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**Datasheet for the decision  
of 10 February 2026**

**Case Number:** T 0440/24 - 3.2.05

**Application Number:** 14810948.1

**Publication Number:** 3007901

**IPC:** B41M1/40, B41M1/22, B41M1/04,  
B41M1/06, B41F17/22, B41F7/16,  
B41M1/28, B41F17/14

**Language of the proceedings:** EN

**Title of invention:**  
Printing process using soft photopolymer plates

**Patent Proprietor:**  
Ball Corporation

**Opponent:**  
Crown Packaging Manufacturing UK Ltd.

**Relevant legal provisions:**  
EPC Art. 111(1), 123(3)  
EPC R. 103(1)(a)  
RPBA 2020 Art. 11

**Keyword:**

Amendments - main request - broadening of claim (no)  
Reimbursement of appeal fee (no) - appealed decision  
sufficiently reasoned (yes) - substantial procedural violation  
(no)  
Appeal decision - remittal to the department of first instance  
(yes)

**Decisions cited:**

R 0023/10, R 0019/12



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Case Number: T 0440/24 - 3.2.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.05**  
**of 10 February 2026**

**Appellant:** Ball Corporation  
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**Representative:** Eisenführ Speiser  
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**Respondent:** Crown Packaging Manufacturing UK Ltd.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 25 January 2024  
revoking European patent No. 3007901 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** P. Lanz  
**Members:** M. Holz  
A. Bacchin

## Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the opposition division's decision revoking European patent No. 3 007 901 (the patent).

In the decision under appeal, the opposition division concluded *inter alia* that claim 1 of the main request did not meet the requirements of Article 123(3) EPC.

With the statement of grounds of appeal, the appellant filed sets of claims of a main request and 1st to 11th auxiliary requests, and descriptions of the 5th to 11th auxiliary requests. According to the appellant, the set of claims of the 1st auxiliary request filed with the statement of grounds of appeal is identical to the set of claims of the main request underlying the decision under appeal.

- II. The opponent (respondent) filed a reply to the appellant's statement of grounds of appeal.

In a letter dated 30 December 2024, the appellant filed further substantive submissions.

On 10 October 2025, the board issued a communication under Article 15(1) RPBA setting out its preliminary opinion.

- III. Oral proceedings before the board were held on 10 February 2026.

During the oral proceedings, the appellant withdrew the main request that it had filed with the statement of grounds of appeal.

The appellant requested that the decision under appeal be set aside and that the case be remitted to the opposition division for consideration of the remaining grounds for opposition. The texts for consideration were the sets of claims of the 1st to 4th auxiliary requests and the sets of claims and descriptions of the 5th to 11th auxiliary requests, all of which had been filed with the statement of grounds of appeal. The appellant also requested reimbursement of the appeal fee in view of an alleged substantial procedural violation.

The respondent requested that the appeal be dismissed. In the event that the board did not uphold the decision to revoke the patent on the basis of non-compliance with Article 123(3) EPC, as found by the opposition division, the respondent requested that the case be remitted to the opposition division for examination of all the other grounds for opposition.

IV. Claim 1 of the main request (that is the 1st auxiliary request filed with the statement of grounds of appeal) reads as follows (the feature numbering used by the board is indicated in square brackets).

"**[1.0]** *A method of decorating an exterior surface of a metallic container using a soft photopolymer plate in a printing process, comprising:*

**[1.1]** *providing a first image to be printed onto the exterior surface of the metallic container;*

**[1.2]** *transferring said first image to a predetermined portion of a face portion of the soft photopolymer*

plate

either by

**[1.2a]** creating a film negative of the first image;  
placing the film negative on the predetermined portion  
of the face portion of the soft photopolymer plate;  
exposing the soft photopolymer plate and the film  
negative to a light source, wherein a material of the  
soft photopolymer plate hardens in predetermined  
locations where light passes through the film negative,  
and wherein the material of the soft photopolymer plate  
remains unexposed and soft in predetermined locations  
where the light is blocked by the film negative;  
removing the film negative from the soft photopolymer  
plate; and

placing the soft photopolymer plate in a washing  
station and cleaning the soft photopolymer plate to  
remove the soft, unexposed material of the soft  
photopolymer plate to reveal the transferred first  
image,

or by

**[1.2b]** directly transferring the first image to the  
predetermined portion of the face portion of the soft  
photopolymer plate using a digital imager apparatus and  
a Computer-To-Plate (CTP) process wherein portions of  
an opaque mask coating on the face portion of the soft  
photopolymer plate are ablated, or otherwise removed,  
to form a negative of the first image;

exposing the soft photopolymer plate to a light source  
and hardening material of the soft photopolymer plate,  
wherein a polymer material of the soft photopolymer  
plate hardens in predetermined locations where the mask  
coating has been ablated, and wherein the polymer  
material of the photopolymer plate remains unexposed  
and soft in predetermined locations where the light is  
blocked by the mask coating; and  
removing the soft, unexposed material of the soft

*photopolymer plate to reveal the transferred first image;*

**[1.3]** *removably affixing the soft photopolymer plate with the transferred first image onto a blanket cylinder of a decorator;*

**[1.4]** *attaching printing plates to a plate cylinder of the decorator;*

**[1.5]** *applying ink from an inker to the printing plates;*

**[1.6']** *transferring the ink from the printing plates to at least a portion of the soft photopolymer plate and the transferred first image; and*

**[1.7]** *transferring the ink from the soft photopolymer plate to the exterior surface of the metallic container, wherein the metallic container is decorated with the first image."*

V. The parties submitted the following.

(a) *Alleged substantial procedural violation and the appellant's request for reimbursement of the appeal fee*

According to the appellant, the opposition division committed a substantial procedural violation which justified reimbursement of the appeal fee. The alleged substantial procedural violation consisted in the fact that the opposition division concluded that feature 1.6' contravened the requirements of Article 123(3) EPC (see point 2.2 of the Reasons of the decision under appeal) without setting out how the skilled person would have construed this feature (see feature 1.6' in point IV. above). This could not be understood, in particular since the opposition division had found that this feature could be construed in such a way that it complied with Article 123(3) EPC.

(b) *The appellant's main request: objection under Article 123(3) EPC*

(i) *Appellant*

Feature 1.6 ("*transferring the ink from a printing plate to the soft photopolymer plate and the transferred first image; and*") of claim 1 as granted meant that at least one printing plate had to transfer ink at least to the transferred first image. By doing so, the printing plate inherently also transferred ink to the soft photopolymer plate, since the transferred first image was a predetermined portion of the soft photopolymer plate. A printing plate transferring ink to the transferred first image always transferred ink to the soft photopolymer plate and the transferred first image. The transferred first image was on the soft photopolymer plate and was thus part of the soft photopolymer plate. Feature 1.6 of claim 1 as granted thus neither specified nor ruled out that ink was transferred to areas of the soft photopolymer plate not having the transferred first image. The passages of the patent cited by the respondent (see below) were consistent with this claim interpretation. The embodiments described by the respondent (see below) therefore fell within what was specified by both feature 1.6 of claim 1 as granted and feature 1.6' of claim 1 of the main request. Consequently, claim 1 of the main request complied with Article 123(3) EPC.

(ii) *Respondent*

Feature 1.6 of claim 1 of the patent as granted specified that at least one printing plate had to transfer ink to the transferred first image and,

additionally, also to areas of the soft photopolymer plate that did not have the transferred first image. Grammatically, claim 1 as granted specified a single printing plate transferring ink to two locations: the soft photopolymer plate and the transferred first image. The word "and" would not make sense, and the mention of the soft photopolymer plate would be redundant, if the soft photopolymer plate and the transferred first image were one and the same thing. If the interpretation submitted by the appellant had been intended, feature 1.6 should have been given a clearer wording. Reference was also made to paragraphs [0002], [0003] and [0007] of the patent and the ink receiving region 16 disclosed in paragraph [0041] of the patent. Unlike feature 1.6, feature 1.6' of claim 1 of the main request covered embodiments in which one printing plate transferred ink only to the transferred first image and a different printing plate transferred ink only to areas of the soft photopolymer plate that did not have the transferred first image. Since these embodiments did not meet what was specified by feature 1.6, they were not covered by claim 1 as granted. Consequently, claim 1 of the main request violated Article 123(3) EPC. Moreover, claim 1 of the application as filed, on which the patent was based, specified that ink was transferred from the printing plates (plural) to at least a portion of the soft photopolymer plate and the transferred first image. However, in the application as filed, the disclosure was that only a single one of the plural printing plates transferred ink to the transferred image 18, while all other printing plates transferred ink to the ink receiving region 16 but not the image 18 (see paragraphs [0064] and [0066] of the application as filed). Therefore, since this claim referred to ink transferred by a plurality of printing plates, it also

had to be understood that the definition of transferring ink to the (that is, to at least a portion of the) soft photopolymer plate and the transferred first image referred to transferring ink to both the ink receiving portion 16 and the image 18, and not only to the image 18.

## **Reasons for the Decision**

### **1. Alleged substantial procedural violation and the appellant's request for reimbursement of the appeal fee**

The appellant is of the opinion that the opposition division committed a substantial procedural violation which justified reimbursement of the appeal fee. The alleged substantial procedural violation consisted in the fact that the opposition division concluded that feature 1.6' contravened the requirements of Article 123(3) EPC (see point 2.2 of the Reasons of the decision under appeal) without setting out how the skilled person would have construed this feature (see point IV. above for the wording of feature 1.6').

There is a procedural violation if it is apparent from the opposition division's decision and/or the minutes of the oral proceedings that a party's right to be heard has been violated. This is the case, for example, when a party is taken by surprise by the grounds and evidence in a decision rejecting a request on which that party has not had the opportunity to comment (see, for example, R 19/12 of 12 April 2016, Reasons 6, and R 23/10, Reasons 2).

In the present case, in point 2.2.1 of the Reasons of the decision under appeal, the opposition division referred to feature 1.6' and stated the following.

*"According to said amended feature some of the printing plates can transfer ink to the transferred first image and the remaining printing plates transfer ink to that part of the soft photopolymer plate which do [sic] not have the transferred first image. Therefore it is no longer necessary that at least one of the printing plates transfers ink to the transferred first image and, additionally, also to areas of the soft photopolymer plate that do not have the transferred first image."*

The opposition division thus set out its view of how the skilled person would have construed feature 1.6' of claim 1 of the main request.

Moreover, there is no support for the appellant's assertion that the opposition division found that feature 1.6' could be construed in a way that complied with Article 123(3) EPC.

The opposition division also concluded, in point 2.2 of the Reasons of the decision under appeal, that both interpretations of the feature *"transferring the ink from a printing plate to the soft photopolymer plate and the transferred first image"* (feature 1.6 of claim 1 as granted) submitted by the parties were valid. The opposition division thus considered both parties' arguments and concluded that both interpretations of claim 1 as granted were available to the skilled person, and that neither interpretation could be discarded. The opposition division furthermore clearly stated that it found the respondent's

interpretation of claim 1 as granted to be valid (see point 2.2.1 of the Reasons of the decision, penultimate sentence). Whether or not this is a correct assessment, by the opposition division and the respondent, of the skilled person's interpretation of claim 1 as granted, and whether or not it can support the opposition division's conclusion that claim 1 of the main request does not meet the requirements of Article 123(3) EPC, the objection under Article 123(3) EPC has nonetheless been examined on its merits. Even if it were assumed that the opposition division's conclusion was incorrect, this would not imply that there had been a procedural violation (a violation of a party's right to be heard), let alone a substantial procedural violation. Indeed, the right to be heard is not a question of whether the view taken by the EPO is correct. The crucial point is whether the parties had an opportunity to comment on the grounds on which a decision was based; and these comments are considered in the Reasons of the decision.

The appellant's request for reimbursement of the appeal fee is therefore rejected (Rule 103(1)(a) EPC).

2. **The appellant's main request: objection under Article 123(3) EPC**

2.1 In the decision under appeal, the opposition division took the view that replacing feature 1.6 (see below) in claim 1 as granted by feature 1.6' in claim 1 of the main request violated Article 123(3) EPC.

*"[1.6] transferring the ink from a printing plate to the soft photopolymer plate and the transferred first image;"*

The issue at hand hinges on how feature 1.6 of claim 1 as granted is interpreted.

- 2.2 The respondent takes the following view: feature 1.6 specifies that at least one printing plate has to transfer ink to the transferred first image and, additionally, also to areas of the soft photopolymer plate that do not have the transferred first image. By contrast, feature 1.6' of claim 1 of the main request also covers embodiments in which one printing plate transfers ink only to the transferred first image and a different printing plate transfers ink only to areas of the soft photopolymer plate that do not have the transferred first image. Since these embodiments do not meet what is specified by feature 1.6, they are not covered by claim 1 as granted. Consequently, claim 1 of the main request violates Article 123(3) EPC.
- 2.3 The appellant is of the following opinion: feature 1.6 of claim 1 as granted means that at least one printing plate has to transfer ink at least to the transferred first image. By doing so, the printing plate inherently also transfers ink to the soft photopolymer plate, since the transferred first image is a predetermined portion of the soft photopolymer plate. Feature 1.6 of claim 1 as granted neither specifies nor rules out that ink is transferred to areas of the soft photopolymer plate not having the transferred first image. In particular, it neither specifies nor rules out that the same printing plate transfers ink to the transferred first image and additionally to areas of the soft photopolymer plate that do not have the transferred first image. The arrangements described by the respondent (see above) therefore fall within what is specified by feature 1.6 of claim 1 as granted and

feature 1.6' of claim 1 of the main request. Consequently, claim 1 of the main request does not violate Article 123(3) EPC.

- 2.4 The opposition division was of the opinion that both interpretations were valid interpretations of feature 1.6 of claim 1 as granted.
- 2.5 The board notes that, according to feature 1.2, which is also present in claim 1 as granted, the first image is transferred to a predetermined portion of a face portion of the soft photopolymer plate. This method step results in a transferred first image. Feature 1.6 is defined with reference to this first image. Hence, by transferring ink to the transferred first image, the printing plate inherently also transfers ink to the soft photopolymer plate. Neither feature 1.6 nor claim 1 as granted as a whole specifies that the same printing plate additionally transfers ink to areas of the soft photopolymer plate that do not have the transferred first image. In particular, there is no compelling reason why the reference to the soft photopolymer plate in feature 1.6 of claim 1 as granted would necessarily be an area of the soft photopolymer plate not having the transferred first image.

The respondent submitted that, grammatically, claim 1 as granted specified a single printing plate which transferred ink to two locations: the soft photopolymer plate and the transferred first image. The word "and" would not make sense, and the mention of the soft photopolymer plate would be redundant, if the soft photopolymer plate and the transferred first image were one and the same thing.

It does not follow, either from claim 1 as granted or from the patent as a whole, that the transferred first image and the soft photopolymer plate are the same thing. Rather, the patent as granted distinguishes between the first image that has been transferred to the soft photopolymer plate, i.e., the transferred first image, and the soft photopolymer plate. For example, claim 2 as granted distinguishes between the soft photopolymer plate and the transferred first image that is revealed. The transferred first image and the soft photopolymer plate are therefore different entities. However, there is a relation between them. For example, in claim 2 as granted, the transferred first image is only revealed by removing areas of the soft photopolymer plate that were not exposed. In this embodiment, the transferred first image is thus embodied by areas of the material of the soft photopolymer plate that have been exposed and hardened. The skilled person would understand the reference to the soft photopolymer plate and the transferred first image in feature 1.6 of claim 1 as granted as a clarification that, at this stage of the claimed method, the transferred first image is embodied in certain areas of the material of the soft photopolymer plate. In view of this clarification, feature 1.6 of claim 1 as granted is understood as specifying that ink is transferred from the printing plate to the transferred first image and to areas of the soft photopolymer plate embodying the transferred first image. In this interpretation, feature 1.6 does not require - nor does it rule out - that the same (or a different) printing plate transfers ink to areas of the soft photopolymer plate that do not have the transferred first image. The question of whether feature 1.6 could have been formulated differently is not relevant to the issues at hand.

2.6 The respondent referred to the description of the prior art and the summary of the invention in paragraphs [0002], [0003] and [0007] of the patent. However, these passages do not disclose, let alone require that one printing plate transfers ink to the transferred first image and, additionally, also to areas of the soft photopolymer plate that do not have the transferred first image.

The respondent also referred to the ink receiving region 16 disclosed in paragraph [0041] of the patent.

The cited passage refers to a preferred embodiment. In this embodiment, there is one printing plate without a relief area that transfers ink to all images 18 and ink receiving regions 16 of the soft photopolymer plates 14 that contact the ink receiving regions 8 of the face portion 4 of the one printing plate 2 without a relief area (see column 14, lines 9 to 14, of the patent). The arrangement described in this passage falls within the interpretation of feature 1.6 of claim 1 as granted that is set out above. According to this interpretation, the feature does not require - nor does it rule out - that the same printing plate also transfers ink to areas of the soft photopolymer plate that do not have the transferred first image, such as ink receiving regions 16. The latter feature is not unambiguously and directly derivable from the cited passage of the description. There is no reason to assume that the skilled person would have read this feature as a mandatory requirement to claim 1 as granted. Nor does feature 1.6 or claim 1 as a whole exclude the possibility that there are further printing plates transferring ink to the same or other areas of the soft photopolymer plate. The above interpretation

of feature 1.6 of claim 1 as granted is therefore consistent with the embodiment described in the cited passage of the patent.

The respondent submitted that claim 1 of the application as filed, on which the patent was based, specified that ink was transferred from the printing plates (i.e., plural) to at least a portion of the soft photopolymer plate and the transferred first image. However, in the application as filed, only a single one of the plural printing plates was disclosed as transferring ink to the transferred image 18, while all the other printing plates transferred ink to the ink receiving region 16 but not the image 18 (see paragraphs [0064] and [0066] of the application as filed). Therefore, since this claim referred to ink transferred by a plurality of printing plates, it also had to be understood that specifying the transferring ink to the (that is, to at least a portion of the) soft photopolymer plate and the transferred first image referred to transferring ink to both the ink receiving portion 16 and the image 18, and not only to the image 18.

Article 123(3) EPC provides that the European patent may not be amended in such a way as to extend the protection it confers. Claim 1 of the application as filed is thus not relevant when examining whether Article 123(3) EPC is violated. Moreover, paragraph [0064] of the application as filed corresponds to paragraph [0041] of the patent and thus refers to the preferred embodiment considered above. As explained above, this embodiment, in which one printing plate transfers ink to all images 18 and ink receiving regions 16 of the soft photopolymer plates 14, falls within the interpretation of feature 1.6 of claim 1 as

granted that is set out above. Paragraphs [0064] and [0066] of the application as filed are thus consistent with the claim interpretation above.

- 2.7 The skilled person would thus have interpreted feature 1.6 of claim 1 as granted to specify that the ink is transferred from a printing plate to areas of the soft photopolymer plate that have the transferred first image. This feature neither requires nor rules out that ink is transferred to areas of the soft photopolymer plate that do not have the transferred first image, let alone that ink is transferred from the same printing plate to areas of the soft photopolymer plate within and outside the area of the transferred first image. Consequently, feature 1.6 of claim 1 as granted covers embodiments in which one printing plate transfers ink only to the transferred first image and areas of the soft photopolymer plate having the transferred first image and a different printing plate transfers ink only to areas of the soft photopolymer plate that do not have the transferred first image. The arrangements considered by the opposition division and the respondent thus fall within what is specified by features 1.6 and 1.6' alike.

The main request therefore meets the requirements of Article 123(3) EPC.

### 3. **Conclusions and remittal**

The board rejects the appellant's request that the appeal fee be reimbursed due to an alleged substantial procedural violation. The only objection on which the decision under appeal is based with respect to the main

request is not convincing. The decision under appeal therefore has to be set aside.

Both parties requested a remittal of the case to the opposition division for further prosecution. Pursuant to Article 111(1) EPC, the board has discretion to remit the case to the opposition division for further prosecution. The respondent had raised further objections to the appellant's main request (see pages 5 to 9 of its reply) which were not considered in the decision under appeal. In view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner (see also Article 12(2) RPBA), and in view of the fact that both parties requested a remittal as an auxiliary measure, the board, exercising its discretion under Article 111(1) EPC and Article 11 RPBA, decides to remit the case to the opposition division for further prosecution.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.
3. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:



D. Hampe

P. Lanz

Decision electronically authenticated