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**Datasheet for the decision
of 28 August 2025**

Case Number: T 2034/23 - 3.2.07

Application Number: 19382165.9

Publication Number: 3705417

IPC: B65D33/16

Language of the proceedings: EN

Title of invention:

A CLIP FOR CLOSING SAUSAGE CASINGS BY CONSTRICTION

Patent Proprietor:

Lorenzo Noguera, Sagar

Opponent:

Poly-clip System GmbH & Co. KG

Headword:

Relevant legal provisions:

EPC Art. 54, 100(a)

RPBA 2020 Art. 13(1), 13(2)

Keyword:

Novelty - main request (no) - auxiliary requests (no)
Amendment after notification of Art. 15(1) RPBA communication
(yes)
Amendment after notification of Art. 15(1) RPBA communication
- exercise of discretion - against procedural economy -
admitted (no) - taken into account (no)

Decisions cited:

G 0001/24

Catchword:



Beschwerdekammern

Boards of Appeal

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Case Number: T 2034/23 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 28 August 2025

Appellant:
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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
25 October 2023 concerning maintenance of the
European Patent No. 3705417 in amended form.**

Composition of the Board:

Chairman G. Patton

Members: S. Watson

Y. Podbielski

Summary of Facts and Submissions

- I. Appeals were filed by both the patent proprietor and the opponent against the decision of the opposition division to maintain European Patent No. 3 705 417 in amended form according to auxiliary request 2.

The opposition division found that the subject-matter of claim 1 of the main request and auxiliary request 1 was not novel (Articles 100(a) and 54 EPC). The subject-matter of claim 1 of auxiliary request 2 was found to be both novel and inventive (Articles 54 and 56 EPC).

- II. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 10 April 2025, according to which the appeal of the patent proprietor was likely to be dismissed but the appeal of the opponent could be allowed.

- III. The patent proprietor responded to this communication with submissions of 6 May 2025 including three new auxiliary requests (2bis, 4 and 5). The opponent responded to the patent proprietor's submissions with its own submissions of 8 August 2025.

- IV. Oral proceedings before the board took place on 28 August 2025. At the oral proceedings auxiliary requests 2bis, 4 and 5 were withdrawn and one new auxiliary request was filed.

At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.

V. The final requests of the parties are as follows.

The patent proprietor requested

- that the decision under appeal be set aside and the patent be maintained as granted (main request), or
- that the patent be maintained in amended form based on one of auxiliary request 1, 2 or 3 filed with the statement of grounds of appeal or based on the set of claims filed during the oral proceedings of 28 August 2025.

The opponent requested

- that the decision under appeal be set aside and
- that the patent be revoked.

VI. The following document is referred to in this decision:

D4: EP 1 845 026 A1

VII. Claim 1 of the main request reads as follows with the claim numbering as in the decision under appeal:

- F 1.1** "A clip (1) that is suitable for the constriction of sausage casings (5),
- F 1.2** the clip having a general U-shaped configuration comprising two facing legs (2, 3) that are bent with respect to a base (4) of the clip,
- the clip being characterised in that
- F 1.3** said base of the clip is divided so as to determine in the same two or more joining bridges (41, 42, 43) between the legs (2, 3),
- F 1.3.1** these joining bridges are spaced apart and the ends thereof converge at the aforementioned

legs,

F 1.3.2 so that between the said bridges one or several creases or folds of the casing can be at least partially housed when the clip (1) tightly clasps around said casing (5)."

VIII. In claim 1 of auxiliary request 1, features F 1.3 and F 1.3.1 have been amended as follows:

"said base of the clip ~~is~~ has been divided so as to determine in the same two or more joining bridges (41, 42, 43) between the legs (2, 3), these joining bridges ~~are~~ having been spaced apart and the ends thereof converge at the aforementioned legs".

IX. In claim 1 of auxiliary request 2 the following features from claim 4 as granted have been introduced at the end of claim 1 as granted (feature labelling as used by the opponent in its statement of grounds of appeal):

F 4.1 , and in that being the clip of metal,
F 4.2 the joining bridges (41, 42) have been formed by the splitting or mechanical separation of a single original base (4a) of the clip,
F 4.2.1 allowing at least a punch tool (10a, 10b) in the shape of a wedge to be able to penetrate the material of which the aforementioned original single base (4a) of the clip is made up,
F 4.2.2 dividing it and separating portions of the base so as to determine the joining bridges (41, 42)
to both sides of the punch tool (10a, 10b),
F 4.2.3 the base (4) of the clip expanding as a result

thereof in relation to the original single base (4a).

X. In claim 1 of auxiliary request 3 the following features from claim 5 as granted have been introduced at the end of claim 1 of auxiliary request 2 (feature labelling as used by the opponent in its statement of grounds of appeal):

F 5.1 , wherein in the splitting of the original single base (4a),

F 5.1.1 penetration is made in the original single base by a first and second punch tool (10a, 10b),

F 5.1.2 each one from one of the faces of the aforementioned single base (4a), the inner face aimed towards the legs and the outer face aimed towards the outside,

F 5.2 preventing raised material or the formation of burrs which project from said faces towards the inside and towards the outside of the clip (1), respectively.

XI. In claim 1 of the auxiliary request filed on 28 August 2025 features F 1.1 and F 4.2 of claim 1 of auxiliary request 3 have been amended as follows:

F 1.1 A process to obtain a clip (1) that is suitable for the constriction of sausage casings (5)

F 4.2 the joining bridges (41, 42) have been formed by the splitting ~~or mechanical separation~~ of a single original base (4a) of the clip.

Feature F 1.2 has also been modified to reflect that the claim is now directed to a process:

F 1.2 the clip having a general U-shaped configuration comprising two facing legs (2, 3) that are bent with respect to a base (4) of the clip,
the ~~clip~~ process being characterised in that.

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

Reasons for the Decision

1. *Main request - claim 1 - novelty (Articles 100(a) and 54 EPC) - document D4*
- 1.1 The opposition division found that the subject-matter of claim 1 of the main request was not novel with respect to the disclosure of document D4 (see decision under appeal, II.15.4.4).
- 1.2 The patent proprietor argued that features F 1.3 and F 1.3.1 were not disclosed in document D4.
- 1.3 Feature F 1.3
- 1.3.1 The patent proprietor argued that the opposition division incorrectly construed feature F 1.3 as merely reading that "said base of the clip has two or more joining bridges between the legs". According to the patent proprietor, feature F 1.3 must be interpreted such that the two bridges were originally part of a single base which was separated.

- 1.3.2 The board notes that claim 1 is directed to a clip suitable for the constriction of sausage casings, i.e. a product. The features therefore have to be interpreted in relation to the product itself, not how the product was manufactured.

Feature F 1.3 requires that the base of the clip "*is divided so as to determine in the same two or more joining bridges between the legs.*" In the board's view, the skilled person interprets this feature to mean that the base is divided into two or more bridges, not that an original base has been, in the past, divided in any particular way, only that the part of the clip called the base is divided into at least two parts. This means that whether the two bridges were formed by a tool punching through one base, or whether material was removed from one base to form the separation, or whether the two bridges were formed separately and joined together later to make the base, is irrelevant.

Therefore, as found by the opposition division, feature F 1.3 is disclosed in document D4.

1.4 Feature F 1.3.1

- 1.4.1 The opposition division reasoned that figure 1 of D4 disclosed that the gap in the clip base reached the curved portion linking the legs to the base and that the description of the contested patent in paragraph [0044] supported the interpretation that this curved portion was part of the legs (see decision under appeal, II.15.4.1).

- 1.4.2 The patent proprietor contested this finding and argued that the interpretation of the feature used by the

opposition division would have been ruled out by the skilled person for a number of reasons. Firstly, the opposition division's interpretation did not make technical sense in view of the problem to be solved. Secondly, the drawings of D4 were schematic so that relative dimensions could not be derived from them.

Additionally, the opposition division had misunderstood the cited description passage of the contested patent (paragraph [0044]).

- 1.4.3 The patent proprietor argued that feature F 1.3.2 required that the convergent point of the bridges in feature F 1.3.1 must be considered to be on the inside of the clip, as it was only on the inside of the clip that the casing could enter the space and be at least partially housed.

According to the patent proprietor, in the absence of any specific claimed feature relating to how much of the bridge must converge at the legs, all parts of the bridge must converge at the legs, not along some part of the base.

- 1.4.4 The board agrees with the patent proprietor's contention, that a patent must be construed with a mind willing to understand (Case Law of the Boards of Appeal, 11th edition 2025 (CLB), II.A.6.1, first paragraph).

However, as noted by the opponent, only interpretations which are not technically sensible should be ruled out.

The board cannot see how the opposition division's interpretation of feature F 1.3.1 under point 1.4.1 above is not technically sensible in view of the

wording of the claim which does not include any problem to be solved or effect to be achieved apart from housing the casing. Feature F 1.3.1 only requires that joining bridges are spaced apart with their ends converging at the legs of the clip.

There is no requirement in the claim that this point of convergence must be considered on the inner side of the clip only. Feature F 1.3.2 requires merely that there is a separation in which, at least partially, the sausage casing can be housed.

In figure 3 and paragraph [0025] of document D4 it can be seen that the casing 160 is at least partially housed in the opening 128 as required by feature F 1.3.2.

- 1.4.5 The patent proprietor argued that as the figures of D4 were schematic drawings no technical teaching could be derived from them.

However, the board is of the view that the skilled person considering figure 1 of D4 would derive directly and unambiguously that the parts of the base which form the bridges converge at the legs, in particular, because there is no clear demarcation in the claim between the base and the legs. Feature F 1.2 requires only that the legs "are bent with respect to a base of the clip", so that at least part of the legs must be bent relative to the base, but where exactly the base ends and the leg begins is not specified in the claim.

- 1.4.6 The opposition division referred (see decision under appeal, II.15.4.1) to the description of the contested patent at paragraph [0044] where it is stated that the legs have "a straight main portion" and there is a

"curved transition zone". The skilled person therefore understands that the base merges into curved transition zones and considering figures 2a and 2c of the contested patent, which show these zones, it is clear for the skilled person that the bridges converge in the transition zone, as in document D4.

The patent proprietor argued that the opposition division misinterpreted paragraph [0044] as the skilled person would understand this paragraph to refer to the extension on the inside surface of the clip only. It was clear from figures 2a to 2c of the contested patent that the separation on the outside of the clip extends through the entire curved transition zone so that it cannot reach the zone on that side.

In the board's view no such limitation is apparent from paragraph [0044] of the contested patent. There is no indication that the separation referred to in paragraph [0044] relates only to the inside of the clip.

Furthermore, such limitation is also not included in the claim.

- 1.4.7 The patent proprietor argued further that as feature F 1.3.1 required that the bridges were spaced apart, that there must have been some lateral movement in position from the original base to the divided and spaced apart bridges.
- 1.4.8 The board again notes that as claim 1 of the main request is directed to a clip, the features have to be assessed with respect to the clip. In the finished clip of D4, the bridges are spaced apart as there is a gap between them. There is no feature in the claim defining any absolute or relative size of the gap or the

bridges, nor any structural features which would inevitably result from a process step for spacing apart the bridges which is itself completely unspecified (see point 1.3.2 above).

1.4.9 Therefore, the board considers that feature F 1.3.1 is also disclosed in document D4.

1.5 The patent proprietor has therefore not convincingly demonstrated that the decision under appeal was incorrect in finding that the subject-matter of claim 1 of the main request lacks novelty with respect to the disclosure of document D4.

2. *Auxiliary request 1 - claim 1 - novelty (Article 54 EPC) - document D4*

2.1 The opposition division found that the subject-matter of claim 1 of auxiliary request 1 was still not novel with respect to the disclosure of document D4, as the punching in D4 resulted in the base being divided and the bridges having been spaced apart (see decision under appeal, point II.15.11).

2.2 The patent proprietor argued that D4 did not disclose that the base was divided into two bridges which were then moved away from one another, displacing them.

According to the patent proprietor, these features resulted in a gap between the bridges which must be greater than any material displaced and accumulated below the base during division. In D4, the displaced material accumulated in the inner face of the clip was equivalent to, not less than, the size of the gap.

- 2.3 The board agrees with the opponent's arguments that the change of tense in the wording in claim 1 of auxiliary request 1 does not result in any different distinct and identifiable characteristics of the clip. In addition, as also noted by the opponent, and reasoned by the opposition division in the decision under appeal, document D4 discloses driving a wedge into a base (D4, paragraphs [0027] to [0034] and figure 4).

There is no feature in the claim relating to either a changed position of the bridge with respect to the rest of the clip, nor to any absolute or relative size of the gap.

- 2.4 The patent proprietor has therefore not convincingly demonstrated that the opposition division was incorrect on this point.

As neither the main request nor auxiliary request 1 are allowable, the patent proprietor's appeal should be dismissed.

3. *Auxiliary request 2 - claim 1 - novelty (Article 54 EPC) - document D4*

- 3.1 The opposition division found that the subject-matter of claim 1 was novel with respect to document D4 because the skilled person would interpret feature F 4.2.3 as requiring expansion in the lateral direction of separation of the bridges (see decision under appeal, II.16.1.4).

- 3.2 The opponent contested this finding and argued that claim 1 of auxiliary request 2 did not specify the direction of expansion so that expansion into the

interior of the U-shaped clip, as in D4, must also be considered to show feature F 4.2.3.

3.3 The patent proprietor argued that as well as feature F 4.2.3, features F 4.2, F 4.2.2 were not disclosed in D4.

3.4 The board notes that with the exception of feature F 4.1 (the clip being of metal) the features introduced into claim 1 of auxiliary request 2 are all features relating to manufacture of a clip, not to the clip itself.

It is settled case law that process features in a claim to a product can only establish novelty of the product itself if the process features give rise to identifiable characteristics in the product which are different to the prior art (see CLB, I.C.5.2.7).

3.5 *Features F 4.2 and F 4.2.2*

3.5.1 The patent proprietor argued in relation to features F 4.2 and F 4.2.2, that dividing and separating portions by splitting or mechanical separation will create a gap which is greater than any material displaced and left accumulated, whereas in D4 a volume of material equivalent to that of the gap is accumulated on the inner face of the base.

3.5.2 However, as claim 1 gives no indication of the relative size of the separation with respect to the at least two bridges, and as it is not possible to ascertain with certainty from the clip itself what size the original single base was, this argument is not convincing.

In document D4 the joining bridges are formed by "mechanical separation of a single original base" (see paragraph [0015]). By forming the opening 128 in the manner described in D4 (figure 4 and paragraph [0015]), the base has been divided and portions have been separated to determine "joining bridges" to both sides of the punch tool.

Therefore, and irrespective of whether these process features in fact give rise to any distinct and identifiable characteristics in the clip itself, features F 4.2 and F 4.2.2 are in any case disclosed in document D4.

3.6 *Feature F 4.2.3*

- 3.6.1 The patent proprietor argued that feature F 4.2.3 must be read together with the rest of the claim. A lateral expansion of the base was inherent in feature F 4.2.3 as it was the result of the dividing of the base and the separating of the bridges, as set out in features F 1.3 and F 1.3.1.

According to the patent proprietor, although vertical expansion could occur in the clip of claim 1 of auxiliary request 2, it was optional, whereas lateral expansion must occur because a vertical expansion alone could not create a gap between the bridges suitable for at least partially housing the casing (as was required by feature F 1.3.2).

The patent proprietor also referred to decision G 1/24 and argued that as the description and drawings must be consulted when interpreting the claims, the lateral expansion disclosed in paragraph [0042] and in figures 2b and 6b should be used in the claim interpretation.

- 3.6.2 The board, however, agrees with the arguments of the opponent, that consultation of the description does not lead the skilled person to interpret claim 1 of auxiliary request 2 as inherently including a lateral expansion (see statement of grounds of appeal, pages 7 to 10).

Figures 2b and 6b, as well as the section of paragraph [0042] which refers to an expansion in width A, describe specific exemplary embodiments of a process for obtaining clips of the invention (see paragraph [0045] onwards) with specific tools. This process requires the use of two punch tools which penetrate from opposite faces of the clip to expand the clip (dimension "A" in figure 2b) and prevent burr formation (see paragraph [0050] of the contested patent). Claim 1 of auxiliary request 2, however, only refers to "allowing at least a punch tool in the shape of a wedge to be able to penetrate the material..." and encompasses any type of "splitting or mechanical separation" (feature F 4.2) which do not necessarily lead to the lateral expansion shown in Figures 2b and 6b. The skilled person would therefore not understand the disclosure of figures 2b and 6b as limiting to a claim.

As set out in G 1/24, the claims are the starting point and the basis for assessing the patentability of an invention under Articles 52 to 57 EPC, the description and drawings are always referred to when interpreting the claims (see G 1/24, Reasons 12 to 14).

This consultation of the description does not, however, mean that claimed features must always be construed as

narrowly as any specific embodiments of the invention found in the description.

In the present case, the skilled person when reading feature F 4.2.3, also in light of the description, does not come to the conclusion that the expansion of the base must be interpreted as definitely including a lateral expansion. The claimed feature refers only to the base of the clip expanding in general as a result of at least a punch tool penetrating the base material. If such a limitation had been intended, it would have been included in the claim.

- 3.6.3 The board thus concludes that the opponent has convincingly demonstrated that the opposition division construed feature F 4.2.3 too narrowly.

Feature F 4.2.3 refers to a base which has been expanded as a result of penetration of a punch tool. Leaving aside the question of whether how the joining bridges have been formed is discernible in the finished clip, the board considers that the process of forming the opening in document D4, which uses a punch (see figure 4), causes the base of the clip to expand in relation to the original single base, at least toward the interior of the clip (D4, figure 1, 130), so that feature F 4.2.3 is known from D4.

- 3.7 The opponent has thus convincingly shown that the decision under appeal is incorrect in finding that the subject-matter of claim 1 was novel with respect to document D4 and should be set aside.

4. *Auxiliary request 3 - claim 1 - novelty (Article 54 EPC) - document D4*

4.1 Auxiliary request 3 was filed during opposition proceedings but was not considered by the opposition division in the decision under appeal as the higher ranking auxiliary request 2 was found allowable.

4.2 In its statement of grounds of appeal, the opponent argued that the subject-matter of claim 1 was *inter alia* not novel with respect to the disclosure of document D4.

The opponent argued that only feature F 5.2 could be considered as limiting for the clip itself, as the further features related only to the process used to obtain the clip, and feature F 5.2 was known from document D4, paragraph [0009] (see opponent's statement of grounds of appeal, page 22).

4.3 At the oral proceedings before the board the opponent introduced two new lines of argument relating to the objection of lack of novelty of document D4.

In a first line of argument, the opponent noted that the newly introduced features F 5.1, F 5.1.1, F 5.1.2 and F 5.2 related only to "splitting of the original single base". Feature F 4.2 however presents "splitting" and "mechanical separation" of a single original base as alternatives. This meant that none of the features in the F 5 group limits the second alternative in feature F 4.2 of "mechanical separation".

Consequently, according to the opponent, claim 1 of auxiliary request 3 was identical to claim 1 of

auxiliary request 2 for the mechanical separation option of feature 4.2. This meant that the subject-matter of claim 1 of auxiliary request 3 was not novel with respect to document D4 for the same reasons as for auxiliary request 2.

- 4.4 In a second line of argument, the opponent contended that the skilled person would understand the claim such that features F 5.1, F 5.1.1, F 5.1.2 and F 5.2 were to be carried out before features F 4.2.1 to F 4.2.3. This was due to the wording of feature F 5.1 which referred to "wherein in the splitting of the original single base", which the skilled person would understand as further additional features comprised within feature F 4.2, in which it was stated that "the joining bridges have been formed by the splitting...of the original single base".

This meant that even if feature F 5.2 required the prevention of raised material or burrs, the further process step of allowing at least one punch tool to penetrate the material (feature F 4.2.1) could lead to further raised material or burrs being formed in the finished clip such that it was not inevitable that process feature F 5.2 led to any identifiable characteristics in the finished clip.

- 4.5 With respect to the first line of argument the patent proprietor argued that the term "splitting" was a more generic term than "mechanical separation" as it also included use of lasers and water jets to split the material.

Regarding the second line of argument, the patent proprietor argued that the claimed process features meant that the clip could have no raised material or

burrs projecting from the faces of the base, which was a structural feature of the clip.

4.6 The board comes to the conclusion that for both of the reasons given by the opponent the subject-matter of claim 1 of auxiliary request 3 is not novel with respect to the disclosure of document D4.

4.6.1 As argued by the opponent, it is not clear from the claim itself whether the terms "splitting" and "mechanical separation" are alternatives or synonyms (see opponent's submissions of 8 August 2025, page 2).

Consultation of the description does not clarify this point. The term "mechanical separation" is only referred to in paragraphs [0021] and [0045] of the contested patent and no indication of its interpretation is given, nor is any definition of splitting given. No mention of laser or water jet cutting is found in the description.

Therefore, the skilled person, after consulting the description, does not come to the conclusion suggested by the patent proprietor that splitting is a broader, more generic, term of which mechanical separation is a narrower example.

It is then reasonable for the skilled person to interpret the claim, such that "splitting" and "mechanical separation" are viewed as alternative processes, because of the use of the word "or" between the two terms. This would mean that features F 5.1, F 5.1.1, F 5.1.2 and F 5.2 are not limiting features for the alternative where mechanical separation is used.

As a result, the reasons given under point 3 above for auxiliary request 2 in view of lack of novelty with respect to the disclosure of D4 are still valid as they apply to mechanical separation which is not further specified in claim 1 of auxiliary request 3.

- 4.6.2 Regarding the opponent's second line of argument, the board agrees with the opponent that the skilled person, when reading the claim, would understand features F 5.1, F 5.1.1, F 5.1.2 and F 5.2 as being further features of the process feature F 4.2 which would then be followed by the process features of F 4.2.1 to F 4.2.3.

In features F 5.1.1 and F 5.1.2 a first and a second punch tool are used from opposite sides of the single base, whereas in feature F 4.2.1 at least one punch tool in the shape of a wedge is used, so that the skilled person does not interpret these features as all relating to the same single process step.

The board therefore is of the view that as the process features F 5.1.1, F 5.1.2 and F 5.2 are not the final steps of a manufacturing method, that the resulting clip is not inherently excluded from having raised material or burrs. This leads to the conclusion that also for this reason the clip of document D4 discloses all the features of claim 1 of auxiliary request 3.

5. *Auxiliary request filed on 28 August 2025 - admittance - Article 13 RPBA*

- 5.1 At the oral proceedings before the board on 28 August 2025, the patent proprietor filed a new auxiliary request. In this request the alternative "mechanical separation" has been deleted and the claim

is directed to a "process to obtain a clip" rather than a clip itself.

- 5.2 The opponent requested that the new auxiliary request not be admitted into the appeal proceedings as it was late-filed, did not overcome the lack of novelty objection with respect to D4, and raised new issues relating to Article 123(2) EPC.
- 5.3 Amendments to a party's appeal case submitted after the notification of the communication under Article 15(1) RPBA are subject to the conditions set out in Article 13(2) RPBA for them to be taken into account in appeal proceedings.

At this third level of the convergent approach defined by Article 13(2) RPBA, the board may also rely on criteria applicable at the second level of the convergent approach, i.e. those set out in Article 13(1) RPBA (see OJ EPO 2020, Supplementary publication 2, Rules of Procedure of the Boards of Appeal 2020, 2. Table setting out the amendments to the RPBA and the explanatory remarks, hereinafter "Supplementary publication 2, 2020", page 60, "Convergent approach - third level").

- 5.4 The board in the present case bases its decision on admittance of the new auxiliary request on the criteria set out in Article 13(1) RPBA, in particular, whether the amendments *prima facie* overcome the issues raised and do not give rise to new objections, and whether the admittance of the request would be detrimental to procedural economy (see CLB, V.A.4.5.4e) and Supplementary publication 2, 2020, *supra*, page 59, "Convergent approach - second level").

5.5 The opponent argued that the new independent claim 1 did not fulfil the requirements of Article 123(2) EPC as it was now based on an embodiment from the description (from paragraph [0045] onwards of the application as originally filed, see A-publication) not just the claims as originally filed. However, not all features from the embodiment were found in the claim, for example, the presence of a continuous metal strip or wire and the offsetting of the two punch tools so that each clip is stamped successively were not included, this led to an unallowable intermediate generalisation.

Further, according to the opponent, the change in category led to a number of the claimed process features, which previously were not considered to be limiting for the product claim, having to be considered for the first time in the oral proceedings before the board. For example, it had to be considered how exactly the terms "first and second punch tool" should be interpreted and to what extent document D4 disclosed these process features.

5.6 The board considers that although the amendment to claim 1 in the present case relates only to a few words, and does not appear complex at first sight, in fact the change of category significantly alters the claim and in particular the discussion of the objection of lack of novelty, leading to complex discussions being necessary at a late stage in the appeal proceedings. The amendment also gives rise to a completely new objection of added subject-matter according to Article 123(2) EPC that would have to be considered for the first time at the oral proceedings before the board.

As noted by the opponent, for the discussion of the objection of lack of novelty, the F 5 group of features relating to process steps was determined not to be limiting for the claimed clip (see also point 4 above). It was therefore unnecessary to consider the extent to which these features were disclosed in document D4.

However, as the claim is now directed to a process to obtain a clip, rather than the clip itself, these features do limit the claim and their interpretation and whether they are disclosed in document D4 must be considered.

Also the interpretation of further process features, such as the F 4.2 feature group, would have to be re-evaluated in the light of a process, rather than a product, claim.

As also noted by the opponent, this new consideration of how certain features should be interpreted when the claim was to a process, and whether D4 disclosed these features, would have to be carried out by the opponent and the board for the first time at the oral proceedings before the board.

- 5.7 In view of the above considerations, it does not appear that the amendments, prima facie, overcome the objection of lack of novelty with respect to the disclosure of D4.

It does not appear either that the amendments, *prima facie*, do not give rise to new objections, in particular an objection of added subject-matter as raised by the opponent.

In order to properly consider these features it is likely that the oral proceedings would have to be postponed, or that the case would have to be remitted to the opposition division, either course of action being detrimental to procedural economy.

- 5.8 The board is therefore of the view that the change of claim category in the new auxiliary request, from a product to a method claim, does not *prima facie* overcome existing objections, *prima facie* gives rise to a new objection, and its admittance would be detrimental to procedural economy.

The board exercises its discretion not to admit the new auxiliary request of 28 August 2025 into the appeal proceedings (Article 13 RPBA). It is therefore not taken into account.

6. *Conclusion*

As the main request and auxiliary requests 1 to 3 are not allowable and the auxiliary request filed on 28 August 2025 is not admitted into the appeal proceedings, there is no request on which a patent could be maintained. The patent therefore has to be revoked.

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