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

**Case Number:** T 0559/25 - 3.2.07

**Application Number:** 15729798.7

**Publication Number:** 3154872

**IPC:** B65D77/00, B32B1/02, B65D81/20

**Language of the proceedings:** EN

**Title of invention:**  
DUAL OVENABLE PACKAGES FOR PERISHABLE FOOD PRODUCTS

**Patent Proprietor:**  
Cryovac, LLC

**Opponent:**  
Isarpatent - Patent- und Rechtsanwälte Barth  
Hassa Peckmann und Partner mbB

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54(2), 56

**Keyword:**  
Novelty - (yes)  
Inventive step - (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 0559/25 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 10 April 2026**

**Appellant:** Isarpatent - Patent- und Rechtsanwälte Barth  
(Opponent) Hassa Peckmann und Partner mbB  
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**Representative:** Isarpatent  
Patent- und Rechtsanwälte  
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**Respondent:** Cryovac, LLC  
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**Representative:** PGA S.p.A.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 13 February  
2025 rejecting the opposition filed against  
European patent No. 3154872 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairman** G. Patton  
**Members:** V. Bevilacqua  
S. Ruhwinkel

## Summary of Facts and Submissions

I. An appeal was filed by the opponent (appellant) against the decision of the opposition division to reject its opposition to European patent No. 3 154 872.

II. The appellant requests that:

- the decision under appeal be set aside
- the patent be revoked

A copy of the statement setting out the grounds of appeal was communicated to the patent proprietor (respondent), which was informed that any reply must be filed within four months. No such reply was filed, either before expiry of the time limit or subsequently. As a consequence, there are no requests or arguments from the respondent on file.

III. The following documents mentioned in the appealed decision will be referred to in the present communication.

D1: WO 2009/013284 A1

D2: WO 2007/093495 A1

D3: WO 2012/160142 A1

IV. Claim 1 of the **patent as granted** reads as follows.

"A modified atmosphere sealed dual ovenable package (10, 20) for storage and cooking of fresh perishable food products, comprising

A) at least a dual ovenable film,

B) at least a fresh perishable food product (11) and

C) a modified atmosphere,

wherein said film completely and air-tightly encloses the product and the modified atmosphere in a flexible container (12), whereby:

- said dual ovenable film comprises at least 80% by weight of one or more (co)polyester(s);
- said dual ovenable film does not include high barrier resins in amount higher than 5% with respect to the total film weight, being the high barrier resins selected from the group consisting of semiaromatic polyamides, EVOH, high acrylonitrile content resins, polyvinyl alcohol resins, polyvinylidene chloride resins, and combinations thereof, and
- the total thickness of said dual ovenable film is from 3 to 100 microns."

- V. The appellant's arguments are discussed in detail in the reasons for the Decision.

### **Reasons for the Decision**

1. Decision in written proceedings

The present decision is given in writing in accordance with Article 12(8) RPBA and Articles 113 and 116 EPC. The appellant requested oral proceedings only in the event that its requests were rejected. The respondent did not file any submissions or requests in the appeal procedure. The board considers that there is no need for oral proceedings (Article 116(1) EPC), since the case is suitable for a decision on the basis of the written submissions and the other documents on file.

2. The decision under appeal

2.1 The opposition division found that the subject-matter of claim 1 of the patent as granted was novel over documents D1, D2 and D3.

In particular, the opposition division referred to D1, paragraphs [0002], [0060], [0073]; D2, paragraphs [0002], [0063], [0064]; and D3, paragraphs [0057] to [0059], and held that none of these disclosed the feature:

"a film enclosing the product in a flexible container".

This feature, together with feature C) of claim 1 ("a modified atmosphere"), was accordingly found to distinguish the subject-matter of claim 1 from the disclosures of each of documents D1 to D3.

2.2 With regard to inventive step, the opposition division applied a "partial-problem" approach. It considered that the provision of "a modified atmosphere" was an obvious measure, and acknowledged inventive step only in the feature of a "flexible container".

3. Flexible container - novelty

3.1 In its statement of grounds of appeal, the appellant contested the opposition division's finding that "flexible container" constituted a distinguishing feature over the disclosures of documents D1 to D3.

3.1.1 The appellant first argued that "flexible" should be construed broadly, as a container characterised by a ready ability to adapt to new, different or changing requirements or applications.

On the basis of this first interpretation, the appellant argued that "flexible container" could not be considered a technical feature distinguishing the claimed subject-matter from the prior art, because no structural limitations of the claimed package could be derived therefrom.

- 3.1.2 The appellant further argued that "flexible container" was not a distinguishing feature even if this feature was interpreted in accordance with the description.

This was because, in paragraph [0062] of the patent in suit, flexible containers were defined as *"containers obtainable by self-sealing a single piece of film in the form of an envelope, a bag or a pouch, or two separated pieces of films, named top and bottom, the same or different"*.

Paragraphs [0105] to [0114] then described two embodiments of such flexible containers in which the bottom film was hollowed.

The appellant contended that, since D1 to D3 all disclosed containers formed by a tray (which could be seen as a hollowed bottom film) with a top film sealed thereto, these packages fell within the definition of a flexible container.

- 3.2 The board is not convinced by the appellant's arguments.

- 3.2.1 The first interpretation of "flexible" ("a ready ability to adapt to new, different or changing requirements or applications") is not accepted by the board, because there is no evidence on file upon which

it could be based.

