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**Datasheet for the decision
of 28 April 2026**

Case Number: T 0605/24 - 3.2.07

Application Number: 20164088.5

Publication Number: 3715276

IPC: B65D5/74, B65D41/48, B65D47/08

Language of the proceedings: EN

Title of invention:
OPENING DEVICE FOR A PACKAGING FOR POURABLE PRODUCTS

Patent Proprietor:
Tetra Laval Holdings & Finance S.A.

Opponent:
SIG Services AG

Headword:

Relevant legal provisions:
EPC Art. 84, 56
RPBA 2020 Art. 13(2)

Keyword:

Claims - clarity - main request (yes)

Inventive step - main request (yes)

Amendment after summons - exceptional circumstances (no)

Decisions cited:

T 1903/13

Catchword:



Beschwerdekammern

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Case Number: T 0605/24 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 28 April 2026

Respondent: Tetra Laval Holdings & Finance S.A.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 27 February 2024
concerning maintenance of the European Patent
No. 3715276 in amended form.**

Composition of the Board:

Chairman G. Patton
Members: V. Bevilacqua
Y. Podbielski

Summary of Facts and Submissions

- I. Appeals were filed by the patent proprietor and by the opponent against the opposition division's decision finding that, on the basis of auxiliary request 5 then on file, the patent in suit met the requirements of the EPC.
- II. In preparation for oral proceedings, the board, in a communication pursuant to Article 15(1) RPBA, gave its preliminary opinion, according to which the patent was likely to be revoked.
- III. The patent proprietor responded to this communication with submissions dated 15 December 2025, to which the opponent reacted with submissions dated 16 March 2026.
- IV. Oral proceedings before the board took place on 28 April 2026.

During the oral proceedings the patent proprietor withdrew its appeal.

The patent proprietor (now respondent) also withdrew its initial request for the patent to be maintained in the version held by the opposition division to comply with the requirements of the Convention, such that the 4th auxiliary request, filed with its reply to the appellant's statement of grounds of appeal (submissions dated 30 October 2024), became its main request.

At the conclusion of the proceedings the opponent (now sole appellant) confirmed its request that the decision

of the opposition division be set aside and the patent revoked.

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

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

V. The arguments of the parties relevant to the decision are dealt with in detail in the Reasons for the Decision.

VI. The following documents, mentioned in the appealed decision, will be referred to in the present communication:

D1: JP 5857668 B2 and its machine translation
into English (D1a)
D2: EP 2 886 479 A1
D8: WO 2009/048273 A2

The following document, originally cited in the notice of opposition but not addressed in the decision under appeal, will also be referred to:

D11: DE 10 2015 116 784 A1.

VII. Independent claim 1 of the 4th auxiliary request reads as follows:

"An opening device (1) configured to be applied to a packaging (2, 3) for pourable products, said opening device (1) comprising:

- a pouring spout (10) defining a pouring opening (11) through which to pour, in use, said pourable product;

- a cap (12) configured to engage and disengage said pouring spout (10) to respectively close and open said pouring opening (11);
- a closing element (30) closing and/or sealing said pouring opening (11), formed in one piece with said pouring spout (10) and connected to said pouring spout (10) by a breakable connecting portion (31) configured to break during first opening of said opening device (1); said closing element (30) comprising a protruding portion (24) extending through said pouring opening (11) and connected to said cap (12); and
- tamper-evidence means (21) fitted to said pouring spout (10) and initially connected to said cap (12) by means of at least one breakable connecting bridge configured to break during first opening of said opening device (1);

characterized in that

said cap (12) is hinged to said tamper-evidence means (21) thereby being permanently tethered to said pouring spout (10), and

said cap (12) is configured

- (i) to engage said pouring spout (10) in a snap-in manner and
- (ii) to be pulled up by the user during first opening of the opening device (1)."

Reasons for the Decision

1. 4th auxiliary request - admittance

1.1 In its written submissions the appellant requested that the 4th auxiliary request not be admitted into the appeal proceedings.

At the beginning of the oral proceedings the appellant expressly stated that, with regard to this procedural request, it relied on its written submissions.

Thereafter the Chair drew the parties' attention to the numerous procedural requests made in writing in respect of the non-admittance of requests and objections, including the present one, and invited the parties to raise or maintain such requests at the time when this would be procedurally appropriate in the course of the oral proceedings.

The appellant did not ask during oral proceedings that this request for non-admittance of the 4th auxiliary request be discussed, and, at the end thereof, when asked by the Chairman, confirmed that it had no further objections other than those discussed during oral proceedings.

Consequently, the board will deal in the following with the arguments submitted in relation to the issue of admittance of the 4th auxiliary request on the basis of the written submissions on file.

1.2 The board is not persuaded by the arguments submitted in writing by the appellant (submissions dated 12 March 2025, pages 12 to 14).

Pursuant to Article 12(1) RPBA, appeal proceedings are also based, in cases involving more than one party, on the written reply to the statement of grounds of appeal.

The 4th auxiliary request was filed in due time in appeal proceedings by the respondent with its reply of 30 October 2024.

As argued by the respondent (see in particular paragraph bridging pages 26 and 27 of its letter of 15 December 2025) and uncontested by the appellant, this request was filed as auxiliary request 6 during the opposition proceedings by letter dated 10 October 2023, i.e. before the time limit of 12 October 2023 set according to Rule 116 EPC by the summons to the oral proceedings (see summons dated 23 February 2023).

Thus it can be considered a legitimate reaction of the respondent, filed in due time during opposition proceedings, to the opposition division's negative preliminary opinion. As a result, the board is of the view that the 4th auxiliary request was admissibly raised and maintained according to Article 12(4) RPBA (see decision under appeal, point I.7).

The appellant pointed out that the 4th auxiliary request had neither been admitted by the opposition division nor had been dealt with in substance in the decision under appeal. However, these considerations are not decisive for answering the question of whether

a request has been admissibly raised in the opposition proceedings.

As the 4th auxiliary request is not an amendment to the respondent's appeal case within the meaning of Article 12(4) RPBA, the convergence criterion with respect to higher-ranking withdrawn requests, invoked by the appellant, cannot be successful against its admittance.

This is because this criterion is an expression of the principle of procedural economy, to be relied upon in discretionary decisions based upon Article 12(4) RPBA in the event of an amendment to a party's appeal case (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, "CLB" in the following, V.A.4.3.4.j) and V.A.4.3.6.e)).

Furthermore, decision T 1903/13, cited by the appellant, concerns a previous version of the Rules of Procedure of the Boards of Appeal, which applied different criteria to the admittance of carry-over requests. The appellant has not provided any arguments as to the extent to which the reasoning in that decision would remain applicable under the version of the Rules of Procedure that entered into force in 2020 and governs the present appeal.

Article 12(6) RPBA likewise cannot be relied upon. Its first sentence concerns submissions not admitted at first instance, which is not the case here. Its second sentence concerns submissions which should have been made, or which were no longer maintained, in the proceedings leading to the decision under appeal, which is manifestly not the case either for the 4th auxiliary request, which was filed and maintained throughout the opposition proceedings.

For the above reasons, the arguments submitted in support of the request not to admit the 4th auxiliary request into the appeal proceedings are not convincing.

As a consequence of the above, the 4th auxiliary request forms part of the respondent's appeal case.

2. Claim 1 - clarity

2.1 The appellant objects that feature (ii) of the characterising portion of claim 1 (see point VII above) introduces a lack of clarity into the claim.

In its view this feature relates to a method of using the opening device rather than expressing a structural property thereof, with the consequence that the claim does not clearly define the matter for which protection is sought (Article 84 EPC).

2.2 The respondent contests this objection and submits that the feature is clear.

It also requests that the clarity objection not be admitted into the appeal proceedings.

2.3 The appellant, in turn, requests that the respondent's request for non-admittance not be admitted.

2.4 The board does not consider that claim 1 lacks clarity, for the following reasons.

2.4.1 As argued by the respondent in its reply (submissions of 30 October 2024, page 15) feature (ii) is clear, as it implies that the cap is configured to be disengaged from the spout by being pulled up by the user during

first opening of the opening device.

This feature is also supported by paragraph [0096] of the description of the patent in suit, corresponding to the passage on page 17, lines 20-21 of the original description, to which the respondent refers in these submissions.

- 2.4.2 As explained by the respondent during oral proceedings, the contested feature is introduced by the clause "said cap is configured to", which equally introduces the immediately preceding feature (i) "to engage said pouring spout (10) in a snap-in manner".

Read in this context, feature (ii) defines a capability of the device, namely that the cap is so designed as to be openable by an axial pulling action exerted by the user during first opening (letter of 15 December 2025, last paragraph of section 1, page 28).

This feature is therefore a functional feature of the apparatus, rather than imposing that the opening device be used in a particular manner.

It is established case law (CLB, II.A.3.5) that a claim containing functional definitions limited to features, which a skilled person would have no difficulty in determining on the basis of common general knowledge, is not objectionable under Article 84 EPC (see again letter of 15 December 2025, page 28, where the respondent cites EPO Guidelines F.IV.6.5 in that respect).

- 2.4.3 The board is satisfied that this functional feature has structural implications and is not a mere statement of intended use.

This is because at the oral proceedings the patent proprietor clarified that the capability defined by feature (ii) necessarily implies the presence on the cap of a gripping feature through which can be transmitted a pulling force of a magnitude sufficient to overcome the retention forces keeping the cap on the spout.

Such retention forces include at least the forces arising from the snap-in engagement of feature (i).

- 2.4.4 At the oral proceedings the appellant reacted to the construction of feature (ii) put forward by the respondent by submitting that the structural limitations thereby imposed on the claimed subject-matter were so modest, i.e. encompassing *de facto* anything, that clarity within the meaning of Article 84 EPC could not be acknowledged.

The board does not find this argument persuasive. It is established case law of the Boards of Appeal that the breadth of a claim is not to be equated with a lack of clarity. Article 84 EPC requires that the claims define the matter for which protection is sought, not that they define it narrowly: a claim that covers a wide range of embodiments is not, for that reason alone, unclear (CLB, II.A.3.4).

- 2.4.5 For the above reasons the board concludes that claim 1 does not contravene the requirements of Article 84 EPC.

- 2.5 In view of the above conclusion that the clarity objection raised against feature (ii) is not convincing on the merits, it is not necessary for the board to address

- the arguments and issues submitted by the respondent on the admittance of that objection into the appeal proceedings, and
- the arguments and issues submitted by the appellant on the admittance of the request of the respondent not to admit that objection.

3. Claim 1 - inventive step, D2 in combination with D8

3.1 The appellant raises an objection of lack of inventive step of the subject-matter of claim 1 of the 4th auxiliary request starting from D2 as closest prior art and combining it with D8.

3.2 In particular, the appellant submits that feature (i), according to which the cap is configured to engage the pouring spout in a snap-in manner, cannot be considered as providing an inventive contribution because, being disclosed in both D2 and D8, it would also inevitably be present in their combination.

3.2.1 This feature is present in D2 because the cap is pushed onto the thread of the spout during first assembly (statement of grounds of appeal, pages 19 to 21); this application step is to be considered as an engagement of the cap with the spout "in a snap-in manner" within the meaning of feature (i).

3.2.2 The appellant also submits that the structural correspondence between the opening device of D2 and that of the patent in suit (in particular as regards the engaging portions of the caps and of the collars of the respective spouts) is such that a snap-in function would be inherently present in D2 (letter dated 16 March 2026, pages 23 to 25).

- 3.2.3 The appellant also argued that a snap-in function may also be provided in addition to a screw-thread engagement, and that the wording "in a snap-in manner" of claim 1 does not require a snap-in coupling in the strict sense, but only an engagement operating in the manner of a snap fit.
- 3.2.4 During oral proceedings the appellant argued that D8 also disclosed feature (i).
- 3.3 The board does not accept this line of argument, because neither D2 nor D8 discloses a cap configured to engage the pouring spout in a snap-in manner.
- 3.3.1 D2, in particular, only mentions, in paragraph [0065], that the closure is fitted to the pouring spout of the container "with reciprocal engagement of the threads", that is, by means of a threaded, rotational engagement (respondent's reply, section 5, page 11).
- The same applies to D8, which likewise does not disclose any snap-in application step.
- 3.3.2 In addition, a one-off axial pushing-on of a screw cap during production, even if it was disclosed, would still not qualify as a snap-in engagement between the spout and the cap, because it would still be necessary to rotate the cap to remove or re-close it (respondent's reply, section 5, page 11).
- 3.3.3 This finding is, moreover, the same as that already reached, on the same factual basis and in respect of the same appellant's argument, by the opposition division in point II.17.2.1 of the appealed decision, with which the board fully concurs.

- 3.3.4 It follows from the above that feature (i) is not disclosed in D2 or in D8 and, for that reason alone, cannot be rendered obvious by their combination.

The opponent's inventive-step attack based on the combination of the teachings of documents D2 and D8 (Article 56 EPC) is therefore not found convincing by the board.

4. Further objections raised at the oral proceedings - admittance (Article 13(2) RPBA)

- 4.1 At the oral proceedings the appellant raised, for the first time, two further inventive-step attacks against claim 1 of the 4th auxiliary request, namely:

- (a) an attack based on D1 in combination with the common general knowledge of the skilled person; and
- (b) an attack based on D2 in combination with D11.

The appellant acknowledged that these two specific attacks had not been raised earlier in the appeal proceedings against the 4th auxiliary request as such, but pointed out that they corresponded to inventive-step attacks already submitted in the written proceedings against the version of the patent maintained by the opposition division, against which the appellant had directed its grounds of appeal.

The appellant submitted that the circumstances justifying the admittance of these two further attacks under Article 13(2) RPBA were to be seen in the fact that the board, contrary to the position expressed in its communication under Article 15(1) RPBA, had, during the oral proceedings, acknowledged the clarity of

feature (ii) of claim 1 and therefore accepted the construction proposed by the respondent.

According to the appellant, this construction is so broad that feature (ii) cannot be regarded as imposing any meaningful limitation on the claimed subject-matter, since virtually any opening device of the relevant kind would satisfy it.

In its view, that change of the board's conclusion as compared with the preliminary opinion, together with the breadth of the construction adopted, amounted to exceptional circumstances within the meaning of Article 13(2) RPBA.

4.2 The respondent objected to the admittance of the two further attacks, arguing that the 4th auxiliary request had originally been filed as auxiliary request 6 during opposition proceedings and had remained unchanged ever since, having been re-filed with its reply to the appellant's grounds of appeal on 30 October 2024.

4.3 The board concurs with the respondent and decides not to admit these two inventive-step attacks into the appeal proceedings.

Under Article 13(2) RPBA, any amendment to a party's appeal case made after notification of the summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

The 4th auxiliary request was filed on 30 October 2024 with the respondent's reply to the appellant's grounds of appeal.

The appellant therefore had had ample opportunity, in particular in its letter dated 12 March 2025 in response to the said reply, before the notification of the board's communication under Article 15(1) RPBA, to substantiate any inventive-step attack it wished to direct against this specific request.

The fact that the board, in the course of the oral proceedings and after hearing the parties, has reached a conclusion on the clarity of feature (ii) different from that expressed in its preliminary opinion under Article 15(1) RPBA does not, in itself, constitute exceptional circumstances within the meaning of Article 13(2) RPBA.

It is established case law of the Boards of Appeal that the preliminary opinion of the board is non-binding, and that a deviation from it after the parties' arguments have been heard at the oral proceedings is part of the normal course of appeal proceedings and does not represent exceptional circumstances (CLB, V.A. 4.5.5.a)).

The alleged "extreme broadness" of the construction of feature (ii) does not justify the filing of new objections against the 4th auxiliary request either.

The construction in question had already been substantially put forward by the respondent in its reply of 30 October 2024 (page 15), where clarity of this feature was first discussed.

For the above reasons, the board exercises its discretion under Article 13(2) RPBA to the effect that the two further inventive-step attacks raised by the

appellant for the first time at the oral proceedings, namely D1 in combination with the common general knowledge of the skilled person and D2 in combination with D11, are not admitted into the appeal proceedings.

5. Description

At the oral proceedings before the board both parties agreed that no amendment to the description was needed in view of the 4th auxiliary request.

The board agreed.

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 in amended form in the following version:
 - Claims 1-13 of the 4th auxiliary request filed with the reply to the opponent's appeal,
 - Paragraphs 1-120 of the patent specification, and
 - Figures 1-4 of the patent specification.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated