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**Datasheet for the decision  
of 5 June 2025**

**Case Number:** T 0395/24 - 3.2.07

**Application Number:** 17782750.8

**Publication Number:** 3442875

**IPC:** B65D3/26, B65B1/04, B65D43/02,  
B65D43/16, B65D3/12, B65D3/14

**Language of the proceedings:** EN

**Title of invention:**  
PAPERBOARD PACKAGING CONTAINER AND LID AND METHOD OF PRODUCING

**Patent Proprietor:**  
AR Packaging Systems AB

**Opponent:**  
Sonoco Development, Inc.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54(3)

**Keyword:**  
Novelty - main request (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0395/24 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 5 June 2025**

**Appellant:** AR Packaging Systems AB  
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**Respondent:** Sonoco Development, Inc.  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
17 January 2024 concerning maintenance of the  
European Patent No. 3442875 in amended form.**

**Composition of the Board:**

**Chairman** B. Paul  
**Members:** A. Cano Palmero  
S. Ruhwinkel

## **Summary of Facts and Submissions**

- I. The patent proprietor and the opponent initially lodged appeals within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent No. 3 442 875 in amended form on the basis of the then auxiliary request 1.
- II. An opposition was filed against the patent in its entirety on the ground for opposition pursuant to Article 100(a) EPC (novelty) and 100(b) EPC (sufficiency of disclosure). The ground for opposition under Article 100(b) EPC was withdrawn during opposition proceedings.
- III. In order to prepare the oral proceedings scheduled upon the parties' requests, the board communicated its preliminary assessment of the case to the parties by means of a communication pursuant to Article 15(1) RPBA, according to which the decision under appeal could be set aside and the patent could be maintained on the basis of the claims according to the main request. In response to this communication, the patent proprietor filed with letter dated 13 February 2025 an amended description paragraph and the opponent withdrew its appeal with letter dated 25 March 2025. The parties submitted no further submission in the substance in reply to the board's communication.
- IV. As a result of the withdrawal of the appeal of the opponent, the patent proprietor is the sole appellant and the opponent has the status of respondent in the present appeal proceedings.

V. The final requests of the parties are as follows:

for the patent proprietor (appellant)

that the decision under appeal be set aside, and  
that the patent be maintained as amended in the  
following version:

Claims: 1 to 17 of the main request filed with  
the appellant's statement setting out the grounds  
of appeal of 15 May 2024,

Description: paragraphs [0001] to [0007] and  
[0009] to [0116] of the patent as granted and  
paragraph [0008] filed with letter dated  
13 February 2025,

Drawings: Figures 1a to 3 of the patent as  
granted;

for the opponent (respondent)

that the appeal be dismissed.

VI. Independent claim 1 according to the main request reads  
as follows:

"A paperboard packaging container (1) for bulk solids,  
said container (1) comprising a tubular paperboard  
container body (3), a container bottom (4) and a  
container lid (5), said container body (3) extending in  
a longitudinal direction (L) of said container (1) from  
a bottom end (10) of said container body (3) to a  
container opening (7), said container body (3)  
comprising a container body abutment edge (8) at said  
container opening (7), said container body (3) having  
an inner surface (12) facing towards an inner  
compartment (14) in said packaging container (1) and an  
outer surface (13) facing away from said inner

compartment (14), said container lid (5) comprising a lid collar (18) having a lid abutment edge (19) adapted for abutting against said container body abutment edge (8) when said container lid (5) is in a closed position, and a plug-in portion (15), said plug-in portion (15) having a side surface (16), extending in said longitudinal direction (L) and facing said inner surface (12) of said container body (3) when said container lid (5) is in said closed position, and a main surface (17), said main surface (17) of said plug-in portion (15) being located at a distance from said container body abutment edge (8) when said container lid (5) is in said closed position, wherein said lid collar (18) is made of the same material as the container body (3) and said lid collar (18) is delimited from said container body (3) by a slit (20') or by weakening means (20'') for allowing said lid collar (18) to be partially separated from said container body (3) at said abutment edges (19,8), wherein a hinge (27) is provided between said container lid (5) and said container body (3), said hinge (27) comprising or consisting of a remaining part of the periphery not comprising said slit (20') or said weakening means (20''), said packaging container (1) being provided with a locking arrangement for retaining said container lid (5) in said closed position, **characterized in that** a reinforcement of the container opening (7) is provided by a partially removable transport closure (29) being attached to said inner surface (12) of said container body (3) and forming a roof over said inner compartment (14), and that said locking arrangement comprises a first locking element (21) in the form of a recess, provided on said inner surface (12) of said container body (3), and a second locking element (22) in the form of a protrusion provided on said side surface (16) of said plug-in

portion (15), said first and second locking elements being mating locking elements (21, 22), said first locking element (21) and said second locking element (22) being in the form of physical deformations of the paperboard material provided on said inner surface (12) of said container body (3) and said side surface (16) of said plug-in portion (15), respectively, wherein said first locking element (21) and said second locking element (22) are arranged such that when said container lid (5) is in said closed position said protrusion is in engagement with said recess and wherein said locking arrangement and said hinge (27) are arranged at opposite sides of said container opening (7)."

VII. Independent claim 13 according to the main request reads as follows:

"A method of producing a paperboard packaging container (1) according to any one of the preceding claims, characterized in that the method comprises the steps of:

- a) bending a paperboard sheet material (2') into a tube (2) having a longitudinal direction (L), a radial direction (R) perpendicular to said longitudinal direction (L), and a circumferential direction (C) and closing said tube (2) in said longitudinal direction (L) by joining overlapping or abutting side edges (30, 31) of said paperboard material (2'), said closed tube (2) having a top end (11) and a bottom end (10) and comprising a container body portion (3') and a lid collar portion (18'), said lid collar portion (18') being arranged at said top end (11) and being delimited from said body portion (3') by a dividing line (20) extending in said circumferential direction (C) between said body portion (3') and said lid collar portion (18');

- b) imparting a predetermined cross-sectional shape to said tube (2);
- c) closing said tube (2) at said top end (11) by pressing a transport closure (29) into said tube (2) at said top end (11) or at said bottom end (10), said transport closure (29) having a transport closure peripheral flange (35) being flexed towards said top end (11) or towards said bottom end (10), said transport closure (29) being a partially removable closure;
- d) attaching said transport closure peripheral flange (35) to said an inner surface of said container body portion (3') at said top end (11) of said tube (2);
- e) pressing a paperboard top disc (23) into said tube (2) at said top end (11), said top disc (23) having a peripheral flange (24) being flexed towards said top end (11) in said longitudinal direction (L), said flexed peripheral flange (24) extending in said longitudinal direction (L) across said dividing line (20) with an attachment portion (32) positioned at said lid collar portion (18') and a plug-in portion (15') positioned at said container body portion (3');
- f) attaching said attachment portion (32) of said peripheral flange (24) of said paperboard top disc (23) to an inner surface of said lid collar portion (18') of said tube (2);
- g) forming a locking arrangement by providing said container body portion with a first locking element (21) and providing said plug-in portion (15') with a second locking element (22), said first and second locking elements (21, 22) being mating locking elements (21, 22) comprising or consisting of a protrusion and a recess, said mating locking elements (21, 22) being formed by physically deforming said paperboard material (2') in said container body portion (3') and said plug-in portion (15) in said radial direction (R);

- h) arranging a slit (20') or weakening means (20'') extending along from 10-95%, or along from 50-95%, or along from 75-90%, of said dividing line (20), said slit (20') or weakening means (20'') being arranged along said dividing line (20) before or after forming said tube (2) thereby providing a hinge (27) between said container lid (5) and said container body portion (3'), said hinge (27) comprising or consisting of a remaining part of the periphery not comprising said slit (20') or said weakening means (20''), wherein said locking arrangement and said hinge (27) are arranged at opposite sides of a container opening (7) of said container body portion (3);  
the process further comprises the steps of
- i) filling bulk solids into said container body portion (3); and
- j) closing said bottom end (10) of said tube (2), wherein said filling step i) is carried out either by filling from said top end (11) after closing said bottom end (10) in step j) and before closing said top end (11) in step c), or by filling from said bottom end (10) after attaching said transport closure in step d), and before said closing step j)."

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

### **Reasons for the Decision**

1. *Main request - Novelty, Article 54(3) EPC*

1.1 The opposition division found in point 12 of the reasons for the decision under appeal that document D1 (**EP 3 162 553 A1**) anticipated the subject-matter of claim 1 of the main request, including the feature that

*"a reinforcement of the container opening (7) is provided by a partially removable transport closure being attached to said inner surface of said container body".*

- 1.1.1 According to the opposition division, the membrane 103 of D1 was to be seen as such a transport closure. Although the membrane 103 of D1 could be completely removed according to paragraph 20 of D1, nothing prevented an user to remove this membrane halfway, so that this membrane was to be seen as being "partially removable". In addition, as confirmed by paragraph [0015] of the patent in suit, any remaining part, regardless of its shape or size, must be seen as contributing (at least partially) to the reinforcement of the container.
- 1.1.2 In addition, the opponent argued that paragraph [0015] of the patent in suit indicated how the term "partially removable closure" was to be interpreted, namely that the closure might be partly removed by a user, such as by peeling or tearing in order to provide access to the interior of the container. This was precisely the case for the membrane 103 of D1 which is "peeled", so that it anticipated a "partially removable transport closure" according to claim 1 of the main request.
- 1.1.3 The opponent further noted that even in the case that the feature could only be understood such that a complete separation of a part of the closure was needed, this would also be anticipated by D1. In particular, paragraph [0004] of D1 indicated that the membrane was made of cellulosic material. This membrane could be torn away and separated by the user from the rest of the remaining closure. By doing so, the

membrane would still fulfil its function of providing access to the interior of the container and was "partially removable".

- 1.1.4 Finally, the opponent argued that the reinforcement in accordance of the claim should be interpreted in the light of the description. In particular, paragraphs [0015] and [0100] of the patent in suit only required that "reinforcing" should be understood as providing stability and maintaining the shape of the container, and that any remaining part along at least 25% of the periphery contributed to that function. Therefore, any added layer such as membrane 103 of D1 was to be seen as a reinforcement in the sense of the claim.
- 1.2 The board does neither agree with the above finding of the opposition division, nor with the arguments of the opponent. It rather concurs with the patent proprietor that the above feature of point 1.1 is not directly and unambiguously anticipated by D1, for the following reasons.
  - 1.2.1 The board agrees with the patent proprietor that the normal meaning in the art of the term "partially removable closure" in the context of the claim is clear, and that it implies that some elements of the closure remain intact, even after at least a portion of the closure has been detached or taken out. ). The description of the patent also gives no indication of a different interpretation.
  - 1.2.2 In the present case, paragraph [0015] of the patent in suit only merely specifies that the partially removable closure might be peeled or torn, which is not at odds with the normal meaning of the term. This does not mean that any type of peelable or tearable closure,

including those in which no part of the closure is separated from the rest of the closure, amounts to a "partially removable closure" as in claim 1 of the main request.

- 1.2.3 In the case that the membrane of D1 is peeled only halfway, no parts of this membrane will have been "removed" since the membrane in its entirety would still be connected to the rest of the container. Instead, in the situation of a halfway peeling, the membrane would have been simply partially detached from the container wall, but not removed or partially removed. There is furthermore no direct indication in D1 that any part of the membrane could remain attached to the container after a complete peeling. Therefore, after a complete peeling of the membrane, the membrane is completely (and not partially) removed.
- 1.2.4 The argument of the opponent that the membrane 103 of D1 could be torn apart by the user and thereby was "partially removable" is not persuasive either. As correctly indicated by the patent proprietor, the force needed for peeling the membrane from containers such as D1 is always lower than the force needed to tear the membrane; otherwise the essential peeling capability of the membrane would not be guaranteed. The board is thus of the view that the hypothetical scenario proposed by the opponent of a portion of the membrane 103 of D1 being torn apart and separated from the rest of the membrane separated is seen by the board as speculative and artificial, and cannot amount in any case to a direct and unambiguous disclosure.
- 1.3 Consequently, the membrane 103 of D1 is not "partially removable" and the subject-matter of claim 1 of the main request is novel over D1. The same conclusion

applies for independent method claim 13, which requires in step c) that the transport closure (29) is a partially removable closure. The subject-matter of claim 13 of the main request is therefore also considered novel over D1. In view of these conclusions alone, the decision under appeal is to be set aside, so that there is no need to establish whether the membrane 103 of D1 can be considered as providing a reinforcement of the container in the sense of claim 1 or not.

2. *Amended description*

2.1 The patent proprietor submitted an amended description paragraph [0008]. Neither the opponent nor the board had any objections to the amendments made.

3. *Conclusion*

In view of the above considerations, the board concludes that the patent proprietor has convincingly demonstrated the incorrectness of the finding of the decision under appeal that document D1 was prejudicial for novelty of claim 1 of the main request. The decision under appeal is to be set aside. In the absence of any other objection made by the opponent or apparent to the board, the patent is to be maintained in accordance with the main request.

## 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 with the order to maintain the patent as amended in the following version:

#### Claims:

nos. 1 to 17 of the main request filed with the patent proprietor's statement setting out the grounds of appeal on 17 May 2024 ;

#### Description:

paragraphs 1 to 7, and  
9 to 116 of the patent specification,  
paragraph 8 of the main request filed with letter dated 13 February 2025

#### Drawings:

figures 1a to 3 of the patent specification.

The Registrar:

The Chairman:



G. Nachtigall

B. Paul

Decision electronically authenticated