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Datasheet for the decision of 18 June 2026

Case Number: T 1329/24 - 3.2.07

Application Number: 16174861.1

Publication Number: 3184453

IPC: B65D21/02, B65D77/20, B65D81/20, B65B51/10

Language of the proceedings: EN

Title of invention:
SEALABLE CONTAINER, SEALED CONTAINER AND PROCESSES FOR MAKING THEREOF

Patent Proprietor:
LINPAC Packaging Limited

Opponent:
Mannok Pack Limited

Headword:

Relevant legal provisions:
EPC Art. 56, 99(1), 112(1)(a), 114(2)
RPBA 2020 Art. 12(6)

This datasheet is not part of the Decision
It can be changed at any time and without notice

Keyword:
Referral to the Enlarged Board of Appeal - (no)
Inventive step - (yes)
Late-filed evidence - admitted in first-instance proceedings (no) - error in use of discretion at first instance (no)

Decisions cited:
G 0005/83, G 0003/08, G 0002/21, G 0001/24, R 0021/09, T 2196/15
Meril v Edwards [UPC_CoA_464/2024] et al (CoA 25 November 2025)
Amgen v Sanofi [UPC_CoA_528/2024] & [UPC_CoA_529/2024] (CoA 25 November 2025)
Emotional Perception AI Limited v Comptroller General of Patents, Designs and Trade Marks [2026] UKSC 3 (11 February 2026)

Catchword:

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Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1329/24 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 18 June 2026

Appellant: (Opponent)	Mannok Pack Limited Scotchtown, Co. Cavan (IE)
Representative:	Murgitroyd & Company 165-169 Scotland Street Glasgow G5 8PL (GB)
Respondent: (Patent Proprietor)	LINPAC Packaging Limited Wakefield Road Featherstone Pontefract West Yorkshire WF7 5DE (GB)
Representative:	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted/electronically transmitted on 9 September 2024 rejecting the opposition filed against European patent No. 3184453 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Patton
Members:	S. Watson
	Y. Podbielski

Summary of Facts and Submissions

I. An appeal was filed by the opponent ("appellant") against the decision of the opposition division rejecting the opposition against European Patent No. 3 184 453.

II. The opposition division found that the single ground for opposition raised by the opponent, that of lack of inventive step (Articles 100(a) and 56 EPC) did not prejudice the maintenance of the patent as granted.

III. The following documents are referred to in this decision:

D4: GB 2471028 A
D21: Expert Report of Mark Strachan, 7 December 2018
D22: Expert report of Charles Shaw, 6 December 2018
D23: Judgment of the High Court of England and Wales: *Quinn Packaging Ltd v Linpac Packaging Limited and R. Færch Plast A/S* [2019] EWHC 2119 (IPEC)
D26: Declaration of Olaf Dolfin 5 April 2024
D27: Declaration of Neil Atkinson 14 March 2024.

IV. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA dated 29 January 2026. The preliminary opinion of the board was that the appeal was likely to be dismissed.

V. The appellant responded to the board's preliminary opinion with written submissions dated 15 May 2026, including, under point 4., a request for referral of a

question to the Enlarged Board of Appeal (see this decision, point VII. below).

The patent proprietor ("respondent") replied to the appellant's submissions with written submissions of 20 May 2026.

VI. Oral proceedings took place on 18 June 2026. At the conclusion of the oral proceedings the decision was announced.

Details of the oral proceedings can be found in the minutes.

VII. The final requests of the parties were as follows.

The appellant requested
- that the decision under appeal be set aside and the patent be revoked
- that documents D26 and D27 be admitted into the appeal proceedings
- that the following question be referred to the Enlarged Board of Appeal
  "*To what extent must a deciding body, under the principle of free evaluation of evidence (G 2/21), consider multiple, consistent expert declarations as sufficient proof of a contested factual assertion of common general knowledge, particularly when such declarations are submitted to meet an established burden of proof?*".

The respondent requested
- that the appeal be dismissed, or if the decision under appeal is set aside

- that the patent be maintained in amended form based on one of the sets of claims of auxiliary requests 1 to 6 filed on 9 May 2023,
- that documents D26 and D27 not be admitted into the appeal proceedings, and
- that the request for referral to the Enlarged Board of Appeal be refused.

VIII. Independent claim 1 of the patent as granted (main request) reads as follows (labelling of features as used by the parties):

"A sealable container comprising:
a base and a continuous side wall extending substantially perpendicular to the base with a peripheral flange formed along the upper, in use, edge of the continuous side wall,
wherein the base and the continuous side wall are clear and consist essentially of polyethylene terephthalate (PET),
wherein a layer of adhesive is located on an upper, in use, surface of the peripheral flange such that a lidding film may be sealed to the peripheral flange to create a sealed space between the base, continuous side wall and lidding film,
wherein said layer of adhesive does not extend onto the vertical, in use, surfaces of the continuous side wall and does not extend onto the base,
characterised in that
(1.5) the container further comprises at least one denesting recess, free of adhesive, adjacent a corner of the container, and
(1.6) a denesting area, free of adhesive, which extends partially or completely along the inner periphery of the flange,
(1.7) wherein the distance between the upper surface

of the denesting area and the base of the tray is shorter than the distance between the upper surface of the flange and the base,

(1.8) wherein the at least one recess is located in the denesting area."

IX. The wording of the claims of the auxiliary requests are not relevant for the decision.

X. The arguments of the parties relevant for the decision are dealt with in detail below.

Reasons for the Decision

1. *Inventive step - claim 1 - D4 with common general knowledge*

1.1 In the decision under appeal the opposition division found that the subject-matter of claim 1 was not obvious in view of document D4 and the common general knowledge of the skilled person because arriving at the claimed subject-matter required a combination of assumptions and choices which could only be made with the benefit of hindsight (decision under appeal, II.15.1.3).

2. Disclosure of D4

2.1 In the decision under appeal the characterising portion of claim 1 (features 1.5 to 1.8 as set out in point VIII. above) was found not to be disclosed in document D4 (see decision under appeal, II.15.1.1).

2.2 It is common ground that feature 1.7 is not disclosed in D4. The respondent also regarded features 1.5, 1.6 and 1.8 as distinguishing features. As the board

concludes that the subject-matter of claim 1 would not have been obvious even if feature 1.7 alone distinguishes the claim from D4, there is no need to decide whether D4 also fails to disclose features 1.5, 1.6 and 1.8. Nor is it necessary to decide on the request of the respondent not to admit the appellant's submissions relating to those features.

3. Objective technical problem

3.1 The respondent formulated the objective technical problem as how to provide containers which may be stacked for storage, but which may readily be freed from the stack.

3.2 The appellant argued that this formulation was too broad and the objective technical problem should be formulated as how to apply adhesive to the outer flange of the tray shown in figure 3 of D4 while ensuring the inner periphery, including the denesting recesses, remains free from adhesive.

3.3 The board need not decide which formulation is correct because, even on the basis of the appellant's formulation, the claimed subject-matter is not obvious.

4. Obviousness

4.1 The appellant argued that the adhesive-free zone on the container could be achieved by selecting between two obvious solutions: (i) avoiding applying the adhesive to the denesting area of a flat flange or (ii) relieving the denesting area relative to the flange. A selection between two obvious alternative solutions could not confer an inventive step.

In a second line of argument, the appellant contended that D4 itself disclosed that the adhesive could be supplied by a) a roller, b) spray coating, c) a hot melt gun, or d) a printing technique (D4, page 4, lines 19 to 21). Methods b) to d) applied the adhesive selectively and were all obvious. Method a), which was explicitly taught in D4, also in the example on page 8, was also obvious. According to the appellant, once the skilled person had selected that option, they would recognise that applying adhesive by a roller across a flat flange would lead to contamination so the most direct and obvious solution would be to relieve the inner area relative to the outer flange.

4.2 It is established case law that an ex post facto approach to inventive step must be avoided as the assessment of obviousness must be carried out without knowledge of the invention (see Case Law of the Boards of Appeal, 11th edition 2025 ("CLB"), I.D.6.).

4.2.1 Regarding the first line of argument, the board agrees with the respondent, in particular in view of the absence of any evidence, that the two alternatives presented by the appellant are not two obvious alternatives. Only with knowledge of the claimed invention would the skilled person recognise, starting from D4, that these alternatives address the identified problem.

4.2.2 The appellant argued that the suggestion of the use of a roller in D4 would motivate the skilled person to choose to apply the adhesive by roller and that once this choice was made, the modification of relieving the denesting area was the inevitable consequence.

However, in the board's view, even if the skilled person, following the appellant's second line of argument, were to choose the option of applying adhesive with a roller from the suggested alternatives in D4, they would still have to identify the resulting problem and select an appropriate solution. Relieving the denesting area relative to the flange is only one of several possible solutions. As submitted by the respondent, alternatives include masking the denesting area or using a patterned roller.

Particularly as document D4 makes no mention of any particular requirement to keep the denesting area adhesive-free, the hint to use a roller to apply adhesive to the flange cannot be seen as a hint to relieve the denesting area from the flange.

The board therefore concludes that the appellant's reasoning relies on hindsight.

5. Further arguments

5.1 The appellant made a policy argument relating to the patent system itself. According to the appellant, a third party following the teaching of D4 would make a tray according to figure 3 of D4 which would then be the same as figure 3 of the contested patent which is presumed to fall within the scope of the patent. This would be contrary to how the patent system is intended to work.

5.1.1 The board notes that the scope of protection of the contested patent is set out in the claims (Article 69(1) EPC).

A third party following the teaching of D4 would not provide denesting recesses in denesting areas relieved from the flange (feature 1.7), as this feature is regarded as not disclosed in D4, and would therefore not produce a container falling within the scope of the claims.

5.2 The appellant also referred to documents D21, D22, D23, D26 and D27 in support of its case on obviousness of the subject-matter of claim 1. Documents D21, D22, D26 and D27 are written declarations from technical experts; document D23 is a judgment from the High Court of England and Wales.

The appellant argued that the opposition division did not sufficiently consider documents D21, D22 and D23 and erred in not admitting documents D26 and D27 into the opposition proceedings.

5.3 *Documents D21 and D22*

5.3.1 The appellant argued that the opposition division did not sufficiently consider documents D21 and D22, which were expert reports submitted in the case leading to the decision in D23. The appellant argued that under the principle of free evaluation of evidence, the expert reports should have been considered as proof of common general knowledge.

According to the appellant, these reports proved that the provision of denesting features to ensure that stacked trays did not stick together formed part of the skilled person's common general knowledge and that the skilled person would recognise such denesting features in the tray of figure 3 of D4.

The appellant has not argued that D21 and D22 demonstrate that relieving the denesting area relative to the flange formed part of the skilled person's common general knowledge. It is therefore unnecessary to consider these documents in relation to feature 1.7.

5.4 *Document D23*

5.4.1 In its notice of opposition, the appellant relied on document D23, a judgment from the High Court of England and Wales, as evidence that the skilled person would regard the claimed subject-matter as obvious. The decision under appeal referred to document D23 and reasoned that as it was a legal document, written by a judge and addressed the circumstances of a specific court case, it was not "a recognised source for establishing or reflecting industry standards or best practices in technical fields" (see decision under appeal, paragraph bridging pages 4 and 5).

5.4.2 In its statement of grounds of appeal, the appellant argued that the opposition division did not properly consider the judge's findings in D23, paragraphs 57 to 68.

At the oral proceedings before the board, the appellant also referred to G 1/24 (Reasons, 16.) and the decisions of the Court of Appeal of the UPC in *Meril v Edwards* (UPC_CoA_464/2024 et al, 25 November 2025) and *Amgen v Sanofi* (UPC_CoA_528/2024, UPC_CoA_529/2024, 25 November 2025) and argued that these decisions demonstrated a desire for harmonisation which meant that a decision of a national court should be regarded as seriously persuasive.

5.4.3 The board notes, as acknowledged by the appellant, that decisions taken in national courts have no binding effect on the deciding bodies of the EPO as questions of patentability are to be decided solely in accordance with the EPC (CLB, III.H.8.2).

As set out in R 21/09, although decisions and opinions of other courts may be considered, caution should be exercised when dealing with such evidence as boards must come to their own independent conclusions (R 21/09, Reasons 2.3 to 2.5).

5.4.4 The board also notes that the harmonisation philosophy behind the EPC generally refers to harmonisation of interpretation of the EPC (see G 5/83, Reasons 6; G 3/08, Reasons 7.2.2; *Emotional Perception AI Limited v Comptroller General of Patents, Designs and Trade Marks* [2026] UKSC 3, paragraphs 44 to 46) or to harmonisation of practice (G 1/24, Reasons 16.). The objective of harmonisation does not require the EPO and national courts to reach identical conclusions in every individual case.

5.4.5 The board therefore sees no error in the opposition division's assessment merely because it reached a different conclusion from the High Court of England and Wales.

5.5 *Admittance of documents D26 and D27 into the appeal proceedings (Article 12(6) RPBA)*

5.5.1 Documents D26 and D27 were not admitted into the opposition proceedings (see decision under appeal, page 5, first complete paragraph).

5.6 The appellant requested that these documents be admitted into the appeal proceedings. According to the appellant, the opposition division had erred in not admitting them as they were not late-filed, and even if they were considered to be late-filed, the opposition division's decision was based on a flawed application of legal principles (Article 12(6) RPBA).

5.7 The respondent requested that documents D26 and D27 not be admitted into the appeal proceedings as the documents were late-filed and the opposition division used its discretion not to admit them correctly (Article 12(6) RPBA).

5.8 According to Article 12(6), first sentence, RPBA, a board shall not admit requests, facts, objections or evidence which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.

5.9 It is established case law that evidence submitted by an opponent after the expiry of the nine-month period according to Article 99(1) EPC is generally to be regarded as late-filed. Exceptions to this rule are made where such evidence could not have been filed earlier, for example where the subject of the proceedings has changed (see CLB, IV.C.4.2.1).

5.9.1 The board concludes that the opposition division had discretion not to admit documents D26 and D27 as they were filed after the nine-month opposition period, in relation to the patent as granted and the subject of the proceedings had not changed.

The appellant argued that documents D26 and D27 were filed in response to the opposition division's preliminary opinion to demonstrate that denesting features formed part of the skilled person's common general knowledge and that the skilled person would recognise such features in the tray shown in figure 3 of D4.

In its annex to the summons to oral proceedings dated 29 September 2023, the opposition division did not dispute that denesting features as such were known. Rather, it reasoned that, since D4 made no mention of denesting, the skilled person would not regard the recessed feature shown in figure 3 as a denesting recess. This point had, however, already been raised by the respondent in its reply to the notice of opposition, see for instance page 20, first complete paragraph. The opposition division's preliminary opinion therefore did not raise any new issues.

5.10 The opposition division therefore had discretion not to admit the late-filed evidence (Article 114(2) EPC, CLB, IV.C. 4.1). The board is satisfied that the opposition division exercised its discretion according to the correct principles and in a reasonable manner.

5.10.1 In the decision under appeal, the opposition division reasoned that D26 and D27 could not be considered as common general knowledge and were in any case no more relevant than D21 or D22 which were already on file.

5.10.2 It is established case law that a board, when reviewing a discretionary decision of an opposition division should not review all the facts and circumstances of the case as if it were in the place of the opposition division but should rather only overrule the way in

which discretion was exercised if the wrong principles were used, or the right principles were not taken into account or if the discretion was exercised in an arbitrary or unreasonable way (CLB, V.A.3.4.1b)).

Prima facie relevance is a recognised criterion for deciding whether to admit late-filed evidence (see CLB, IV.C.4.5.3).

5.10.3 The appellant argued that D26 and D27 had to be viewed together with D21 and D22 as corroborative, not merely cumulative, evidence that the skilled person would readily identify features in trays which are suitable for denesting. According to the appellant, the four declarations demonstrated a consensus of opinion regarding common general knowledge.

Further, the opposition division had applied a formalistic standard that common general knowledge should be proven by a textbook or monograph instead of freely evaluating the evidence (G 2/21) and weighing up the declarations to form an overall picture of common general knowledge in the field, as had been carried out, for example, in T 2196/15.

5.10.4 The board is not convinced by these arguments. The issue in the present case is whether the opposition division exercised its discretion correctly when it decided not to admit D26 and D27, whereas the appellant's arguments concern the extent to which expert declarations may establish common general knowledge of the skilled person. The decision in T 2196/15 did not concern the review of an opposition division's discretionary decision and is therefore not applicable to the present case.

The skilled person is a fictitious person (see CLB, I.D.8.1.1). The decisive question is therefore not whether one or more individual experts interpreted figure 3 of D4 in a particular way, but what the skilled person would derive directly and unambiguously, using common general knowledge, from that document as a whole. That denesting features in trays belong to the skilled person's common general knowledge was undisputed and already argued in D21 and D22, but that said features could readily be identified in figure 3 of D4 as alleged in any of the documents D21, D22, D26 and D27 no longer relates to said common general knowledge, but merely to an expert's personal assessment based on their own technical knowledge. Such assessments of a document, even if corroborative, cannot form common general knowledge as it cannot be excluded that other experts may assess the document differently.

The opposition division evaluated D26 and D27 and concluded that they were no more relevant than D21 and D22, which were already on file, so were not *prima facie* relevant. The board sees no error in that exercise of discretion.

5.10.5 The board cannot see any circumstances in the present case which would justify admitting documents D26 and D27 into the appeal proceedings (Article 12(6), first sentence, RPBA).

6. *Referral to the Enlarged Board of Appeal*

6.1 The appellant requested the following question be referred to the Enlarged Board of Appeal as a point of law of fundamental importance had arisen, should the

board decide that the opposition division did not err in refusing to admit documents D26 and D27:

"*To what extent must a deciding body, under the principle of free evaluation of evidence (G 2/21), consider multiple, consistent expert declarations as sufficient proof of a contested factual assertion of common general knowledge, particularly when such declarations are submitted to meet an established burden of proof?*"

6.2 According to Article 112(1)(a) EPC a board shall, during proceedings on a case and either of its own motion or following the request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the purposes set out in Article 112(1) EPC, namely to ensure uniform application of the law, or if a point of law of fundamental importance arises.

6.3 According to the appellant, the practical application of the principle of free evaluation of evidence in proving common general knowledge remains a source of uncertainty. In the present case, the opposition division relied on a formalistic "textbook" standard of proof.

6.4 The board does not consider a referral to be necessary. The question is not decisive for the present case as there is no disputed factual assertion of common general knowledge. Moreover, the principle of free evaluation of evidence precludes prescribing the weight to be given to a particular category of evidence.

7. *Conclusion*

In conclusion, the appellant's request for referral to the Enlarged Board of Appeal is to be refused. As none of the appellant's objections prejudices the maintenance of the patent as granted, the appeal must be dismissed.

Order

For these reasons it is decided that:

1. The request for referral to the Enlarged Board of Appeal is refused.

2. The appeal is dismissed.

The Registrar: The Chairman:

G. Nachtigall G. Patton

Decision electronically authenticated