The appellant has not submitted any evidence supporting this rather abstract interpretation of "flexible", which lacks any basis in the patent specification or in the common general knowledge of the skilled person.

The board considers that the interpretation resulting from the decision under appeal (I.12.2) is more convincing.

According to this interpretation, "flexible container" cannot refer, in relation to the packaging film, to containers which are disclosed as being rigid.

This interpretation is consistent with the technical context of the patent in suit, which identifies bags, pouches and envelopes as flexible containers (see paragraph [0062] of the patent in suit).

- 3.2.2 The appellant's interpretation based on paragraphs [0062] and [0105] to [0114] of the patent in suit is not convincing either.

While paragraph [0062] defines flexible containers as being made from "films", paragraph [0063] defines "ovenable tray lidded packages" as "ovenable packages including a thick, foamed or solid, plastic container closed with a lidding film sealed around the flange of the container".

The appellant's contention that a rigid or foamed tray can be equated with a "bottom film" finds no support, because the patent clearly distinguishes between the two concepts.

Furthermore, paragraph [0095] explicitly contrasts "these very thin films as packaging materials for dual ovenable packages" with "the previous thick, lidded trays".

Where thermoforming is mentioned in paragraph [0114], this is done to provide a cavity.

In addition, the thickness of films used in the invention is specified as "from 3 to 100 microns" (claim 1, paragraph [0092]), whereas foamed supports disclosed in the patent have a thickness "higher than 0.5 mm" up to "7.0 mm" (paragraph [0131]).

- 3.2.3 The containers disclosed in D1 to D3 are explicitly described as rigid or foamed trays (D1: table 4, paragraph [0073] - "rigid and foamed trays"; D2: paragraph [0064] - CPET ("crystalline poly(ethylene terephthalate)", APET ("amorphous poly(ethylene terephthalate)")) or APET/CPET containers, i.e. "solid" containers; D3: paragraph [0058]).

The board also notes that, for each of the allegedly novelty-destroying embodiments cited by the appellant, there is a disclosure in the prior-art documents that the heat generated by the sealing frame promotes shrinkage of the film in both directions without distortion of the container, to give a hermetically sealed lid (see D1, paragraph [0062]; D2, paragraph [0065]; D3, paragraph [0059]). The same applies to the examples in D1, which all comprise rigid and foamed trays (see D1, table 4, examples 3 to 6, paragraph [0073]).

Clearly, in a flexible container, shrinkage of the film in both directions could not occur without distortion

of the container. A flexible container, by definition, would deform or distort in response to the shrinkage forces exerted by the shrinking film. The fact that D1 to D3 all describe shrinkage without distortion of the container is a clear indication that the containers disclosed are rigid, not flexible.

The board therefore fully concurs with the opposition division that "flexible" is a distinguishing feature which is not disclosed by any of documents D1, D2 or D3. Accordingly, the subject-matter of claim 1 is novel.

4. Flexible - inventive step

4.1 As noted above, the opposition division found that the feature "flexible container" was not obvious, since there was no indication or hint in D1 to D3 that the rigid bottom trays there (which provide better protection) were flexible.

4.2 In its statement of grounds of appeal, the appellant argued that the effect obtained by providing flexible containers was that material could be reduced, something very advantageous in terms of sustainability and costs. The appellant relied on paragraph [0095] of the patent in suit, which states that "using these very thin films as packaging materials for dual ovenable packages instead of the previous thick, lidded trays is very advantageous in terms of sustainability and costs".

Based on this effect, the appellant formulated the partial objective technical problem as that of providing a packaging which is more sustainable and cost-efficient.

The appellant argued that the claimed solution, namely reducing the amount of material and thus providing a flexible container, was obvious to a person skilled in the art. According to the appellant, a skilled person confronted with the objective technical problem of providing a packaging with improved sustainability and reduced costs would immediately consider it obvious, based on their general knowledge, to reduce the amount of material and thereby provide a flexible container, in particular because flexible containers are well known and widely used for food packaging.

- 4.3 In the absence of any counter-argument from the respondent, the appellant's reasoning appears correct, and is accepted by the board.

As argued by the appellant, the closest prior art for the subject-matter of claim 1 of the patent as granted can be any one of documents D1, D2 or D3.

The appellant was correct in its formulation of the technical problem to be solved, as it relied on the effects of the distinguishing feature "flexible" which are mentioned in the patent in suit itself (see paragraph [0095]).

Thus, the partial objective technical problem relating to the distinguishing feature "flexible container" can be formulated as that of providing a packaging which is more sustainable and cost-efficient.

The board considers that the claimed solution, namely reducing the amount of material and thus providing a flexible container, is obvious to a person skilled in the art.

A skilled person confronted with the objective technical problem of providing a packaging with improved sustainability and reduced costs would immediately consider it obvious, based on common general knowledge, to reduce the amount of material by providing a flexible container.

This is all the more the case because flexible containers are well known and widely used for food packaging.

The skilled person in the field of food packaging would be fully aware of flexible packaging as an alternative to rigid trays and would naturally consider using flexible containers when seeking to reduce material usage and improve sustainability.

Accordingly, and taking into account the fact that the opposition division considered that the provision of a "modified atmosphere", i.e. the only other distinguishing feature over each of the cited prior-art documents D1, D2 and D3, was obvious, the appellant has convincingly demonstrated that the subject-matter of claim 1 of the patent as granted lacks inventive step (Article 56 EPC) when starting from any of documents D1, D2 or D3 and combining the teaching thereof with the common general knowledge of the skilled person.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated