gripper arm (3b), the left and right clamps (4a, 4b) being configured for gripping a flexible container (5) at opposite side

edges thereof with the flexible container (5) in a vertical position

wherein the closed path defined by the track (1) lays in a horizontal plane and includes straight and curved sections; and

the left gripper arm (3a) is pivotally connected to the left mover (2a) by a left articulation (6a) about a vertical axis and the right gripper arm (3b) is pivotally connected to the right mover (2b) by a right articulation (6b) about a vertical axis;

the conveyor device being characterized in that:

the left and right gripper arms (3a, 3b) are linked together by a parallelism-keeping mechanism configured for keeping the left and right gripper arms (3a, 3b) mutually parallel and with the left and right clamps (4a, 4b) facing each other in both the straight and curved sections of the path even when a distance between the left and right articulations (6a, 6b) is varied due to the relative movements of the left and right movers (2a, 2b),

**and in that the parallelism-keeping mechanism comprises a linear guide (8) perpendicular to the left and right gripper arms (3a, 3b) attached to one of the left and right gripper arms (3a, 3b) and a guide follower (9) attached to the other of the left and right gripper arms (3a, 3b) and slidingly coupled to the linear guide (8), the linear guide (8) being perpendicular to the vertical axis of the left articulation (6a) and to the vertical axis of the right articulation (6b)."**

XIII. **Claim 1 of auxiliary request 5** is based upon claim 1 of auxiliary request 3, whereby the first two lines thereof have been amended as follows (added features

are in bold, emphasis added by the board):

"A conveyor device for conveying flexible containers **hanging in a vertical position** along a packaging line, comprising:"

XIII. **Claim 1 of auxiliary request 6** corresponds to claim 1 of the main request with the following features added at the end of the characterizing portion thereof:

"and in that the parallelism-keeping mechanism comprises a linear guide (8) perpendicular to the left and right gripper arms (3a, 3b) attached to one of the left and right gripper arms (3a, 3b) and a guide follower (9) attached to the other of the left and right gripper arms (3a, 3b) and slidingly coupled to the linear guide (8), the linear guide being perpendicular and coplanar to the vertical axis of the left articulation (6a) and to the vertical axis of the right articulation (6b)."

XIV. **Claim 1 of auxiliary request 7** corresponds to claim 1 of auxiliary request 6, whereby the first two lines thereof have been amended as follows (features added are in bold, emphasis added by the board):

"A conveyor device for conveying flexible containers **hanging in a vertical position** along a packaging line, comprising:"

XV. The main arguments of the parties relevant to the decision are discussed below in the reasons for the decision.

## **Reasons for the Decision**

### ***Appeal of the patent proprietor***

#### 1. Main request

- 1.1 The opposition division found that claim 1 of the main request differed from the conveyor device disclosed in D1 only by the features of its characterizing portion (feature 1.8).

They found that these features lacked a technical effect and formulated the problem to be solved as the the mere provision of an alternative parallelism-keeping mechanism.

They then concluded that an inventive step was missing because D2 teaches a parallelism-keeping mechanism based on feature 1.8, to which the skilled person, looking for an alternative to the parallelism-keeping mechanism of D1, would have readily resorted.

- 1.2 The patent proprietor acknowledges that the features of the characterizing portion of claim 1 (feature 1.8) are the only distinguishing features when starting from the conveyor device depicted in figure 2 of D1 (first embodiment).

- 1.2.1 However, according to the patent proprietor, the opposition division erred in formulating the problem to be solved as the mere provision of an alternative parallelism-keeping mechanism.

This is because, according to the patent proprietor during the oral proceedings before the board, the

opposition division failed to properly acknowledge that the ability to open and close the flexible containers **during motion** along the complete conveying path is an implicit feature of the claimed conveyor device.

In fact, as known by the skilled person and exemplified in paragraphs [0002] and [0003] of D1 (see D1'), this feature is essential in the technical field of conveying flexible containers, which is the field of D1 and of the patent in suit.

Moreover, the opposition division also failed to properly acknowledge that the tilting mechanism (30) disclosed by D1, figure 2, being based on cam rails (45), is unable to effectively maintain parallelism between the arms (23A, 23B) when one of the movers (21A, 21B) enters in the straight section and the other mover (21A, 21B) is still in the curved section of the conveying path.

The patent proprietor emphasizes that, when the above is taken into account, it becomes clear that feature 1.8 has the following effects:

- easily adapting to different sizes of flexible containers,
- opening and closing the flexible containers during motion, and
- maintaining parallelism between the gripper arms throughout the entire path, including straight, curved and transitional sections.

These effects should therefore be reflected in the problem to be solved, which should be formulated as

"how to provide an alternative parallelism-keeping

mechanism, wherein the conveyor device can quickly adapt to different sizes of flexible containers and being adapted to open and close said flexible containers during motion and either in a straight, curved or transition section of the path".

1.2.2 When discussing the combination with D2 the patent proprietor contends that the skilled person aiming to solve the problem formulated above would not even consider the teachings of this document, as it belongs to a remote technical field.

1.2.3 The opposition division also failed to take the teaching of **paragraph [0016]** of D2 into account.

This paragraph clearly states that it is preferable that the gap between the left and right movers remains constant.

This teaching makes clear to any skilled reader that the parallelism keeping mechanism of D2 is inherently incompatible with the conveyor device of D1.

In other words, paragraph [0016], identifying as particularly advantageous that the gap between the movers (retaining elements in D2) remains constant, clearly teaches away from a combination with the conveyor device of D1, which is based on the opposite concept, namely of varying the distance between movers.

This is however, not surprising at all, because as the conveying device of D2 is for conveying rigid boxes this document cannot provide a solution which would be used by a skilled person in the field of conveying flexible containers, where being able to open and close

the container during conveying is a mandatory requirement.

- 1.2.4 In addition, even if the skilled person, disregarding this inherent incompatibility, would still have tried to combine the teachings of D2 with those of D1, such combination would not have resulted in the subject-matter of claim 1 of the main request.

This is because the skilled person would not only have implemented the parallel-keeping mechanism of D2 into D1, but would also have necessarily taken over the movers and the control motion system of D2.

As the movers of D2 are not independently driven and controlled the skilled person would have arrived at a conveyor device missing feature 1.3 and therefore different from the claimed device.

- 1.3 The board is not convinced by the above arguments for the following reasons, put forward by the opponent.

- 1.3.1 The following effects, mentioned by the patent proprietor, of

- easily adapting to different sizes of flexible containers, and
- opening and closing the flexible containers during motion

should not be considered when formulating the problem to be solved.

This is because the patent proprietor has not shown any passage of the patent in suit (and none is apparent to the board) from which it can be derived that the above-

mentioned effects are directly and causally related to the particular parallelism-keeping mechanism claimed (feature 1.8), which is the only distinguishing feature of claim 1.

Furthermore, contrary to the patent proprietor's view, the board is not convinced that claim 1 implicitly comprises the feature of opening and closing the flexible containers "**during motion**" as also put forward by the opponent. The fact that the device of claim 1 has to be suitable for flexible containers (feature 1.1) does not necessarily imply, as argued by the opponent during the oral proceedings before the board, that it has to be conceived for opening and closing the flexible containers "during motion". The board follows the opponent's view that, in case of filling flexible containers with liquid product, as in D1 (see D1', paragraph [0002]), which is not excluded from claim 1 of the main request, filling is best performed when the conveyor device is stopped, not during motion. As a consequence, not only can opening and closing the flexible containers "during motion" not be seen as implicit in claim 1, but it also cannot be seen as a technical effect of the claimed subject-matter.

Finally, as also appearing from the patent proprietor's statement of grounds (point 5.5), paragraphs [0002] and [0003] of D1 (see D1') show that the above-mentioned effects of easily adapting to different sizes of flexible containers and opening and closing the flexible containers are also achieved in D1 such that they cannot be related to the distinguishing feature 1.8.

Finally, with respect to the technical effect mentioned by the patent proprietor in its written submissions of

maintaining parallelism between the gripper arms throughout the entire path, including straight, curved and transitional sections, the board considers that it only reflects what a "parallelism-keeping mechanism" aims to do.

As a consequence of the above, the board is of the opinion that the problem to be solved has been correctly formulated in the decision under appeal (points II.10.1.1 and II.10.1.2) as:

- how to provide an alternative to the parallelism-keeping mechanism disclosed by D1.

- 1.3.2 The board is also not convinced that the skilled person would have disregarded D2 because this document belongs to a different technical field, namely the field of conveying rigid boxes.

The fact that D2 deals with a conveyor device for rigid boxes would not prevent a skilled person from taking its teaching into account because, as the technical problem is to find an alternative parallelism-keeping mechanism, the skilled person would concentrate on this detailed aspect and specifically look for parallelism-keeping mechanisms suitable for being used in the device of D1.

As a matter of fact, and as put forward by the opponent, the skilled person, looking for an alternative parallelism-keeping mechanism for the conveyor device of D1 would immediately realise, from figures 1 and 2 of document D2, and from paragraphs [0029] to [0032] of the description thereof, that D2 does not belong to a remote technical field as alleged by the patent proprietor, but rather to a neighbouring technical field to that of D1 and claim 1 of the main

request, since it also discloses a conveyor device for conveying containers along a packaging line using gripper arms.

In addition D2 also deals with the problem of keeping arms parallel **at all times** while holding containers during conveying, in particular along curved paths.

D2 in fact discloses a mechanism keeping two arms (called "retaining elements" 16 and 18) mutually parallel even when the distance between the left and right articulations (the "base bodies" 12 and 14) is varied due to the relative movements of the left and right movers during transport along both the straight and curved sections of the path, *de facto* including also transitional sections.

This mechanism is described in paragraphs [0032] and [0045] of D2 and comprises all the features of the characterizing portion of claim 1 (feature 1.8).

The board therefore concurs with the opponent (and the decision under appeal) that the skilled person would see the advantages of the teaching of D2 and have no practical difficulties in applying it to the method and system disclosed in D1.

In this way the skilled person would arrive at the subject-matter of claim 1 of the main request without having to exercise any inventive skill.

- 1.3.3 The board is also not convinced that paragraph [0016] of D2, identifying as particularly advantageous that the gap between the movers (retaining elements in D2) remains constant, would teach away from D1 and would prevent the skilled person from implementing feature

1.8 into D1.

As noted by the opponent during the oral proceedings before the board, the specific teaching of paragraph [0016] of D2 is not inherently incompatible with D1, because even if the movements of the first and second movers have to be controlled in D2 in such a way that the gap between the retaining elements remains constant during motion, as argued by the patent proprietor, this gap can however still be varied, for example to adapt to different container sizes, before conveying, which has not been contested by the patent proprietor.

As already discussed under point 1.3.1 above, this variation of the gap in view of opening and closing flexible containers for filling with liquid product as in D1 (see D1', paragraph [0002]) is best performed when the conveyor device is stopped, i.e. not during motion. In fact, the patent proprietor failed to convincingly show that the gap between the movers in D1 has to be varied during motion only. Paragraph [0016] of D2 cannot therefore be seen as teaching away from the combination of the teaching of D2 with that of D1 and, hence, would not prevent the skilled person from implementing the solution disclosed in D2 in the conveyor device of D1.

- 1.3.4 The board is also not convinced that when implementing the parallel-keeping mechanism of D2 into D1 the skilled person would also inevitably have taken the movers of D2 (6, 8) and their control system, thereby arriving at a conveyor system deprived of feature 1.3 (independently driven and controlled left and right movers) and therefore different from the claimed device.

This is because, as convincingly explained by the opponent during oral proceedings before the board, there is no need, when looking for an alternative parallel-keeping mechanism, to also take the movers with their control system, because the parallelism-keeping system (24) of D2 keeps its functionality even if it is applied to movers which are independently driven, such as the movers of D1. In this respect, the patent proprietor failed to provide arguments showing that the way the movers 6 and 8 are driven and controlled in D2, i.e. dependent on each other according to the patent proprietor, is inextricably linked to the parallelism-keeping mechanism disclosed therein.

- 1.3.5 Consequently, the subject-matter of granted claim 1 does not involve an inventive step (Article 56 EPC), the main request cannot be allowed, and the appeal of the patent proprietor is to be dismissed.

***Appeal of the opponent***

2. Interpretation of "perpendicular"

2.1 The opponent argues that the findings of the decision under appeal on claim 1 of auxiliary request 1 are not correct because they are based on an excessively restrictive interpretation of the term "perpendicular" used in feature 1.10 thereof.

This is because the common meaning of "perpendicular", which is also the way in which this term is used in the patent in suit, is that neither mutual intersection nor coplanarity are required.

2.2 The patent proprietor replies that the alternative interpretation of "perpendicular" proposed by the opponent is not correct and that the restrictions imposed on the claimed subject-matter by the term "perpendicular" are evident to a skilled reader.

This is because in feature 1.10 this term is used to define the orientation with respect to geometrical entities (the longitudinal axis of the linear guide and the vertical axes of the left and right articulations).

In this context "perpendicular" requires the intersection of the axes of said entities and therefore also coplanarity thereof.

The skilled person would clearly recognise that this is the correct meaning of "perpendicular" also in the context of the claim, not only because this corresponds to the meaning of this term in the field of tridimensional geometry, but also because this is what is shown in figures 3 to 9 of the patent in suit,

whereby other embodiments, such as those of figures 10 and 11, are clearly excluded.

2.3 The board follows the interpretation of "perpendicular" proposed by the opponent, for the following reasons.

2.3.1 The term "perpendicular" is constantly used, in common language as well as in the patent in suit, in a sense which is broader than the interpretation followed by the patent proprietor, to define the relative position and orientation of components which are not necessarily coplanar.

This can be seen from the description of the first embodiment depicted in figures 1 to 9 (see paragraph [0030]), which is reflected in feature 1.9, according to which the linear guide, which is clearly not coplanar with the gripper arms (see figure 7), is described as being perpendicular to the gripper arms via a guide bar.

This means that a skilled reader would not follow the strict geometrical interpretation proposed by the patent proprietor, but rather consider that two elements are already perpendicular if it is possible to define a 90-degree dihedral angle between them, even if they do not intersect in three-dimensional space.

Only this broader interpretation is consistent with how the term is used throughout the patent description, particularly when describing the relationship between three-dimensional components that may not necessarily intersect.

In other words only this broader interpretation allows for a consistent understanding of the term across

different parts of the patent and encompasses all the embodiments described therein.

The board therefore concurs with the opponent, contrary to the findings of the decision under appeal, point II.11.3.1, that claim 1 should not be construed as requiring coplanarity between the linear guide and the vertical axes of the left articulation and of the right articulation.

3. Auxiliary request 1 - Inventive step of claim 1

3.1 It is undisputed that features 1.9 and 1.10, added to claim 1 of auxiliary request 1, are not disclosed by D1.

The opposition division acknowledged inventive step over the combination D1 with D2 because they found that D2, while teaching feature 1.9, does not teach feature 1.10 and that for this reason the claimed device differs from the combination of D1 and D2 by feature 1.10 (see for instance decision under appeal, point II.11.4.1).

As discussed above these findings were based on the interpretation that feature 1.10 requires that the linear guide, the vertical axis of the left articulation and the vertical axis of the right articulation are coplanar and therefore also intersecting.

3.2 The opponent contests the above findings of the opposition division arguing that under the correct, broad interpretation of "perpendicular", feature 1.10 is also known from D2.

The combination of D1 and D2 would therefore be detrimental to inventive step also of the subject-matter of claim 1 of auxiliary request 1 for the same reasons as discussed above for the subject-matter of claim 1 of the main request.

- 3.3 The patent proprietor did not dispute that D2 discloses feature 1.9 and did not provide any explanation as to why D2 fails to disclose feature 1.10 when "perpendicular" is interpreted as not requiring coplanarity.

The patent proprietor defended inventive step of claim 1 of auxiliary request 1 referring to its arguments already submitted when discussing inventive step of the main request, that D2 belongs to a remote technical field and is incompatible with D1 because paragraph [0016] of D2 teaches away from the claimed invention.

- 3.4 The subject-matter of claim 1 of auxiliary request 1 lacks inventive step, for the following reasons.

As discussed above, the board follows the opponent's interpretation of "perpendicular".

The linear guide (24) shown in figures 1 to 4 of D2 is perpendicular, in the broader sense discussed above, to the vertical axis of the left articulation (20) and to the vertical axis of the right articulation (22) because although these elements do not intersect, it is possible to define a 90-degree dihedral angle between them.

As a consequence of the above, feature 1.10 is disclosed in D2.

As shown in particular in figure 2 of D2, and undisputed by the patent proprietor, feature 1.9 is also disclosed in D2.

Therefore a skilled person, when applying the parallel keeping mechanism of D2 to the conveyor device disclosed in D1 would arrive at a conveyor device comprising features 1.8, 1.9 and 1.10.

The arguments on incompatibility between D1 and D2 raised by the patent proprietor when defending the main request are not convincing for the reasons already discussed above.

The board's position on these matters remains unchanged for auxiliary request 1, also because the patent proprietor has not explained how the broader interpretation of "perpendicular" would have an effect on the lack of compatibility between D1 and D2.

The subject-matter of claim 1 of auxiliary request 1 therefore lacks inventive step (Article 56 EPC) for the same reasons already discussed above in relation to claim 1 of the main request.

The decision under appeal, maintaining the patent on the basis of this request, is therefore to be set aside.

4. Request for remittal
- 4.1 The patent proprietor requested remittal to the opposition division for further prosecution.
- 4.2 The opponent argued against remittal, explaining that there would be no undue burden in examining auxiliary

requests 2 to 7 for the following reasons.

- 4.2.1 The subject-matter of claim 1 of auxiliary request 2 is *prima facie* obvious starting from D1.

The features added to this claim with respect to claim 1 of the main request (see point IX above), although not being disclosed in D1, still do not contribute to inventive step.

This is because as these features are both structurally and functionally unrelated to the distinguishing feature of claim 1 of the main request (feature 1.8), their contribution to inventive step should be discussed separately from the parallelism-keeping mechanism.

Inventive step should be denied, according to the opponent, because these features belong to the common general knowledge of the skilled person as a known measure for conveying more than one container at once.

In this context the opponent explained that document D3 had only been cited as a proof of the alleged common general knowledge and that the lack of synergy between the effects of the two distinguishing features, justifying the partial problems approach, was *prima facie* evident.

- 4.2.2 Concerning the remaining auxiliary requests (except for auxiliary request 4) the opponent argued that because of the interpretation of "perpendicular" used by the opposition division, the decision under appeal already dealt with situations in which the linear guide is not only perpendicular, but also coplanar to the vertical axis of the left articulation and to the vertical axis

of the right articulation and therefore intersecting therewith.

- 4.3 The request for remittal for further prosecution is allowed, because discussing auxiliary requests 2 to 7 would involve an undue burden, for the following reasons.
- 4.3.1 The opponent raises an objection of lack of inventive step against claim 1 of auxiliary request 2, which in view of the above summarized arguments of the opponent shows clearly that a discussion of inventive step on auxiliary request 2 would require taking into account a new distinguishing feature; a discussion on whether this feature has synergy with feature 1.8; the introduction of a possible new technical effect; the formulation and discussion of a possible new problem to be solved; and possibly also the discussion of the disclosure of D3 as a potential new secondary document and of the skilled person's common general knowledge.
- 4.3.2 The opponent also argues that the features added to claim 1 of each of auxiliary requests 3 to 7 are not based on the originally filed documents. In particular the opponent contests that for auxiliary requests 3, 5, 6 and 7 the drawings provide the basis for the amendments, contrary to the patent proprietor's arguments when submitting these requests (see letter of 19 July 2023, points 5.2, 7.1, 8.2, 9.1).

The board notes that no issue of added subject-matter has been dealt with in the decision under appeal at all, and in particular that the objection of added subject-matter raised against claim 1 of the first auxiliary request was not admitted by the opposition

division (decision under appeal, II.11.2).

- 4.3.3 Article 11 RPBA foresees that a board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so.

However, as discussed in section 2 above, the board interprets "perpendicular" in a substantially broader sense than in the decision under appeal such that the subject-matter of claim 1 of auxiliary request 1 is found to lack inventive step, whereas the decision under appeal had found this claim allowable.

This means that the factual framework of the case has fundamentally changed and that the board would have to assess the patentability and added subject-matter of the subject-matter of claim 1 of auxiliary requests 2 to 7 on the basis of this new interpretation of the claim wording for the first time, taking also into consideration that these auxiliary requests have not been addressed in the decision under appeal, nor the objections raised against them by the opponent in the appeal proceedings, contrary to the primary object of the appeal proceedings to review the decision under appeal in a judicial manner as specified in Article 12(2) RPBA.

According to the established case law (Case Law of the Boards of Appeal, 11th Edition, 2025, V.A.9.3.2 d)) this amounts to a fresh case, and that alone constitutes special reasons justifying the remittal of the case to the department of first instance for further prosecution, in accordance with the provision of Article 11 RPBA and Article 111(1) EPC.

**Order**

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

**The decision under appeal is set aside.**

**The case is remitted to the opposition division for further prosecution.**

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated