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Datasheet for the decision of 27 April 2026

Case Number: T 0378/25 - 3.2.01

Application Number: 13177327.7

Publication Number: 2668969

IPC: A61M5/20

Language of the proceedings: EN

Title of invention:
Automatic injection device with trigger lock

Patent Proprietor:
Cilag GmbH International

Opponent:
Daub, Thomas

Headword:

Relevant legal provisions:
EPC Art. 83, 123(2), 52(1), 54, 56
RPBA 2020 Art. 12(3), 12(5)

Keyword:
Sufficiency of disclosure - (yes)
Amendments - extension beyond the content of the application as filed (no)
Novelty - (yes)
Inventive step - (yes)
Statement of grounds of appeal - reasons set out clearly and concisely (no)
Discretion not to admit submission - requirements of Art. 12(3) RPBA 2020 met (no) - submission admitted (no)

Decisions cited:
G 0002/21

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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 0378/25 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 27 April 2026

Appellant: (Patent Proprietor)	Cilag GmbH International Gubelstrasse 34 6300 Zug (CH)
Representative:	Carpmaels & Ransford LLP One Southampton Row London WC1B 5HA (GB)
Appellant: (Opponent)	Daub, Thomas Patent- und Rechtsanwaltskanzlei Daub Bahnhofstraße 5 88662 Überlingen (DE)
Representative:	Vossius & Partner Patentanwälte Rechtsanwälte mbB Siebertstrasse 3 81675 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted/ electronically transmitted on 3 January 2025 concerning maintenance of the European Patent No. 2668969 in amended fo rm.**

Composition of the Board:

Chairman	G. Pricolo
Members:	V. Vinci
	O. Loizou

Summary of Facts and Submissions

I. The appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division to maintain the patent in amended form.

The patent proprietor likewise filed an appeal against the interlocutory decision of the Opposition Division that was withdrawn by letter dated 2 May 2025. Consequently, the appellant (opponent) is the sole appellant in the present appeal proceedings, while the patent proprietor participates as respondent.

II. The Opposition Division found that the main request filed on 26 September 2024 did not comply with the requirements of Article 123(2) EPC and decided to maintain the patent on the basis of the auxiliary request 1 filed on the same date. The Opposition Division found that the auxiliary request 1 complied with the requirements of Articles 83 and 123(2) EPC and that the subject-matter of independent claim 1 was novel and involved an inventive step within the meaning of Articles 52(1), 54 and 56 EPC in view of the following state of the art:

D1 : WO 2007/093067 A1
D1': US 2009/0149809 A1 (equivalent in English of D1)
D2 : WO 2007/036676 A1
D3 : US 2005/0101919 A1
D4 : US 2005/0203466 A1
D5 : US 2006/0270984 A1
D6 : WO 2006/111861 A2
D7 : WO 2008/022476 A1
D8 : US 4 717 383 A
D9 : US 2003/0229308 A1

With the communication according to Article 15(1) RPBA dated 12 December 2025 the Board informed the parties of its preliminary assessment of the case.

Oral proceedings pursuant to Article 116 EPC were held before the Board on 27 April 2026 by videoconference.

III. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed (main request) or, in the alternative, that the patent be maintained in amended form according to one of the auxiliary requests 1 to 7 filed with their reply.

IV. Independent claim 1 of the patent in the version as maintained by the Opposition Division (main request) reads as follows (labelling according to the decision under appeal):

1. *"An injection device (110) comprising:*

1.1 *a housing (112) adapted to receive a syringe (114) having a discharge nozzle (118), the syringe (114) being moveable in the housing (112) on actuation of the injection device (110) along a longitudinal axis from a retracted position in which the discharge nozzle (118) is contained within the housing (112) and an extended position in which the discharge nozzle (118) of the syringe (114) extends from the housing (112) through an exit aperture (128),*

1.2 *wherein the exit aperture is defined by a rim (128a) located on an edge of the housing;*

1.3 *an actuator (130);*

1.4 *a drive (131, 132, 133, 134, 135) adapted to be acted upon by the actuator (130) and in turn act upon the syringe (114) to advance it from its retracted position to its extended position and discharge its contents through the discharge nozzle (128);*

1.5.1 *a locking mechanism comprising a contact surface in the form of a flange which is adapted to extend over or around at least a part of the rim and a sleeve (119) extending from the contact surface into the housing,*

1.5.2 *the sleeve configured to be moveable, from an engaged position of the locking mechanism in a direction into the housing (112) at the exit aperture (128) into a disengaged position, of the locking mechanism,*

1.5.3 *wherein the locking mechanism is adapted to prevent actuation of the device when it is in its-san engaged position and permit actuation of the device when it is in its disengaged position;*

1.6 *a syringe carrier (127) for carrying the syringe as it is advanced and restraining its advancement beyond its extended position, wherein the syringe carrier (127) is adapted to support the syringe (114);*

1.7 *a latch member (161) adapted to prevent, in an engaged position of the locking mechanism, movement of the syringe carrier (127) relative to the housing (112) and further adapted to permit, in a disengaged position of the locking mechanism, the syringe carrier (127) moving relative to the housing (112); and*

1.8 *wherein when the contact surface is spaced from the rim, including when the end of the sleeve can be seen to emerge from the exit aperture, the sleeve can slide from an engaged position to the disengaged position in which the contact surface has been pushed into a position in which it sits adjacent, in contacting juxtaposition, to the rim."*

Reasons for the Decision

Article 123(2) EPC: Amendments

1. The patent as maintained complies with the requirements of Article 123(2) EPC as correctly found by the Opposition Division.

1.1 The appellant submitted that the features introduced in claim 1 according to which the locking mechanism comprised *"a contact surface in the form of a flange ..." (feature 1.5.1)*, said contact surface being *"... pushed into a position in which it sits adjacent, in contacting juxtaposition, to the rim"* (feature 1.8) lacked a basis in combination in the application as filed, thereby introducing subject-matter extending beyond the content originally disclosed, contrary to the requirements of Article 123(2) EPC.

1.1.1 In essence, they argued that, contrary to item 18.3 of the contested decision, the skilled person, when reading claim 1 in the technical context of the application as filed, would understand the term *"contact surface"* as a surface providing an improved contact area against the patient's tissue at the injection site. The *"contact surface"* would therefore not correspond, as erroneously assumed by the Opposition Division, to the proximal, rim-facing side of the flange. Furthermore, according to the appellant, any interpretation according to which both the patient-facing and the rim-facing sides of the flange constituted the *"contact surface"* found no direct and unambiguous support in the application as filed, in particular in the cited passages on page 3 and 6 of the description which had been indicated by the Opposition

Division and the respondent as forming the basis for the amendment to claim 1.

1.1.2 At the oral proceedings, and in response to the Board's preliminary opinion on this issue following the view of the respondent, the appellant argued that the contact surface of the flange was disclosed in the cited passages of the application as originally filed as providing contact both with the patient's tissue at the injection site and with the rim defining the exit aperture of the housing. According to the appellant, the omission in claim 1 as maintained of the functionality relating to the contact with the patient's tissue resulted in an unallowable intermediate generalisation infringing Article 123(2) EPC. In this respect, the appellant submitted that the wording of claim 1 now encompassed embodiments where the flange was not arranged at the very distal end of the housing but more proximally, wherein the proximal contact surface of the flange could be pushed in contact to the rim but while its distal contact surface could not contact the patient's tissue at the injection site. Such embodiment allegedly falling within the scope of claim 1 as amended was not supported by the application as originally filed.

1.2 These arguments are not convincing:

The Board - in accordance with the interpretation of the Opposition Division and the respondent - finds that the only meaningful way to read claim 1 is that feature 1.5.1 requires a flange defining a contact surface that on its proximal side can contact the rim when the sleeve moves from the engaged to the disengaged position, while its distal side is suitable to contact the tissue at the injection side. This reading is fully

supported by the passages on page 3 and 6 of the the description as filed referred to by the parties, from which it can be derived that the *"contact surface"* within the meaning of the contested patent and of feature 1.5.1. fulfils two functions, namely (1) improving the contact area at the injection site (patient-facing surface of the flange) and (2) preventing the locking mechanism from being caught on the rim of the exit aperture of the housing (rim-facing end surface of the flange). The Board considers that a person skilled in the art reading the claim with a mind willing to understand and in the light of the technical context of the patent considers the tissue-contacting function to be implicit in the claimed arrangement and cannot thus see any additional technical information introduced in claim 1 arising from the absence of an explicit reference to the contact of the flange with the tissue of the patient objected by the appellant.

Article 83 EPC: Sufficiency of Disclosure

2. The patent as maintained complies with the requirements of Article 83 EPC as correctly found by the Opposition Division.

2.1 With their statement of grounds of appeal, the appellant contested the conclusion of the Opposition Division that the patent as maintained complied with the requirements of Article 83 EPC.

2.2 At the oral proceedings before the Board the parties regarding the objection pursuant to Article 83 EPC relied on their arguments presented in writing and did not make any further submissions. Since the parties did neither contest nor comment the preliminary opinion of the Board set out in the communication pursuant to

Article 15(1) RPBA dated 12 December 2025, the Board having considered all relevant aspects of this case sees no reason to deviate from its preliminary opinion which is hereby incorporated as its final findings and repeated below:

2.3 The appellant — on the basis of their interpretation of the feature *"contact surface"* developed in the context of their objection under Article 123(2) EPC - held that the skilled person was unable to manufacture a locking member comprising a flange-shaped contact surface simultaneously contacting the patient's tissue and the housing rim.

2.4 In line with the conclusions of the Opposition Division and in view of the the interpretation set out under point 1.2 above, the Board cannot see any difficulty for the skilled person in implementing a locking member having a contact surface in the form of a flange, said surface coming into contact both with the injection site (distal surface of the flange) and the housing rim (proximal surface of the flange). For example, Figure 1 of the application as filed provides all information necessary for the skilled person to design a locking mechanism comprising a contact surface in the form of a flange capable of performing both functions.

Novelty: Articles 52(1) and 54 EPC

3. The subject-matter of independent claim 1 of the patent as maintained is novel within the meaning of Articles 52(1) and 54 EPC, as correctly found by the Opposition Division.

3.1 The appellant argued that, contrary to the finding of the Opposition Division, the subject-matter of claim 1

as granted lacked novelty over document D1.

3.2 It is common ground that the injection device disclosed in D1 comprises features 1 to 1.5.1 and 1.5.3 to 1.7 of claim 1 of the patent as maintained. Therefore, under discussion is whether features 1.5.2 and 1.8 can be also directly and unambiguously derived from this prior art document as alleged by the appellant or not as found by the Opposition Division.

3.3 The appellant criticized what they considered to be an unduly narrow interpretation of claim 1 adopted by the Opposition Division and also followed by the Board in its preliminary opinion. The appellant submitted that the group of features 1.5.1 to 1.5.3 as well as feature 1.8 had to be read broadly. In this respect they put forward that the *"locking mechanism"* of feature 1.5.1 was merely defined as a sleeve with a flange. Furthermore, the claim did not specify what is locked, engaged, or disengaged, nor with respect to which further component the engagement/disengagement took place. According to the appellant, the terms *"engaged position"* and *"disengaged position"* of feature 1.5.2 consequently amounted to nothing more than a first and second positions of the sleeve. The appellant also brought forward that claim 1, in the second position, merely required that actuation of the device was permitted, without specifying the mechanism by which this occurs. In their opinion, D1 disclosed the same arrangement and functionalities derivable from a correct reading of claim 1. The appellant observed that the arrangement of the injection device of D1 comprised the transmitting element (16), which like the locking mechanism of feature 1.5.1 consisted of a sleeve with a flange, the transmitting element (16) being moved inward from an initial position into a second position

upon contact with the patient's body. Once this second position was reached, actuation of the known device became possible because the movement of the transmitting element (16) placed the switch element (17) in a state that allowed the subsequent triggering sequence leading to release of the syringe carrier. The appellant also observed that claim 1 did not exclude the use of a trigger and that in fact the device of the contested patent itself, as described in paragraph [0039], also required a trigger button (302) to initiate injection. In the appellant's opinion, both the claimed device and that of D1 provided a state in which actuation was permitted, and this in the same way. Since the claim contained neither further limitation regarding the alleged locking, engagement, or disengagement functions nor the constructional solution adopted thereto, and since the same permission of actuation was disclosed in D1 as result of the movement transmitted by the transmitting element (16) to the switch element (17), the appellant concluded that the features relating to the engaged and disengaged positions as they result from a correct broader reading of claim 1 and in particular of its features 1.5.2. and 1.8 in combination, were fully anticipated by D1 which - contrary to the findings of the Opposition Division - was thus prejudicial to novelty of the subject-matter of claim 1 of the patent as maintained.

3.4 The Board is not persuaded:

As convincingly pointed out by the respondent, the functionality defined in claim 1 does not relate to initiating the injection or actuating the drive mechanism to this purpose, but rather to whether and when movement of the syringe carrier is prevented or

permitted. This is clearly expressed by feature 1.7. When reading claim 1 as a whole, rather than considering individual features in isolation, the skilled person derives that the claimed subject-matter clearly requires and implies a direct causal link between the movement of the sleeve into the *"disengaged position"* characterised - according to feature 1.8 - by the flange abutting the housing rim and an operational state of disengagement of the locking mechanism such that forward movement of the syringe carrier relative to the housing is permitted once the drive means are activated. In line with the respondent's arguments and the findings of the Opposition Division, D1 does not disclose a disengaged position of the locking mechanism that is reached solely by movement of the sleeve into the housing, as required by features 1.5.2 and 1.8 read in combination. Rather, as correctly noted in the contested decision and emphasised by the respondent during oral proceedings, according to D1 the latch member (10B) depicted in in Figure 2B continues to prevent movement of the syringe carrier even after the sleeve has been pushed fully inward and its contact surface is abutting the housing rim. Contrary to the appellant's reading of the technical teaching of D1, release of the latch member (10B) occurs in the known injection device only upon subsequent actuation of the trigger (11), and therefore not as a direct consequence of the sole inward movement of the sleeve/transmitting element (16). Accordingly, - as correctly found by the Opposition Division - D1 does not disclose the functionality of features 1.5.2 and 1.8 that movement of the sleeve itself places the locking mechanism into its disengaged position, thereby leaving the syringe carrier free to be moved forward. The subject-matter of claim 1 is therefore novel over D1.

Inventive Step: Articles 52(1) and 56 EPC

4. The subject-matter of independent claim 1 of the patent as maintained involves an inventive step within the meaning of Articles 52(1) and 56 EPC, as correctly found by the Opposition Division.

4.1 Following lines of inventive step attacks have been submitted:

Line of inventive step attack starting from D2

4.2 With their appeal, the appellant contested the finding of the Opposition Division that the subject-matter of claim 1 was not rendered obvious by document D2 in combination with common general knowledge or D1 or any of documents D6, D7, and D9. These lines on inventive step attack where confirmed by the appellant at the oral proceedings. With their written submissions the appellant also referred to the combination of D2 with D5 and D8.

4.3 The Opposition Division found that the subject-matter of claim 1 differed from D2 in some aspects of features 1.5.2 and 1.8.

4.4 Starting from D2 as the closest prior art, the appellant argued that the only relevant difference was the presence of a flange on the sleeve (119). They put forward that once such a flange was provided, the distinguishing aspects of features 1.5.1 and 1.8 identified by the Opposition Division were inherently and inevitably achieved, namely that the flange extended over or around the rim and that, in the disengaged position, the contact surface was pushed into a position in which it sat in contacting

juxtaposition with the rim.

4.4.1 The appellant criticized the Opposition Division's formulation of the objective technical problem as providing visual feedback that the locking mechanism and hence the syringe carrier is disengaged. They argued that the alleged technical effect of providing visual feedback was not derivable from the patent. Furthermore, they submitted that no such visual feedback could be achieved in practical use because the flange, when pushed against the patient's body, was inevitably partly embedded in the patient's tissue and thus not visible. Instead, based on paragraph [0005] of the patent, the appellant formulated the objective technical problem as improving stability and ensuring reliable activation of the device.

4.4.2 According to the appellant, D2 already recognised on page 3, lines 13-14 the desirability of a large contact surface at the distal end of the sleeve. They thus argued that the skilled person would obviously consider to increase this surface by providing a flange at the distal end of the sleeve (119). The person skilled in the art would promptly select this solution to improve stability because it did not require a complete redesign of the injector, as it would be necessary if - according to the alternative mentioned by the respondent and the Opposition Division - the overall circumference of the injector and/or the sleeve wall thickness were increased. The appellant further argued that the Opposition Division's finding that there was no incentive to correlate the flange abutment position with the disengagement of the locking mechanism was artificial, since both the injection device of D2 and of the contested patent were ready for activation once

the sleeve has reached its final position.

4.4.3 Alternatively, even if the objective technical problem were to be formulated in the way suggested by the Opposition Division and the respondent as providing visual feedback of the operational state of the injection device, the appellant submitted that the claimed solution was obvious in view of D2 combined with D1, since this piece of prior art already disclosed a flanged sleeve and recognised the benefit of providing visual feedback to the user during operation. Finally, the appellant argued that documents D5, D6, D7, D8 and D9 demonstrated that providing a flange at the distal end of injector sleeve belonged to common general knowledge. They observed that in fact these documents also disclosed flanged sleeve, wherein the flange abutted the housing rim in the end inward position, thereby rendering obvious the claimed correlation between flange abutment and disengaged position of the locking mechanism. Accordingly, the person skilled in the art starting from D2 in combination with common general knowledge or with any of documents D1, D5, D6, D7, D8 or D9, would arrive at the subject-matter of claim 1 without the exercise of inventive skill.

4.5 The arguments of the appellant regarding lack of inventive step are not persuasive.

Regarding the question of the correct formulation of the technical problem addressed by the contested patent, the Board notes that according to established case law of the Board of Appeal (see for example G2/21), a technical effect relied upon for the formulation of the objective technical problem does not necessarily need to be expressly mentioned in the

application as filed. Rather, the relevant question is whether the skilled person, using common general knowledge and having regard to the technical teaching embodied by the originally disclosed invention, would derive that effect as being encompassed by that teaching. In this respect, the Board follows the view of the Opposition Division and the respondent that although it is true that the patent is silent regarding the possibility of obtain a visual feed back of the actual operational state of the injection device, a skilled person would immediately recognise such an effect as inherently arising from the disclosed abutting arrangement of the flange on rim in the disengaged position of the syringe carrier. Therefore, the Board finds that the formulation of the technical problem as adopted by the Opposition Division is correct, namely to provide a visual feedback of the operational state of the device.

4.6 The Board concurs with the assessment of the Opposition Division that the person skilled in the art, starting from D2 and seeking to provide visual feedback regarding the operational state of the injection device, in particular as to whether the disengaged position of the locking mechanism and hence of the syringe carrier has been reached, would not find any obvious hint towards the solution defined in claim 1. More specifically, the Board does not see why the skilled person should consider to modify the device of D2 by providing a flange at the distal end of the sleeve and by linking the disengaged position of the locking mechanism to the situation in which the distal contact surface of the flange sits adjacent to and in contacting juxtaposition with the rim as required by feature 1.8 of claim 1. The Board further considers that such a measure cannot be regarded as belonging to

the common general knowledge of the skilled person, particularly since several alternative solutions for providing visual feedback could be envisaged. For example, the operational state of the device could be indicated by means of a window provided in the housing or by other dedicated indicator arrangements. The same considerations and conclusions apply to the lines of inventive step attack based on D2 in combination with any of D5, D6, D7, D8 and D9. As regards these combinations, the Board does not see why the skilled person would extract the flange feature in isolation from these known injection devices and incorporate it into the device of D2 in such a way that the flange provided at the distal end of the sleeve comes into abutment with the rim when the disengaged position is reached, thereby providing visual feedback regarding the operational state of the device.

Further lines of inventive step attack

4.7 At the oral proceedings the appellant - when asked by the Board - maintained the lines of inventive step attack starting from D1 as closest prior art and referred in this respect to their written submission, namely to point 4.4 on page 21/23 of the statement of grounds of appeal.

4.8 The Board notes that document D1 is only briefly mentioned in the second paragraph of point 4.4 of the grounds. The Board finds that this inventive step attack does not meet the requirements of Article 12(3) RPBA, since this short passage does not contain a complete line of argument duly substantiating why the findings of the Opposition Division regarding the lines of inventive step attack starting from D1 were incorrect and should be reversed. For the sake of

completeness, the same analogously applies to the inventive step attack involving documents D3 and D4, which may at most be inferred from the last paragraph of point 4.4 of the statement of grounds of appeal of the appellant. The Board cannot therefore conclude that the attacks mentioned above can support the objection of lack of inventive step raised by the appellant.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar: The Chairman:

D. Grundner G. Pricolo

Decision electronically authenticated