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**Datasheet for the decision
of 10 April 2019**

Case Number: T 1841/14 - 3.2.05

Application Number: 09425161.8

Publication Number: 2246176

IPC: B29C49/36, B29C49/46

Language of the proceedings: EN

Title of invention:

Apparatus for molding containers obtained from parisons

Patent Proprietor:

Gea Procomac S.p.A.

Opponent:

KHS Corpoplast GmbH

Relevant legal provisions:

RPBA Art. 12(4), 13(1), 13(3), 15(3)

EPC Art. 123(2), 100(b), 56

Keyword:

Late-filed request - amendments after arrangement of oral proceedings - request clearly allowable (yes)

Amendments - disclosure in drawings

Sufficiency of disclosure - (yes)

Admittance of new alleged public prior use in appeal - (no)

Inventive step - (yes)



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Case Number: T 1841/14 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 10 April 2019

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
30 June 2014 concerning maintenance of the
European Patent No. 2246176 in amended form.**

Composition of the Board:

Chairman P. Lanz
Members: T. Vermeulen
A. Jimenez

Summary of Facts and Submissions

- I. The appeal was filed by the opponent against the interlocutory decision of the opposition division finding that European patent No. 2 246 176 (hereinafter "the patent") as amended with the auxiliary request submitted during the oral proceedings before the opposition division met the requirements of the EPC.
- II. During the opposition proceedings, the opponent raised the grounds for opposition according to Article 100(a) (lack of inventive step), 100(b) and 100(c) EPC.
- III. Oral proceedings were held before the board of appeal on 10 April 2019 in the absence of the appellant as announced in the letter dated 26 February 2019.
- IV. The appellant (opponent) requested that the decision under appeal be set aside and that European patent No. 2 246 176 be revoked.

The respondent (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained on the basis of the claims filed as main request during the oral proceedings.

- V. The documents referred to during the appeal proceedings include the following:

D10	EP 0 758 624 A1;
D18	US 2008/0254161 A1;
D21-D22	confirmation of orders B160;
D23	machine sales 1994;
D24	list of delivered B160;
D25	SAP excerpt;
D26-D27	technical drawings 'Blasstation';

D28 excerpt from manual B160.

VI. Claim 1 of the main request reads (the board has added a feature labelling in square brackets):

"1. **[A]** Blow-molding apparatus (1) for a bottling line using aseptic technology, comprising:

[B] a molding station (3) equipped with a blowing machine (4) of the type with a rotary carousel (20) for blow-molding containers (2) obtained from parisons of plastic material;

[C] moulds (11) fixed to the machine (4), each mould (11) comprising two half portions (14) relatively movable to each other between a closed position and an open position of the mould (11), a bottom element (25) cooperating with the half portions (14) in order to shape the bottom of the container (2) and locking means (15) for the mould (11), which are movable between a locking configuration and a release configuration when the mould (11) is in the closed position, said locking means (15) consisting of two collars moved by respective rods; and operatively active on the two opposite ends of the mould (11) in the closed position

[D] drive components (5) of said machine (4), including drive members (12) for opening and closing the moulds (11) and drive members for raising and lowering the bottom element (25);

[E] an isolation device (6) for the molding machine (4), serving to define a controlled-contamination environment (7) for housing the machine (4), said drive components (5) being situated outside said environment (7),

[F] wherein the isolation device (6) comprises a movable portion (6a) integral with the molding machine (4) and a fixed portion (6b), there being interposed

between said portions (6a, 6b) of the isolation device (6) at least one seal member (10);

[G] wherein it comprises tubular bodies (13) disposed partly inside and partly outside said environment (7), said tubular bodies (13) defining tubular cavities suitable for the passage of said opening/closing members (12) which are able to rotate in their corresponding tubular bodies (13), of said raising/lowering members which are able to slide longitudinally in their corresponding tubular bodies (13) and of the rods of the locking means (15) which are able to slide longitudinally in their corresponding tubular bodies (13)."

VII. The submissions made by the appellant were essentially as follows:

Added subject-matter

By adding the specific use of aseptic technology in feature A of claim 1, the claimed blow-moulding apparatus had to meet certain requirements disclosed in the description as originally filed. In absence of features reflecting the correct filtering and the pressure conditions mentioned as being of fundamental importance in paragraph [0002] of the published application, the amendment amounted to an unallowable intermediate generalisation. Also paragraph [0018] mentioned the arrangement of filters in the inlet of the apparatus. The conclusion of the opposition division in point 2.3 of [the facts and submissions of] the impugned decision that the presence of filters was implied by the feature "aseptic technology" could not be followed. Other solutions were known from the prior art, which did not require filtering of the gaseous fluids before they entered the controlled-contamination

environment. In addition, according to paragraph [0028] of the published application, the aseptic feature required a specific arrangement of the infeed section for the supply of the parisons, and a specific arrangement of the outfeed section, both including a rotary carousel.

The embodiment of figures 1-3 disclosed that the movable member 6b of the isolation device 6 claimed in feature F of claim 1 extended all the way through the controlled-contaminant environment 7. In figure 3, both the lower and the upper zone of the environment 7 comprised a movable and a fixed isolating portion. Adding the isolation device and the rotary carousel to the original claim 1 without these further features resulted in subject-matter that extended beyond the content of the application as filed.

The first sentence of paragraph [0022] of the original description had to be read in such a way that rods, connecting rods, cams, rollers, motors, pneumatic actuators, hydraulic actuators *and* other moving parts were comprised by the drive components. The use of "and" meant that the drive members 12 added to feature D of claim 1 were only disclosed in combination with the other drive components of the exhaustive list. Leaving out these further drive components from feature D resulted in an intermediate generalisation without basis in the original application.

The limitation "locking means consisting of collars moved by rods" in feature C of claim 1 stemmed from a specific embodiment that only disclosed two collars arranged in a particular manner. With regard to its function, paragraph [0031], which the opposition division and the respondent adhered to for the basis of

this amendment, described that the locking means only went into action when the mould had been closed. Feature C did not include these further details, but encompassed the possibility that more than two collars were provided, that they were arranged differently and that they locked the half portions in a different sequence of movements.

Sufficiency of disclosure

The patent did not sufficiently disclose how the entire mould, including the longitudinally movable bottom element, could be locked by the locking means.

Likewise, the patent failed to disclose any measure that would explain how a potential interference of the drive means for the bottom element with the drive means for the locking means was avoided. The skilled person was left in the dark about the details of the claimed locking mechanism.

Inventive step

(a) Public prior use - admittance of documents D21-D28

Documents D21-D28 were evidence of a public prior use involving the sale of blow-moulding apparatus of the type B160 by the company Krupp Corpoplast GmbH to the company KPRM Edison in the USA in the years 1993 and 1994. The hearing of three witnesses was offered in order to corroborate the written evidence relating to the construction, the function and the public availability of the "B160 machine".

The evidence was filed as a reaction to the surprising importance attributed to the "locking means" of claim 1

in the course of the oral proceedings before the opposition division.

(b) Starting from document D18

Document D18 could also be considered as a suitable starting point since it concerned blow-moulding of containers made from thermoplastic material. Moreover, the mould of document D18 was locked by a collar-like locking means. The differences with the claimed subject-matter resided in the claim features E, F and G and in the fact that the blowing machine of document D18 was not of the type with a rotary carousel.

The use of a sterile chamber significantly reduced the contamination in the moulding apparatus. The technical problem to be solved could be considered as providing an improved blow-moulding apparatus with units of the type described in document D18, that prevented the contamination of parisons during blow-moulding.

Rotary carousels were conventional for blow-moulding units. The skilled person would take the features E, F and G from document D10 and adapt the apparatus of document D18 accordingly without exercising an inventive step. Notably in figure 4, document D10 disclosed the use of an isolation device that created a sterile chamber in a blowing machine of the type with a rotary carousel, whereby drive components situated outside the clean environment were led through the walls of the isolation device (cf. reference signs 40a, 41, 42 and 43).

VIII. The respondent's submissions may be summarised as follows:

Admissibility of the main request filed during oral proceedings

The amended claims that had been submitted in preparation of the oral proceedings were believed to overcome all objections formulated in the communication of the board. The new main request was filed in order to surmount further implications of these objections, which became apparent from the discussion of the amendments of claim 1 during the oral proceedings.

Added subject-matter

The objections raised by the appellant were exactly the same as those contained in the notice of opposition. Therefore the content of the letter submitted during opposition proceedings on 30 April 2013 and the reasons set out in the preliminary opinion of the opposition division on 7 January 2014 were referred to.

The basis for the amendment "respective" in conjunction with the locking means of feature C could be found in the description of the patent [sic], namely in the wording "the locking means 15 (consisting, for example, of collars moved by respective rods)" in paragraph [0031], in the wording "the rods of the locking means 15 slide longitudinally inside their tubular bodies 13, causing the respective collars to move apart" in paragraph [0033] and in the embodiment illustrated in figures 1-7, in particular figures 4-5. By amending claim 1 introducing the word "respective" a broadening of the claimed subject-matter was avoided and arrangements were excluded where the collars were

jointly driven by several rods or where each collar had several rods associated therewith.

The specification of the number of collars and the further amendment "operatively active on the two opposite ends of the mould (11) in the closed position" had a basis in paragraph [0021], in column 4 on lines 5-10, of the published application, as well as in the drawings, which form part of the application. Figures 4 and 5 clearly show that two collars are arranged on opposite ends of the mould.

Sufficiency of disclosure

Figure 5 sufficiently disclosed that the bottom element remained within the half portions and the upper collar of the mould. Therefore it could not become detached therefrom.

Once the mould was completely closed, the rods of the locking means slid longitudinally and enable the mould to be locked in the closed position shown in figure 5.

Therefore, the claimed invention was disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

Inventive step

(a) Public prior use - admittance of documents D21-D28

The allegation of a prior use based on the appellant's own activities only at the appeal stage was an abuse of the proceedings and a breach of the principle of good faith. In these cases, the chain of evidence should be proved beyond any reasonable doubt, which was not the

case here. The prior use was too poorly substantiated to justify further investigation of the matter and should simply be excluded from appeal. The witnesses were only offered for confirming the structure and function of the B160 machine. The introduction of the newly cited documents should therefore be rejected independently of the possible relevance.

The reason given by the appellant for the late-filing was the unexpected focus on the feature of the "locking means" during oral proceedings before the opposition division. However, granted claim 1 already contained the "locking means" feature so that the appellant should have dealt therewith at the earliest stage of the opposition. The subsequent slight amendment during opposition proceedings did not justify the late-filing.

(b) Starting from document D18

Document D18 did not deal with aseptic technology, so that it could not be the proper choice of closest prior art. Even assuming document D18 as the starting point, the subject-matter of claim 1 would differ therefrom not only by the rotary carousel and claim features E, F and G, but also by the use of aseptic technology and by the collars moved by rods. The male element A of document D18 was not locked by collars but by a female element B which consisted of a clamp 26.

The technical effects of the differences lied in speeding up the locking of the moulds and in converting the blow-moulding device of document D18 into an aseptic blow-moulding device, respectively. No synergistic effect ties the differing features together. Consequently, two different partial problems needed to be solved.

None of the cited documents disclosed collars moved by rods for locking a mould, nor could this feature be taken from the common general knowledge of the person skilled in the art of moulding plastic bottles. Hence, claim 1 was inventive over any combinations of prior art documents.

Should the skilled person consider combining documents D10 and D18, he would not receive any hints from document D10 on how to integrate the clamp 26 of document D18 within the sterile chamber 40a of document D10. In any case, document D10 did not disclose tubular bodies partly inside and partly outside the controlled-contamination environment.

Reasons for the Decision

1. Admissibility of the main request
 - 1.1 The respondent filed a new main request during the oral proceedings held before the board.
 - 1.2 According to Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA), any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.

Article 13(3) RPBA additionally requires that amendments sought to be made after oral proceedings have been arranged are not to be admitted if they raise issues the board or the other party cannot reasonably

be expected to deal with without adjournment of the oral proceedings.

- 1.3 In general, amended claims submitted at such a late stage can be considered only in exceptional cases, as the purpose of an oral hearing in appeal proceedings is to give the parties an opportunity to argue their case but not to give a patent proprietor the opportunity to repeatedly modify its requests until an acceptable set of claims is found.

In accordance with established case law (cf. Case Law of the Boards of Appeal of the EPO, 8th edition, 2016, IV.E.4.2.6), the general principle is that in order to be admissible, an amended claim belatedly filed in oral proceedings must be clearly allowable by virtue of a clearly permissible amendment. It must be immediately apparent to the board, with little or no investigative effort on its part, that amendments successfully address the issues raised without giving rise to new ones.

- 1.4 In the statement setting out the grounds of appeal the appellant had raised several objections against added subject-matter in view of the amendment "locking means consisting of collars moved by rods" in feature C of claim 1. The board gave its preliminary opinion in the communication pursuant to Article 15(1) RPBA sharing the appellant's view that the "locking means" amendment lacked a proper basis in the application as originally filed. In point 6, item iv of the communication, the board indicated that an obstacle against allowing the amendment was the omission of the word "respective" from the relevant passage in paragraph [0031] of the published application. The attention was further drawn to paragraph [0033] of the original description and to

the drawings of the preferred embodiment, according to which other features would appear to be closely related with the "locking means" feature.

In reply thereto, the respondent filed a set of claims in preparation of the oral proceedings. The only amendment consisted in the addition of "respective" to the "locking means" in feature C of claim 1, in accordance with the literal wording in lines 33-34 of paragraph [0031] of the original description.

The respondent brought forward that he had only become fully aware of the implications of the objections against the "locking means" amendment during the discussion at the oral proceedings. The new main request was filed in response to this finding.

- 1.5 Since the new main request is a direct and immediate reaction to the debate in the oral proceedings and it only concerns a further limitation of the "locking means" amendment, it cannot be seen as adding to the complexity of the case. In addition, the further limitation responds to an issue the appellant had raised in the statement setting out the grounds of appeal, namely the discrepancy between the claim wording and the original disclosure of two collars arranged in a particular manner with respect to the mould. As a consequence, the new request does not extend the framework of the discussion established in the written proceedings.

In fact, by specifying the exact number of collars ("two") visible in the figures 4 and 5 and the way these collars are arranged ("on opposite ends") with respect to the mould, the amendments address the issue

raised by the appellant and noted by the board in the written proceedings without giving rise to new ones.

1.6 Although the appellant did not attend the oral proceedings, he could have reasonably expected amendments like those made in the claims of the respondent's new main request, as they were filed as a direct attempt to overcome at least some of the objections raised in the written proceedings. The appellant could thus not have been taken by surprise by the new set of claims. Accordingly, the absence of the appellant is not a bar to admitting the new main request and taking a decision on it (cf. Article 15(3) RPBA).

1.7 For the reasons given above, the main request is admitted into the appeal proceedings under Article 13(1) and (3) RPBA.

2. Added subject-matter

2.1 First objection - "aseptic"

With respect to claim 1 as originally filed, the specific use of the claimed apparatus "for a bottling line using aseptic technology" was added in feature A.

Basis for this amendment can be found in paragraph [0002] of the published application.

2.1.1 In that paragraph, the use of aseptic technology is mentioned together with the conditions "correct filtering of gaseous fluids" and "correct management of the pressures in various zones". According to the last sentence of paragraph [0018] of the published application, however, the gaseous fluids fed to the

claimed apparatus can be filtered in a feed conduit, which is not part of apparatus and typically extends at a certain distance from the inlet thereof. The general description in paragraphs [0001] and [0042] of the published application refer to aseptic bottling without any mention of filtering or of pressure management.

For those reasons, the board does not share the view of the appellant that there is an inextricable link between the "aseptic" aspect of the original disclosure and the filtering or pressure management conditions. The overall disclosure of the application as originally filed does not require the addition of any of these conditions to the subject-matter of claim 1.

2.1.2 Similarly, the application as originally filed does not disclose the aseptic technology in close relationship to the arrangement of the infeed section 23 and the outfeed section 24. The interfaces between the moulding station 3 on the one hand and the parison treating station 21 and the bottle filling station 22 on the other hand are described in paragraphs [0028] to [0034], as well as in dependent claim 15 of the application as filed, without any mention of aseptic technology.

Hence, the specific use of the blow-moulding apparatus can be inserted in the claim without the need for adding the infeed and outfeed sections.

2.2 Second objection - "isolation device"

Feature F was added to claim 1 as originally filed. This feature concerns the structure of the isolation device and introduces the movable portion 6a, the fixed portion 6b and the seal member 10.

The appellant argues that the addition of "a rotary carousel" from the detailed description to feature B of claim 1 requires incorporating further features of the isolation device into the claim. In particular, figures 1 to 3 of the application as originally filed show the arrangement of the isolation device 6, whereby the movable portion 6a of the isolation device extends from the lower zone 26a to the upper zone 26b of the controlled-contaminant environment 7 between lower and upper fixed portions 6b.

The board regards the addition of feature F and the amendment to feature B as combinations of original claims. Feature F corresponds *verbatim* to the additional feature of dependent claim 2 as filed, whereas the rotary carousel is taken from original claim 14, which is dependent on original claim 2. As a result, the details of the carousel structure taken from the figures are not inextricably linked to the components of the isolation device.

The overall disclosure of the application as filed therefore justifies the addition of feature F and the amendment to feature B without providing further details of the isolation device.

2.3 Third objection - "drive components"

The amendment of feature D of claim 1 is contested by the appellant. By introducing the different drive members to feature D, the wording of the first sentence of paragraph [0022] of the published application would also require to add the mechanical components "rods, connecting rods, cams, rollers, motors, pneumatic actuators, hydraulic actuators" to the claim.

Basis for the amendment of feature D can be found in original claim 5 and in paragraph [0022] of the published application. The board understands the wording of the paragraph in the sense that the drive members form a subgroup of the drive components. The drive members may each encompass one or more mechanical elements from the list given in the first sentence of the paragraph. The "and" in the list does not mean that the drive components of the machine must at all times include all the other mechanical elements of the list. This becomes clear from a reading of paragraph [0023], according to which the drive members 12 that open and close the moulds and the drive members that raise and lower the bottom element comprise "for example, rods associated therewith".

A further indication that the rods, rollers, motors or actuators are not closely linked to the drive members is given by the paragraphs [0031], [0033] and [0040]. There the operation of the apparatus is explained with reference to the drive members ("opening/closing members" resp. "raising/lowering members") without any mention of a specific mechanical drive component.

Taking account of the different passages in the original description and in claim 5 as originally filed, the board therefore concludes that the addition of feature D is justified without providing further details of the drive members or of the drive components.

2.4 Fourth objection - "locking means"

2.4.1 Feature C of claim 1 is largely based on the additional feature of claim 6 as originally filed, with the exception that

- the clamping means were replaced by "locking means (15) consisting of two collars moved by respective rods" and that
- the collars are further limited by the amendment "are operatively active on the two opposite ends of the mould (11) in the closed position".

2.4.2 In the judgment of the board, these amendments do not introduce subject-matter which extends beyond the content of the application as filed, for the following reasons.

(a) Lines 32-34 of paragraph [0031] of the published application read:

"the locking means 15 (consisting, for example, of collars moved by respective rods)".

(b) Paragraph [0031] is part of the detailed description of the single embodiment shown in figures 1 to 7. The reference sign "15" is directed to figures 4 and 5, in which a perspective view of a mould 11 is given in its open and closed positions, respectively. The figures contain two reference signs "15", each pointing at an annular-shaped element placed on opposite ends of the mould 11. As a consequence, the embodiment discloses exactly two collars 15 on the opposite ends of the mould 11.

The number of the collars and their arrangement at opposite ends of the mould are clearly, unmistakably and fully derivable from the figures by the skilled person and are not at odds with the other parts of the disclosure.

- (c) In figure 4, the half portions 14 of the mould 11 are in the open position and the collars 15 are in the release configuration. In figure 5, the half portions 14 are in the closed position and the collars 15 are in the locking configuration. In reference to figures 4 and 5, paragraph [0021] of the published application describes in lines 5-10 of column 4 that the "locking means 15 ... are operatively active on the mould 11 in the closed position".

- (d) The whole of the application as originally filed therefore discloses in a direct manner and without there being any ambiguity that the mould 11 is locked in its closed position by means of locking means 15 consisting of two collars moved by respective rods, the collars being operatively active on the two opposite ends of the mould in the closed position.

- (e) The appellant submitted that further details of the embodiment were disclosed in close relationship with the locking means. Paragraph [0031] notably imposes a specific action sequence on the operation of the mould apparatus: the locking means only "go into action" when the mould 11 is closed. However, the board is convinced that the wording included in feature C "the locking means (15) are movable between a locking configuration and a release configuration when the mould (11) is in the closed position" actually inhibits the movement of the locking means from the release configuration to the locking configuration and *vice versa* when the half portions 14 of the mould 11 are in the open position. Consequently, the claim wording excludes

the possibility of a locking movement by the collars before the mould is completely closed.

Similarly, the relative movement of the collars described in paragraph [0033] is considered to be inherent to the wording of features C and G. Two collars operatively active on opposite ends of the mould in the closed position can only move from a locking configuration to a release configuration by moving apart from each other, when their respective rods slide longitudinally in their corresponding tubular bodies.

In summary, all features that are disclosed in close structural and functional relationship with the amendments extracted from the description and the figures are also covered by the subject-matter of the amended claim.

2.5 Conclusion

The conditions of Article 123(2) EPC are fulfilled.

3. Sufficiency of disclosure

3.1 Figures 4 and 5 of the patent disclose two collars 15 positioned below respectively above the half portions 14 of the mould 11. The half portions 14 can rotate about a common hinge between an open position (figure 4) and a closed position (figure 5). The bottom element 25 is placed in a cavity between the half portions 14. After closing the half portions 14 around the bottom element 25, the locking collars 15 are moved from their release configuration shown in figure 4 into engagement with the lower and upper rims of the half portions. In doing so, the half portions 14 are prevented from

opening, confining the bottom element to the mould cavity. The entire mould 11 is thus locked by the locking means.

- 3.2 Paragraph [0022] of the patent explains that the half portions 14 and the bottom element 25 are driven by rods, connecting rods, cams, rollers, motors, pneumatic actuators, hydraulic actuators and other moving parts. The driving members for opening and closing the mould 11 and the drive members for raising and lowering the bottom element 25 rotate, respectively slide, inside tubular bodies at the interface with the controlled-contamination environment.

Likewise, the rods of the locking means slide inside respective tubular bodies (paragraph [0040]).

Whereas the driving member of the lower collar 15 is shown in figures 4 and 5, the perspective view of the mould 11 conceals how the bottom element 25 and the upper collar 15, which is coaxial with the bottom element, are driven and how their respective driving members are arranged.

In the judgement of the board, the absence of some details from the figures and the description does not prevent the skilled person from carrying out the claimed invention. No undue effort can be required to devise separate drivelines for two coaxial output shafts, nor to operate the drivelines without mechanical interaction between the movement of the bottom element 25 and the movement of the upper collar 15. The appellant has not plausibly argued that common general knowledge would not enable the skilled person to put such a drive system into practice without

encountering mechanical interference between the different components.

3.3 Hence, the patent discloses the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC).

4. Inventive step

The appellant raised inventive step objections against claim 1 starting either from an alleged public prior use or from prior art document D18.

4.1 Alleged public prior use - B160 machine

4.1.1 With the statement setting out the grounds of appeal, the appellant submitted documents D21-D28 as evidence in support of an alleged public prior use referred to as the "B160 machine". The hearing of three witnesses was offered in order to corroborate the written evidence relating to the construction, the function and the public availability of the B160 machine.

The public prior use allegedly concerns the manufacture, sale and delivery of several blow-moulding apparatus for bottling lines of the type B160 by the company Krupp Corpoplast GmbH in 1993 and 1994.

As to the reasons for the belated filing, the appellant argued that the opposition division attributed a particular importance to the locking means of claim 1 in the course of the oral proceedings, which took the appellant (then opponent) by surprise. The submissions in support of the alleged prior use were filed in response thereto.

4.1.2 The board is persuaded that the alleged public prior use lies within the sphere of activities of the appellant. The B160 machine was built and sold by the company Krupp Corpoplast Maschinenbau GmbH, which seems to be a legal predecessor of the appellant, a company belonging to the same corporate group or at least a company very closely related to the appellant. In this respect the board notes that the three persons offered as witnesses to corroborate the written evidence were, at the time of writing the statement setting out the grounds of appeal, all employees of the appellant KHS Corpoplast GmbH (cf. page 12 of the statement).

4.1.3 Given the fact that the prior use is based on the appellant's own activities, knowledge thereof must have existed within the appellant's company well before the statement setting out the grounds of appeal was filed.

In this respect the board notes that the appellant states in the first paragraph on page 4 of the statement setting out the grounds of appeal that blow-moulding apparatus of the type as in the claims have been known since decades (*"Blasformmaschinen mit Blasformeinheiten der beanspruchten Art ... schon seit Jahrzehnten bekannt sind"*).

4.1.4 The board judges that it is not justified in the present case to invoke the position taken by the opposition division during the oral proceedings as a reason for submitting the alleged public prior use at such a late stage. The feature "locking means" was already comprised in the only independent claim of the patent in suit. Thus, the appellant should have already submitted any facts and evidence relevant to the aspect of the locking means with the notice of opposition in 2012, or at the latest with his submissions in

preparation of the oral proceedings before the opposition division.

In fact, the written arguments presented by the parties before the opposition oral proceedings imply that both parties already gave a certain weight to the "locking means" feature at an early stage of the opposition. Reference is made, for example, to page 6 of the notice of opposition (second and third paragraphs) and page 3 of the reply of 30 April 2013 (second paragraph), both referring to the meaning of the term "collars" vis-à-vis the disclosure of the prior art cited at that stage.

In conclusion, the appellant should have filed the evidence in support of the alleged public prior use at the earliest possible opportunity during the opposition proceedings before the opposition division.

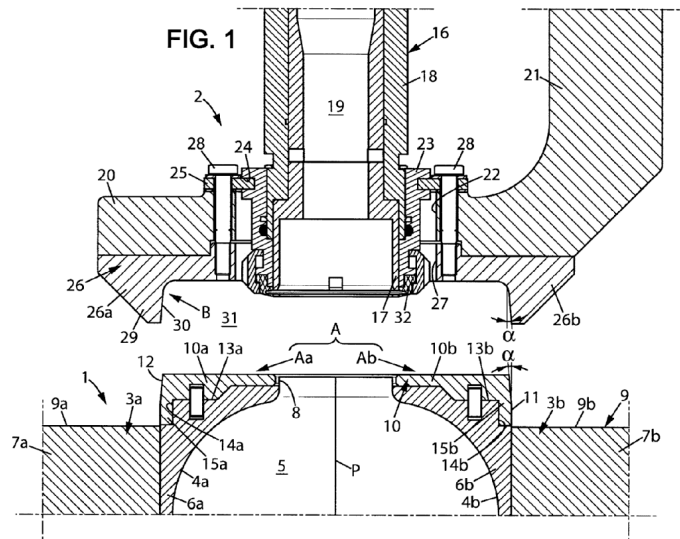
4.1.5 In view of the strict standards for the admissibility of late-filed evidence related to an alleged public prior use based on a party's own activities (see Case Law of the Boards of Appeal of the EPO, 8th edition, 2016, III.G.4.3.2 and IV.C.1.3.17), the board therefore exercises its discretionary power not to admit the documents D21-D28 into the appeal proceedings, pursuant to Article 12(4) RPBA. This also applies to the oral evidence of the witnesses adduced by the appellant for proving the invoked public prior use.

4.2 Document D18 as starting point

4.2.1 It is common ground between the parties that document D18 fails to disclose claim features E, F and G. Furthermore, the appellant does not dispute that the

prior art blowing machine is not of the type with a rotary carousel (claim feature B).

The board concurs with the respondent that document D18 does not relate to the use of aseptic technology (claim feature A). Although the clamp 26 has an annular shape that comes into locking engagement with



the half portions 3a and 3b, document D18 does not disclose a locking means consisting of *two collars moved by rods*, which are operatively active on the *two opposite ends* of the mould in the closed position.

As a result, the subject-matter of claim 1 differs from the apparatus disclosed by document D18 by claim features A, B, C, E, F and G.

- 4.2.2 The arrangement of two collars on opposite ends of the mould (feature C) improves the locking of the mould. This aspect is functionally independent of the other distinguishing features, which have the technical effect that contamination during blow moulding is reduced.

The board shares the view of the respondent that the two aspects do not have any apparent synergistic or combinative effect. In accordance with the established case law, the inventive step of the two aspects must therefore be assessed separately. For the subject-matter of the claim to be inventive, it is sufficient if one of the aspects is.

The first partial technical problem lies in the improvement of the locking of a mould. The second partial technical problem is to reduce the contamination during blow moulding.

- 4.2.3 Regarding the first partial technical problem, there is no indication in document D18 that the clamp 26 may be complemented by another clamp or collar at the opposite end of the mould.

The only prior art document cited by the appellant in combination with document D18 is D10, which concerns a bottling plant for sterilising, washing, filling and capping bottles in a controlled-contamination environment. Irrespective of the question whether the person skilled in the art would even consider a prior art document that is remote from the technical field of blow-moulding, no means for locking are mentioned the closed position, let alone locking collars driven by respective rods.

Consequently, it has not been shown how the first partial technical problem can be solved in an obvious manner.

- 4.3 In view of the above, the board concludes that the subject-matter of claim 1 involves an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent in amended form on the basis of the following documents:

Claims : 1 to 10 filed during the oral proceedings as main request;

Description: paragraphs 1-15 and 17-39 of the patent specification and paragraph 16 filed on 20 May 2014 during the oral proceedings before the opposition division;

Drawings: Sheets 1-6 of the patent specification.

The Registrar:

The Chairman:



N. Schneider

P. Lanz

Decision electronically authenticated