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**Datasheet for the decision  
of 27 March 2026**

**Case Number:** T 0377/24 - 3.3.03

**Application Number:** 15828598.1

**Publication Number:** 3234058

**IPC:** C09J153/00, B65D21/02

**Language of the proceedings:** EN

**Title of invention:**  
PACKS OF METAL CONTAINERS

**Patent Proprietor:**  
H. B. Fuller Company

**Opponents:**  
Henkel AG & Co. KGaA  
Bostik SA

**Relevant legal provisions:**  
EPC Art. 56  
RPBA 2020 Art. 13(2)

**Keyword:**  
Inventive step - all requests (no)  
Amendment after summons - taken into account (yes)

**Decisions cited:**

T 0939/92



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Case Number: T 0377/24 - 3.3.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.03**  
**of 27 March 2026**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted/  
electronically transmitted on 8 January 2024  
concerning maintenance of the European Patent  
No. 3234058 in amended fo rm.**

**Composition of the Board:**

**Chairman**            M. Barrère  
**Members:**            O. Dury  
                              L. Basterreix

## **Summary of Facts and Submissions**

I. The appeal by opponent 2 lies from the interlocutory decision of the opposition division concerning maintenance of European patent No. 3 234 058 in amended form according to the claims of auxiliary request I filed with letter of 20 September 2023 and an adapted description.

II. The following documents were, among others, cited in the decision under appeal:

D2: US 5 331 038

D23: Declaration of A. Mansour, dated  
2 December 2021 (one page)

III. The decision under appeal was based on a main request and on auxiliary request I filed with letter of 20 September 2023. As far as relevant to the present case, the following conclusions were reached in the decision under appeal:

- The main request was not allowable.
- The subject-matter of the claims of auxiliary request I involved an inventive step when D2 was taken as the closest prior art.

For these reasons and since none of the other objections raised against auxiliary request I were successful, the patent as amended on the basis of auxiliary request I was held to meet the requirements of the EPC.

- IV. Opponent 2 (appellant) lodged an appeal against this decision.
- V. With the rejoinder to the statement of grounds of appeal, the patent proprietor (respondent) filed six sets of claims as main request and auxiliary requests 1 to 5. The respondent simultaneously filed document D23 anew as well as comparative tests 1 and 2 that they had already filed during the opposition proceedings (rejoinder: page 24; see also patent proprietor's letter of 10 December 2021: pages 16-17).
- VI. The parties were summoned to oral proceedings and a communication pursuant to Article 15(1) RPBA indicating specific issues to be discussed at the oral proceedings was then sent to the parties.
- VII. The party as of right (opponent 1) indicated with letter of 19 September 2025 that they would not attend the oral proceedings.
- VIII. Oral proceedings were held on 27 March 2026. The party as of right was, as announced, not represented.
- IX. The **final requests** of the parties were as follows:
- (a) The appellant requested that the decision of the opposition division be set aside and that the patent be revoked. The appellant further requested that the respondent's new arguments on the inventive step of the main request submitted with the letter of 26 February 2026 not be admitted into the proceedings.
  - (b) The respondent requested that the appeal be dismissed (main request) or, in the alternative,

that the patent be maintained in amended form according to any of auxiliary requests 1 to 5 filed with the rejoinder to the statement of grounds of appeal.

(c) No requests were filed by the party as of right.

X. Claim 1 of the **main request** reads as follows

"1. A container pack comprising a plurality of metal containers, wherein the metal containers are bonded to each other with a hot melt adhesive composition comprising based on the total weight of the hot melt adhesive composition:

- a) from 10 to 50 weight percent of at least one block copolymer;
- b) from 15 to 50 weight percent of at least one plasticizer;
- c) from 20 to 45 weight percent of at least one resin;
- d) optionally up to 25 weight percent of at least one semi crystalline polyolefin; and
- e) optionally up to 10 weight percent of at least one wax;

wherein the at least one block copolymer has a triblock, radial or multiblock content of less than 20 weight percent based on the total weight of the hot melt adhesive composition, and wherein the at least one block copolymer is a styrenic block copolymer."

XI. Claim 1 of **auxiliary request 1** differs from claim 1 of the main request in that the following feature is added at the end of the claim:

**"and wherein the total amount of block copolymers in the hot melt adhesive composition is from 10 to 50 weight percent, based on the total weight of the hot melt adhesive composition".**

XII. Claim 1 of **auxiliary request 2** differs from claim 1 of the main request in that the amount of the at least one block copolymer a) is limited to **"from 17 to 40 weight percent"** (instead of "from 10 to 50 weight percent").

XIII. Claim 1 of **auxiliary request 3** corresponds to claim 1 of auxiliary request 1, further amended in the same manner as claim 1 of auxiliary request 2.

XIV. Claim 1 of **auxiliary request 4** corresponds to claim 1 of auxiliary request 2, further amended in that the at least one block copolymer defined therein should have a triblock, radial or multiblock content of **"less than 15 weight percent"** based on the total weight of the hot melt adhesive composition (instead of "less than 20 weight percent").

XV. Claim 1 of **auxiliary request 5** differs from claim 1 of auxiliary request 4 in that the following feature is added at the end of the claim:

**"and wherein the total amount of block copolymers in the hot melt adhesive composition is from 17 to 40 weight percent, based on the total weight of the hot melt adhesive composition".**

XVI. The submissions of the appellant and of the respondent, insofar as they are pertinent, may be derived from the reasons for the decision below. The points of dispute were as follows:

- The admittance into the proceedings of certain arguments put forward by the respondent in their letter of 26 February 2026.
- The question of inventive step of the subject-matter of claim 1 of each of the main request and of auxiliary requests 1 to 5 when example 19 of D2 was taken as the closest prior art.

XVII. The party as of right did not make any substantive submissions during the appeal proceedings.

## **Reasons for the Decision**

### **Main request (auxiliary request I allowed by the opposition division)**

1. It was undisputed that the main request filed by the respondent with the rejoinder to the statement of grounds of appeal is identical to auxiliary request I allowed by the opposition division. The Board sees no reason to take a different view.
2. Admittance of arguments - Article 13(2) RPBA
  - 2.1 At the beginning of the oral proceedings before the Board, the appellant requested that the arguments put forward by the respondent in points 66 to 68 and 71 to 78 of their letter of 26 February 2026 not be admitted

into the proceedings. According to the appellant, these arguments had never been put forward before and there was no reason justifying their filing at such a late stage in the appeal proceedings. Therefore, these submissions constituted an amendment to the respondent's case which should not be taken into account.

2.2 Points 66 to 68 and 71 to 78 of the respondent's letter of 26 February 2026 concern the meaning of the features specified in claim 1 of D2 with regard to the amounts of resins (b) and (c) defined therein and the relevance of these passages for the corresponding feature defined in feature c) of claim 1 of the main request. After having heard the parties' submissions, the Board was satisfied that the respondent's submissions were directed to a further development of arguments that remained within the framework of their line of defence put forward in writing regarding inventive step of claim 1 of the main request in view of example 19 of D2 as the closest prior art (no "fresh case"). Therefore, there was no reason for the Board to disregard these arguments pursuant to Article 13(2) RPBA. In addition, given that the Board's conclusion on inventive step is favourable to the appellant, there is no need for the Board to provide any more details here on the issue of the admittance of these arguments.

3. Article 56 EPC

3.1 Closest prior art- Starting point - Distinguishing features

3.1.1 D2 concerns adhesives for joining containers into cluster packages so as to eliminate the necessity for a plastic ring type carrier. More particularly, D2

relates to a method of joining two or more containers together so as to ensure controlled adhesion, i.e. each container can be removed individually without the cluster package losing its integrity (D2: column 1, lines 5-11; column 2, lines 12-19). Suitable adhesive compositions are disclosed in particular in claim 1 and in the examples of D2.

3.1.2 Claim 1 of D2 is directed to an adhesive for joining containers into cluster packages from which individual containers can be easily removed, consisting of:

(a) 100 parts of a linear hydrogenated triblock copolymer of a vinyl aromatic hydrocarbon and conjugated diene which has a coupling efficiency of greater than 45% and a peak molecular weight of 50,000 to 150,000,

(b) 30 to 110 parts of an endblock resin having a weight average molecular weight of from 1000 to 10000, and

(c) 80 to 210 parts of a hydrogenated hydrocarbon resin having a softening point below 35° C;

wherein the following relationships are satisfied:

$$H - 1.6E < 93$$

$$H + 1.3E > 175$$

$$H + 6.8E < 854$$

where H is the amount of hydrocarbon resin and E is the amount of endblock resin.

3.1.3 Example 19 of D2 is directed to a hot melt adhesive composition which is used to bond aluminium cans and is disclosed as providing the highest possible rating in terms of a separation test (D2: column 7, lines 30-32; table 4, rating of "5" at 73°F = 23°C, see rating scale specified in the paragraph bridging columns 7 and 8; column 9, lines 13-16). This adhesive composition is made up of:

- A total amount of 100 phr (parts per hundred rubber) of a mixture of two copolymers A and B as defined in column 6, lines 58-65 of D2, that are according to feature (a) of claim 1 of D2;
- 40 phr of resin KRISTALEX 1120 and 140 phr of resin REGALREZ 1018 (D2: column 7, lines 3-11) according to features (b) and (c), respectively, of claim 1 of D2.

It was undisputed that the composition according to example 19 of D2 is according to claim 1 of D2 and meets all the requirements defined therein, in particular in respect of the amounts of resins (b) and (c) (absolute amount of each resin; additional requirements regarding the relative amounts of these resins as defined by the three inequations).

3.1.4 It was common ground that the adhesive composition defined in claim 1 of the main request differs from the one according to example 19 of D2 in the following features:

- i) The mandatory presence of a plasticizer in an amount of 10-50 wt.% (whereas the composition used in example 19 of D2 contains no plasticizer);

ii) A lower amount of resin c) (20-45 wt.% in operative claim 1 vs. 64 wt.% for the total amount of resins (b) and (c) in example 19 of D2).

In that regard, it was undisputed, in particular during the oral proceedings before the Board, that the adhesive composition according to example 19 of D2 meets all the requirements related to the definition of the at least one block copolymer a) according to claim 1 of the main request. The Board agrees. In light of the definition of the term "coupling efficiency" given in column 5, lines 7-47 of D2, the Board in particular shares the appellant's analysis regarding the disclosure of D2 in terms of triblock content in the examples of D2, according to which the adhesive composition according to example 19 of D2 has a triblock content of 18.2 weight percent based on the total weight of the whole adhesive composition (statement of grounds of appeal: footnote 4 on page 22 and table on page 24).

3.2 Problem effectively solved over the closest prior art

3.2.1 The question of how the technical problem effectively solved over example 19 of D2 is to be formulated was a point of contention between the parties.

a) The respondent considered that the examples of the patent in suit together with D23 and comparative tests 1 and 2 according to page 24 of the rejoinder showed that the technical problem solved by claim 1 of the main request resided in the provision of an alternative hot-melt adhesive and container pack for reliably bonding metal containers into packs while allowing easy separation of the containers (rejoinder: points 90-109; letter of 26 February 2026: point 58).

During the oral proceedings, the respondent confirmed that, as indicated in their last written submission, they considered that the problem effectively solved by claim 1 of the main request over example 19 of D2 resided in the provision of an alternative container pack comprising an adhesive composition with good adhesive properties, i.e. without any improvement over the closest prior art being claimed to be achieved.

b) The appellant argued that it was not credible that any effect was achieved over the whole scope of the claim (statement of grounds of appeal: section 7.2). In addition, the respondent had neither carried out a direct comparison between the subject-matter being claimed and example 19 of D2, nor demonstrated that any effect could be causally related to the above indicated distinguishing features (statement of grounds of appeal: section 7.3.1). Therefore, according to the appellant, the problem solved resided in the mere provision of an alternative adhesive composition for bonding metal containers.

3.2.2 Although the appellant's arguments did not convince the Board (mainly for the reasons indicated in points 12.2.2 and 12.2.3 of the Board's communication pursuant to Article 15(1) RPBA), the Board arrived at the conclusion that an inventive step was not to be acknowledged even if, to the respondent's benefit, their formulation of the problem effectively solved over the closest prior art was considered to be valid. Under these circumstances, there is no need for the Board to elaborate any further on that issue in the present decision, i.e. it is considered hereinafter that the technical problem effectively solved over example 19 of D2 resides in the provision of a container pack with a reliable bond between metal

containers while simultaneously allowing easy separation of the containers as an alternative to the one according to example 19 of D2 (which is referred to hereinafter as to provide a suitable alternative to example 19 of D2).

### 3.3 Obviousness

3.3.1 The question remains to be answered whether the skilled person, desiring to solve the problem identified above, would, in view of the closest prior art, possibly in combination with other prior art or with common general knowledge, have modified the disclosure of the closest prior art in such a way as to arrive at the claimed subject matter.

3.3.2 In the present case, the appellant's objection was based on the sole disclosure of D2 (statement of grounds of appeal: top of page 20 and first half of page 21; oral proceedings before the Board).

#### *Distinguishing feature i) - Plasticizer*

3.3.3 Regarding the distinguishing feature i) as identified in section 3.1.4 above, the Board agrees with the appellant that, in view of the indication in column 6, lines 20-30 of D2 that the adhesive compositions of D2 may contain plasticizers in an amount of 10 to 100 phr, preferably 0 to 60 phr, it was obvious to a skilled person wishing to provide a further adhesive composition/container pack as an alternative to the one according to example 19 of D2, to add a plasticizer to this composition, in particular in an amount of 15-50 weight percent (based on the whole composition) as specified in feature b) of claim 1 of the main request.

The reasons are as follows.

- 3.3.4 The respondent and the opposition division held that example 1 of D2 taught away from using any plasticizer (rejoinder: point 128; decision: top of page 13 and paragraph bridging pages 13 and 14). In particular, since claim 1 of D2 was drafted in a closed manner ("consisting of"), any additional components other than the ones specified therein were excluded. In addition, example 1 of D2 was the sole example of D2 comprising a plasticizer but it led to unsatisfactory performances.

However, these arguments were not persuasive already in view of the passage at column 6, lines 20-30 of D2, in which it is explicitly stated that plasticizers may be used in the adhesive composition "of the instant invention". The fact that claim 1 of D2 excludes plasticizer (in view of the wording "consisting of") does not constitute a valid reason to disregard the clear and unambiguous passage at column 6 and provides no cause to exclude the combination of this passage with the disclosure of example 19 of D2. In addition, the Board considers that the fact that example 1 of D2, which is the sole example carried out with a plasticizer, did not perform well (D2: table 3; column 9, lines 14-16) does not teach away from the use of plasticizers in the compositions according to D2. Rather, the Board agrees with the appellant that what example 1 of D2 shows is that a combination of two resins in specific amounts (as defined in features (b) and (c) of claim 1 of D2 but which is not the case in example 1 of D2) is essential in order to provide satisfactory adhesive compositions (statement of grounds of appeal: page 18, third paragraph). For similar reasons, also the consideration of the

opposition division that example 1 of D2 would indicate that a high content of triblock would be necessary does not convince (statement of grounds of appeal: page 21, third full paragraph).

- 3.3.5 In these circumstances, it was undisputed that adding plasticizers to the adhesive composition according to example 19 of D2 in an amount at the higher end of the range of 0 to 100 phr disclosed in column 6, lines 20-30 of D2 allowed to prepare adhesive compositions comprising a plasticizer in the content range defined in feature b) of claim 1 of the main request.

*Distinguishing feature ii) - Amount of resin(s)*

- 3.3.6 Regarding the distinguishing feature ii) as identified in section 3.1.4 above, the appellant showed in the statement of grounds of appeal (page 20, first full paragraph to top of page 21) that a composition consisting of the following components is both according to the teaching of D2 as a whole (i.e. adhesive compositions in which plasticizers may be present) and according to claim 1 of the main request:

- 100 phr of the same mixture of copolymers A and B as the one used in example 19 of D2;
- 100 phr plasticizers (see D2: column 6, lines 20-30);
- 155 phr of resins, consisting in 75 phr of KRISTALEX 1120 (resin (b) according to D2) and 80 phr of REGALREZ 1018 (resin (c) according to D2), which are the two resins also used in

example 19 of D2 (albeit in different amounts).

As shown by the appellant, such a composition comprises in weight percent based on the whole composition:

- 28.17 wt.% copolymers according to feature a) of claim 1 of the main request;
- 28.17 wt.% plasticizer according to feature b) of claim 1 of the main request;
- 43.66 wt.% resins according to feature c) of claim 1 of the main request;

such that the triblock content is 14.37 wt.% as defined in claim 1 of the main request.

(a) Although the respondent argued in writing that the teaching of D2 regarding the components making up the adhesive composition disclosed therein was incompatible with the requirements specified for the adhesive composition according to claim 1 of the main request (letter of 26 February 2026: "second conclusion" of point 69; points 76-78), this line of defence was not pursued further during the oral proceedings before the Board. In particular, in reply to a question of the Board, they acknowledged that, should it be considered that document D2 allowed that up to 100 phr plasticizers be present in the adhesive compositions according to claim 1 of document D2, it was possible to arrive at an adhesive composition according to claim 1 of the main request. However, according to the respondent, the region of overlap between this disclosure of document D2 and claim 1 of the main request was

relatively small (minutes: top of page 2). In these circumstances, in light of the disclosure of D2 as a whole and of the conclusion reached in point 3.3.3 above that D2 allows the presence of up to 100 phr plasticizer in the adhesive compositions taught therein, the Board also considers that there is no incompatibility between the definition of the adhesive disclosed in D2 as a whole and the definition of the adhesive composition according to claim 1 of the main request. In other words, as acknowledged by the respondent during the oral proceedings before the Board, there is an overlap between the definition of the adhesive composition of D2 comprising an amount of plasticizers in the higher end of the range taught therein and the one according to claim 1 of the main request.

- (b) Therefore, starting from the adhesive composition according to example 19 of D2, the appellant have shown that it is possible to arrive at a composition according to claim 1 of the main request by adding thereto an amount of plasticizer in the higher end of the range disclosed in D2 while simultaneously modifying the amounts of both resins KRISTALEX 1120 and REGALREZ 1018 present therein (whereby still meeting all the requirements taught in D2 in terms of the amounts of these resins as defined by the ranges of absolute amounts and three inequations specified in claim 1 of D2). Accordingly, since the problem to be solved resides in the provision of a suitable alternative to D2 (i.e. an alternative container pack with a reliable bond between metal containers while simultaneously allowing easy separation of the containers, as is already the case in example 19 of D2: see point 3.2.2 above), the Board agrees with the

appellant that, starting from the adhesive composition according to example 19 of D2, it was obvious to solve the problem posed by adding thereto a sufficient amount of plasticizer while modifying the amounts of both resins present in accordance with the overall teaching of D2 (statement of grounds of appeal: page 20, starting from the second full paragraph to top of page 21; oral proceedings before the Board).

- (c) In reaching the above conclusion, the Board agrees with the appellant (statement of grounds of appeal: page 21, second full paragraph) that, since the objective problem resides in the provision of a suitable alternative to the closest prior art, there is no need for a pointer in said prior art to the combination of features according to claim 1 of the main request. Rather, it is sufficient to show that the (missing) distinguishing feature(s) constitute(s) an arbitrary selection within a host of available alternatives. Indeed, the established decisive principle governing the answer to the question as to what a person skilled in the art would have done depends on the result they wished to obtain (T 939/92: point 2.5.3 of the reasons). Therefore, in the present case, it only has to be assessed if the alternatives that were effectively made available by the disclosure of D2 fall under the scope of claim 1 of the main request, which was found to be the case for the reasons outlined above.

3.3.7 The respondent and the opposition division held that the fact that all the examples of D2 had been carried out using a total amount of resins higher than the one specified in feature c) of claim 1 of the main request

taught away from using resin(s) in an amount within the range specified in claim 1 of the main request (rejoinder: point 128; reasons: top of page 13).

However, this argument is not persuasive as it is not in accordance with the whole disclosure of D2 (see in particular claim 1 and column 5, line 55 to column 6, line 19), which - as shown by the appellant - allows amounts of resins within the range specified in claim 1 of the main request.

- 3.3.8 In their latest submission (point 1.1.3.c), the respondent argued that while D2 did not teach that the triblock content of the whole adhesive composition was a decisive parameter, the present invention did. Therefore, according to the respondent, the technical concept underlying the present invention was not obvious.

However, the feature defining the amount of triblock specified in claim 1 of the main request is already met by example 19 of D2 and, for that reason, cannot contribute to an inventive step. In addition, it was shown by the appellant that a triblock content below 20 weight percent (as defined in claim 1 of the main request) was within the ambit of D2 (see table on page 24 of the statement of grounds of appeal, in which several examples illustrative of the teaching of D2 are shown to meet this requirement). Finally, as already indicated in point 3.3.6 above, the appellant also showed that such adhesive compositions with a triblock content below 20 weight percent could be achieved by an obvious modification of example 19 of D2 carried out on the basis of the disclosure of D2 as a whole (statement of grounds of appeal: page 20 and top of page 21). Accordingly, the skilled person looking for a suitable

alternative adhesive composition would have no reason to disregard compositions with a triblock content below 20 weight percent. For these reasons, this argument of the respondent did not succeed.

3.3.9 During the oral proceedings before the Board, the respondent argued that, in view of the above, several modifications of the adhesive composition according to example 19 of D2 were necessary in order to arrive at the subject-matter of claim 1 of the main request. The respondent further pointed out that the various modifications that were necessary in order to arrive at the subject-matter of claim 1 of the main request required to work in three extreme domains, namely:

- an absolute amount of resin (c) of 80 phr, which was at the lower end of the range specified in claim 1 of D2;
- an absolute amount of resin (b) of 75 phr, which was in the lower end of the range of resin (b) that was necessary for inequation  $H + 1.3E > 175$  according to claim 1 of D2 to be met;
- an amount of plasticizer in the higher end of the range disclosed in column 6, lines 29-30 of D2.

Therefore, according to the respondent, although such modifications were theoretically possible, they would not have been considered by the skilled person (could/would approach and/or non-obvious alternative).

a) However, to provide a suitable alternative to the adhesive composition/container pack according to example 19 of D2, the skilled person would contemplate any variation of this embodiment that is within the

ambit of D2. Since the modifications of the closest prior art that are required in order to arrive at the subject-matter of claim 1 of the main request are held to be obvious in light of D2 itself for the reasons indicated above, the subject-matter of said claim 1 can be arrived at by routine measures following the disclosure of D2. For these reasons, the skilled person does not need a good reason to do these modifications because the fact that these modifications are encompassed by the teaching of D2 itself is sufficient to render the - alternative - adhesive composition/ container pack being claimed obvious.

b) In their letter of 26 February 2026 (point 100) and during the oral proceedings before the Board, the respondent further pointed out that for instance examples 14 and 18 of D2 had, according to the appellant (table on page 19 of the statement of grounds of appeal), a triblock content lower than 20 weight percent but did not lead to satisfactory performances. On that basis, according to the respondent, the skilled person would not consider it obvious to prepare adhesive compositions with an amount of triblock lower than 20 weight percent (see also points 126 and 127 of the respondent's letter of 26 February 2026, in respect of auxiliary request 4).

However, it is derivable from D2 that examples 14 and 18 thereof are not in accordance with the teaching of D2 (see D2: column 9, lines 14-16, according to which only examples 6, 8, 11-13, 15-17, 19, 20 and 22 are formulations "of this invention"). Also, it was not shown by the respondent that the skilled person would have any reason to consider that this statement of D2 was not correct and also the Board sees no reason to deviate from this view. Therefore, this argument did

not convince.

c) In addition, the respondent's submissions provide no cause for the Board to consider that the skilled person would have had any reasons to disregard any adhesive compositions that is within the ambit of D2, in particular the modifications of example 19 of D2 relied upon by the appellant. Therefore, the Board does not share the view of the respondent that the skilled person seeking for a suitable alternative to example 19 of D2 would have disregarded the composition relied upon by the appellant or any other (similar) composition according to the overlap between the disclosure of D2 as a whole and claim 1 of the main request.

d) For these reasons, the respondent's arguments did not convince.

3.3.10 In view of the above, the Board considers that it was obvious to solve the problem posed in light of the disclosure of D2 itself, namely by adding to the adhesive composition of example 19 of D2 an amount of plasticizer in the higher end of the range disclosed therein while modifying the amounts of both resins present in accordance with the teaching of D2 in that respect so as to arrive at a composition that meets all the requirements of claim 1 of the main request.

3.3.11 Consequently, the subject-matter of claim 1 of the main request does not involve an inventive step when example 19 of D2 is taken as the closest prior art and the main request as a whole is not allowable.

**Auxiliary requests 1 to 3**

4. In their latest written submission and during the oral proceedings before the Board, the respondent explicitly agreed that the amendments made in claim 1 of each of auxiliary requests 1 to 3 were not suitable to overcome an objection of lack of inventive step that would be retained against the main request (letter of 26 February 2026: point 113; minutes: page 2, last full paragraph). In these circumstances, auxiliary requests 1 to 3 can only share the same fate as the main request regarding inventive step. Therefore, auxiliary requests 1 to 3 are not allowable because the subject-matter of claim 1 of each of these requests does not involve an inventive step when example 19 of D2 is taken as the closest prior art.

**Auxiliary request 4**

5. Inventive step
- 5.1 Claim 1 of auxiliary request 4 differs from claim 1 of the main request in that:
- (a) The amount of the at least one block copolymer a) is limited to "from 17 to 40 weight percent" (instead of "from 10 to 50 weight percent").
  - (b) The content of triblock, radial or multiblock is limited to "less than 15 weight percent ..." (instead of "less than 20 weight percent ...").

5.2 It was common ground that:

- Above amendment (a) did not constitute an additional distinguishing feature (as compared to claim 1 of the main request) over the disclosure of example 19 of D2 (respondent's letter of 26 February 2026: point 118).
- Due to above amendment (b), the subject-matter of claim 1 of auxiliary request 4 further differed (as compared to claim 1 of the main request) from the disclosure of example 19 of D2 in that the content of triblock should be lower (less than 15 weight percent based on the whole adhesive composition in claim 1 vs. 18.2 weight percent in example 19 of D2; see appellant's letter of 28 February 2025: section 5, fourth paragraph).

5.3 The respondent further agreed that the problem effectively solved over example 19 of D2 remained the same as the one identified above in respect of claim 1 of the main request (respondent's letter of 26 February 2026: points 119 and 120; oral proceedings before the Board). Also the appellant had no different or additional arguments in this respect as compared to the main request. Therefore, the problem effectively solved over example 19 of D2 is the same as that identified in section 3.2.2 above.

5.4 Regarding the obviousness of the solution, the respondent argued that D2 provided no teaching to control the content of triblock/radial/multiblock, let alone to limit it to the range below 15 weight percent. To the contrary, the examples of the patent in suit together with comparative tests 1 and 2 on page 24 of the rejoinder showed that adhesives as claimed with a

triblock/radial/multiblock contents below about 15 weight percent were associated with robust bundled-can performance, while raising the triblock content towards or above 20 wt% led to markedly poorer results, especially at 5°C (respondent's letter of 26 February 2026: whole point 2.4.2; oral proceedings before the Board).

- 5.4.1 However, as argued by the appellant, the adhesive composition according to example 20 of D2 is illustrative of the teaching of claim 1 of D2 and exhibits a triblock content of 13.7 weight percent (statement of grounds of appeal: table on page 24). Accordingly, the Board agrees with the appellant that the skilled person seeking a suitable alternative adhesive composition/container pack to the one according to example 19 of D2 would have had no reason to disregard adhesive compositions with a triblock content below 15 weight percent as specified in claim 1 of auxiliary request 4 (appellant's letter of 28 February 2025: page 11, middle of the last paragraph). In addition, the Board arrived at the conclusion that it was obvious to arrive at an adhesive composition/container pack according to claim 1 of the main request in light of the disclosure of D2 itself. This conclusion was reached considering that an adhesive composition as defined in claim 1 of the main request could be obtained in an obvious manner by modifying the composition according to example 19 of D2 on the basis of the disclosure of D2 as a whole. As pointed out by the appellant (letter of 28 February 2025: bottom of page 11 to top of page 12; oral proceedings before the Board), it was concluded that, on that basis, the skilled person could arrive in an obvious manner to an alternative adhesive composition with a triblock content of 14.37 weight

percent (based on the whole adhesive composition; see statement of grounds of appeal: page 21, first line and point 3.3.6 above), i.e. to a modified composition according to claim 1 of auxiliary request 4. Therefore, following the same reasoning as for the main request, the same conclusion regarding obviousness is bound to be valid for the subject-matter of claim 1 of auxiliary request 4.

5.4.2 In addition, regarding the respondent's argument under obviousness that the choice of a triblock content below 15 wt% was associated with robust bundled-can performance, the Board shares the appellant's view that there is no evidence on file that this additional distinguishing feature was shown to be related to any technical effect (appellant's letter of 28 February 2025: page 11, beginning of the last paragraph). In particular, as shown by the appellant during the oral proceedings before the Board, while the comparative tests 1 and 2 according to page 24 of the statement of grounds of appeal are the sole examples on file directed to an adhesive composition with a triblock content above 15 weight percent, these compositions do not only differ from any of the adhesive compositions E1 to E10 of the patent in suit in the fact that they have a triblock content of more than 15 weight percent. Also, these compositions are not illustrative of the teaching of D2, let alone of example 19 thereof. Therefore, the evidence on file do not allow to conclude that the additional distinguishing feature (triblock/radial/multiblock content below 15 wt%) is causally related to any technical effect.

5.4.3 For these reasons, it is agreed with the appellant that the fact that the subject-matter of claim 1 of

auxiliary request 4 differs from the disclosure of example 19 of D2 in an additional distinguishing feature does not alter the conclusion on (lack of) inventive step reached for claim 1 of the main request.

- 5.4.4 In view of the above, the subject-matter of claim 1 of auxiliary request 4 does not involve an inventive step when example 19 of D2 is taken as the closest prior art. Therefore, auxiliary request 4 is not allowable.

**Auxiliary request 5**

- 5.5 In their latest written submission and during the oral proceedings before the Board, the respondent agreed that the amendment made in claim 1 of auxiliary request 5 was not suitable to overcome an objection of lack of inventive step in view of example 19 of D2 that would be retained against claim 1 of auxiliary request 4 (letter of 26 February 2026: point 113; minutes: paragraph bridging pages 2 and 3). Therefore, the subject-matter of claim 1 of auxiliary request 5 does not involve an inventive step in view of example 19 of D2 as the closest prior art and auxiliary request 5 is not allowable.

- 5.6 In these circumstances, there is no need to address the question of the admittance of auxiliary request 5, which was contested by the appellant (letter of 28 February 2025: section 6).

6. Since none of the respondent's requests is allowable, the decision under appeal is to be set aside and the patent to be revoked.

**Order**

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

1. The decision under appeal is set aside.
2. The patent is revoked

The Registrar:

The Chairman:



D. Hampe

M. Barrère

Decision electronically authenticated