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**Datasheet for the decision  
of 6 May 2025**

**Case Number:** T 0166/24 - 3.2.07

**Application Number:** 12780849.1

**Publication Number:** 2760768

**IPC:** B65G47/84, G01G15/00

**Language of the proceedings:** EN

**Title of invention:**

SYSTEM AND METHOD FOR WEIGHING CONTAINERS

**Patent Proprietor:**

I.M.A. Industria Macchine Automatiche S.p.A.

**Opponent:**

Bausch + Ströbel Maschinenfabrik Ilshofen GmbH +  
Co. KG

**Relevant legal provisions:**

EPC Art. 100(a), 54, 54(2)

**Keyword:**

Novelty - public prior use - implicit obligation to maintain  
secrecy (no) - public prior use (yes) - state of the art  
Lack of novelty of main request and auxiliary request (yes)

**Decisions cited:**

T 1085/92, T 1043/93, T 0423/22



**Beschwerdekammern**

**Boards of Appeal**

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**Case Number:** T 0166/24 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 6 May 2025**

**Appellant:** I.M.A. Industria Macchine Automatiche S.p.A.  
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**Respondent:** Bausch + Ströbel Maschinenfabrik Ilshofen GmbH +  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
11 December 2023 concerning maintenance of the  
European Patent No. 2760768 in amended form.

**Composition of the Board:**

**Chairman** G. Patton  
**Members:** A. Cano Palmero  
Y. Podbielski  
S. Watson  
O. Loizou

## **Summary of Facts and Submissions**

- I. The patent proprietor (appellant) lodged an appeal within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent No. 2 760 768 in amended form on the basis of the then auxiliary request 2.
- II. The opposition had been filed against the patent in its entirety and was based on the grounds for opposition under Article 100(a) EPC (lack of novelty and lack of inventive step).
- III. In preparation for oral proceedings requested by the parties, the board communicated its preliminary assessment of the case in a communication pursuant to Article 15(1) RPBA. In response to this communication, the appellant filed arguments concerning substantive issues with letter dated 4 April 2025.
- IV. Oral proceedings before the board took place on 6 May 2025.

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

- V. The appellant requested

that the decision under appeal be set aside, and  
that the patent be maintained as granted (main  
request),  
or, in the alternative,

that the patent be maintained in amended form according to the set of claims filed as auxiliary request 1 during opposition proceedings.

VI. The opponent (respondent) requested

that the appeal be dismissed.

VII. The lines of argument of the parties relevant for the present decision are dealt with in detail in the reasons for the decision.

VIII. The documents relied upon by the parties and relevant for the present decision are the following:

B+S2: Acceptance report 7 March 2011;

B+S3: Two Assembly reports dated 22 March 2011 and 19 April 2011;

B+S5: Part list for the component KSF1025-IPF0012-01 (weighing unit) dated 15 April 2011;

B+S7: Design drawings of the units "weighing unit" KSF1025-IPF0012-01 of 15 April 2011 and "transport system wheel";

B+S10: Functional specification for KSF1025 (design document) dated 8 March 2011;

B+S15: Assembly report in the time interval from 27 April 2011 to 29 April 2011;

B+S16: Assembly report in the time interval from 5 May 2011 to 6 May 2011;

B+S17: four screenshots from the CAD model provided with a CD-ROM showing the weighing cell and neighbouring components;

B+S18: Design drawing of the plate of the weighing cell (part 46368380-00) dated 28 September 2010;

B+S19: Design drawing of the plate of the weighing cell (part 46368380-01) dated 15 April 2011;

Annex 1: screen shot from B+S17;

Annex 2: sequence from the CAD model.

Annexes 1 and 2 were filed with the statement setting out the grounds of appeal while the other documents were cited in the decision under appeal.

During the opposition proceedings Mr Patrick Springer and Mr Christian Ahrens were heard as witnesses; their respective testimonies annexed to the minutes of the oral proceedings before the opposition division as taking of evidence is relied upon in the present decision.

IX. **Claim 1** of the main request (*i.e.* according to the patent as granted) reads as follows:

"Group (40) for weighing containers (3) including:  
a movable member (4) for drawing at least one container (3), the movable member (4) featuring a peripheral edge wherein a recess (5) forming a seat (7) for drawing the container (3) is achieved, the movable member (4) being movable in a first movement direction (H) so as a first wall (15) of the seat (7) abuts and draws the container (3);  
a weighing cell (8) for weighing said container (3), including a support plane (9) for receiving and supporting the container (3);  
guide means (10) for guiding the container (3);  
the movable member (4) being further movable in a further second movement direction (J), opposite to the first movement direction (H), for detaching the seat (7) from the container (3) and leave the container (3) on the support plane (9) for weighing;  
characterised in that:

the weighing cell (8), the movable member (4) and the guide means (10) are arranged in such a way that when the container (3) is drawn by the movable member (4) the container (3) can slide on the support plane (9) and being guided by the guide means (19) outwards with respect to the seat (7);  
the guide means (10) includes a lateral guide wall (11) being part of the weighing cell (8)."

- X. **Claim 1** of auxiliary request 1 corresponds to claim 1 according to the main request with the following features added at the end of the claim:

"...wherein the weighing cell (8) is positionable with respect to the movable member (4) in such a way that the support plane (9) and the lateral guide wall (11) be below the seat (7) of the movable member (4), with the lateral guide wall (11) projecting outwards with respect to the internal wall (14) of the seat (7)."

- XI. **Claim 8** of auxiliary request 1 corresponds to claim 1 according to the main request with the following features added at the end of the claim:

"...wherein the seat (7) includes two lateral walls (15) that are opposite one another and an internal wall (14) connected to the two lateral walls (15), said first wall being defined by one of the two lateral walls (15), and wherein, when the container (3) is guided by the guide means (10) outwards with respect to the seat (7), the container moves away from the internal wall (14)."

## **Reasons for the Decision**

1. *Prior use KSF 1025 - Public availability, Article 54(2) EPC*
- 1.1 The appellant contested the reasoned finding of the opposition division in points 7 to 11 of the reasons for the decision under appeal, that a filling and sealing machine model KSF 1025 with machine number 55212 was sold and delivered to the company Crucell Berna Biotech Ltd. ("Crucell" hereafter) by the respondent Bausch + Ströbel Maschinenfabrik Ilshofen GmbH + Co.KG ("B + S" hereafter). In this regard, the appellant requested in the first place to not admit the late-filed evidence (B+S10 and B+S15 to B+S19) which was admitted by the opposition division (see points 5 and 6 of the reasons for the decision under appeal).
- 1.2 With respect to the admittance of documents B+S10 and B+S15 to B+S19, the board notes that these documents were admitted, considered and relied upon by the opposition division in its reasoned findings in the decision under appeal.
- 1.2.1 Under Article 12(2) RPBA, "a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based". Furthermore, Article 12(4) RPBA states that any part of a party's appeal case which does not meet the requirements in Article 12(2) RPBA is to be regarded as an amendment unless the party demonstrates that this part was admissibly raised and maintained in the proceedings leading to the decision under appeal. In the present case, the opposition division not only admitted these late-filed documents,



but also considered and based its decision *inter alia* on some of these documents.

- 1.2.2 Therefore, in accordance with Article 12(4) RPBA, documents B+S10 and B+S15 to B+S19 are not to be regarded as an amendment to the parties' respective appeal cases. Since they form part of the appeal proceedings, the board has no discretion not to admit these documents.
- 1.3 The appellant contested the public availability of the prior use for the following reasons.
  - 1.3.1 Firstly, they argued that it had not been proven beyond any reasonable doubt that there was not a confidentiality agreement between the companies involved in the delivery of the machine. Neither a debit note, nor a shipment document nor a delivery receipt have been presented as evidence of the sale of the machine.
  - 1.3.2 Secondly, the appellant considered that it could be assumed that confidentiality was indeed present between the parties, relating to the specific and special aspects of the machine as requested by Crucell even if the presence of an explicit confidentiality agreement could not be confirmed by the testimonies of the witnesses heard in the opposition proceedings. The appellant argued that in the present case in which the plate of the weighing unit had been adapted to the needs of the purchaser, then the selling of a customized machine was necessarily involved with some kind of development activity. Referring to decision T 1085/92 the appellant argued that it was established case law that a confidentiality agreement could be assumed where development took place. Consequently, at

least the modified plate of documents B+S7 and B+S17, on which the decision of the opposition division as regards novelty was based, was confidential and thus not publicly available.

- 1.4 The board disagrees and follows the finding of the opposition division that the prior use has been proven as being publicly available at the priority date. As correctly noted by the respondent, it is established case law of the Boards of Appeal that a single sale is sufficient to render the article sold available to the public within the meaning of Article 54(2) EPC, provided the buyer was not bound by an obligation to maintain secrecy, see Case Law of the Boards of Appeal of the European Patent Office (CLB), 10th Edition, 2022, I.C.3.3.1 and III.G.4.3.2b.
- 1.4.1 In the case at hand, the board agrees with the opposition division that the documents on file and the testimonies of the witnesses convincingly prove that the machine was delivered and was made available to the employees of Crucell at the latest when the employees of this company were trained in early May 2011. The fact that the machine was delivered, accepted and put into operation by Crucell (see documents B+S2, B+S3, B+S15 and B+S16) together with the testimony of Mr Springer, pages 47 and 48, is likewise considered by the board as sufficient evidence for a sale even in the absence of a debit note, shipment document or delivery receipt.
- 1.4.2 With respect to the alleged confidentiality, the board also concurs with the opposition division that there was no apparent special relationship between Crucell and B + S apart from a customer/supplier relationship. Modifications that could be carried out on particular

pieces of the delivered machine are in the board's view within the framework of the commercial relationship for these type of machines and are not part of a development program or agreement, as correctly found by the opposition division (see reasons for the decision under appeal, point 10). The situation of case T 1085/92 is not comparable to the present one since in that case the companies involved in the alleged public prior use were bound by a sub-contracting relationship, one producing for the other, such that they were considered to be linked by a "relationship of trust", i.e. by a tacit confidentiality agreement (see point 2 of the reasons).

- 1.4.3 The appellant referred to the design drawing B+S7 and argued that it gave an explicit indication of confidentiality by stating that the reproduction, distribution and utilisation of the document and the communication of its contents was prohibited without express authorisation. The board concurs however with the respondent that even if there had been an element of confidentiality with regard to design drawings, there was certainly no confidentiality at the point in time when the sale had been completed and the employees of Crucell were trained.
- 1.4.4 In sum, taking into account the evidence on file, the board is of the view there was no special development involving secrecy linked to the delivery of the machine. Therefore, Crucell's employees are considered to be members of the public and the prior use forms part of the prior art under Article 54(2) EPC.
- 1.5 The appellant additionally argued that the opposition division considered in the decision under appeal that the geometries corresponding to the CAD model B+S17,

which allegedly included the support plate of B+S7 with part number 46368376-01, formed part of the alleged public prior use. However, the machine was delivered according to the parts list B+S5 with a support plate with part number 46368380-01 (B+S19). While Mr Springer (at the time an employee of the customer Crucell) affirmed that the support plate had never been modified (see pages 46 and 47 of Mr Springer's taking of evidence), Mr Ahrens (at the time an employee of the supplier B + S) stated that the part with number 46368380-01 (B+S19) was polished and welded with other parts resulting in part number 46368376-01 (B+S7). The appellant further argued that Mr Ahrens' testimony did not appear consistent and credible based on the questions regarding B+S17. Such contradictions in a witness testimony or between testimonies of several witnesses was decisive in the evaluation of evidence, as it was in cases T 423/22 and T 1043/93. The contradictions between both testimonies, the apparent lack of credibility of Mr Ahrens' testimony and the decision not to take evidence from a third witness (Mr Dreiling), that could have eventually clarified the contradictory versions of the previous witnesses, resulted in an error in the opposition division's finding that a weighing device including the support plate of B+S7 and B+S17 had been made available to the public.

- 1.5.1 The board is not persuaded by the appellant's arguments and is rather of the view that the opposition division made no error in the evaluation of the testimony of Mr Ahrens (see pages 95, 97 and 108 of Mr Ahrens' taking of evidence) that the raw plate of B+S19 (46368380-01) together with other elements were assembled, welded and polished to become the finished weighing cell shown in B+S7 (see point 11 of the reasons for the decision

under appeal). The weighing plate of B+S7 (46368376-01) was then identified by Mr Ahrens as being the plate used in the machine and represented in the CAD model of B+S17 (see taking of evidence of Mr Ahrens, page 86). The board further sees no contradiction between the testimony of Mr Ahrens and Mr Springer. Indeed, according to page 47 of the taking of evidence of Mr Springer, the witness could only assume that the plate of B+S19 was the one installed in the machine in May 2001. The witness did not know whether that was the standard plate (*i.e.* according to B+S19) or the modified plate (*i.e.* according to B+S7 and B+S17), but only recalled that the plate looked like the one of B+S19. These statements are in the board's view not sufficient to qualify the testimony of Mr Ahrens as either not credible or contradictory with the testimony of Mr Springer. Hence, T 423/22 and T 1043/93 do not apply to the present case.

- 1.5.2 In addition, the board is not convinced by the appellant's arguments relating to the suffixes of the part numbers. According to the appellant it was not possible that a component with the suffix -01, such as B+S7 (part number 46368376-01) could be the final version of another component, such as the support plane shown in B+S19 (part number 46368380-01), because it also had the suffix -01.

In the board's view, as B+S7 relates to an assembly of components, including B+S19 (part number 46368380 indicated without suffix, page 2, top right), the suffixes will vary depending on what modifications have been undertaken and it is not excluded that an assembly having a suffix -01 includes a component also having a suffix -01.

- 1.5.3 The board also notes that in the absence of contradictory testimonies or lack of credibility of one of the testimonies, the opposition division did not need to listen to the further witness, Mr Dreiling, in order to take its decision. In addition, the board observes that this witness was initially proposed by the respondent and that the appellant did not request to hear this witness. Therefore, the board does not see any error of the opposition division in deciding not to hear this last witness.
- 1.5.4 The appellant also argued during the oral proceedings before the board that the delivery of the machine took place in March 2011 (see B+S3) which was in contradiction with the date of the drawing B+S7 of 15 April 2011. The board does not see however a contradiction in this respect and rather follows the respondent's argument that the drawings were produced once the machine had been installed in order to reflect the machine as actually delivered.
- 1.6 In sum, the board concludes that the prior use KSF 1025 consisting of a weighing machine including a weighing unit and a transport wheel in accordance with B+S7 and B+S17 was publicly available before the priority date and thus prior art according Article 54(2) EPC.
2. *Patent as granted (main request) - Novelty, Article 54 EPC*
- 2.1 The appellant contested the reasoned finding of the opposition division of points 12 to 20 of the reasons for the decision under appeal, that the alleged public prior use KSF 1025 anticipated the subject-matter of claim 1 according to the patent as granted. In

particular, the appellant argued that the public prior use did not contain features 1h) and 1i), namely that:

"1h) the weighing cell, the movable member and the guide means are arranged in such a way that when the container is drawn by the movable member the container can slide on the support plane and being guided by the guide means outwards with respect to the seat;"

and that

"1i) the guide means includes a lateral guide wall being part of the weighing cell."

- 2.2 In particular, the appellant argued that no containers were illustrated in B+S17, and neither were there any images of the sequence of the movement of the wheel holding the containers in their seats. According to the appellant, taking into account the dimensions of the support plate shown in B+S7 and the images of B+S17, it could be derived that the flat portion of the inner lateral wall of the support plate eventually protrudes within the seat of the wheel for less than 1mm. Relying on the drawing of Annex 1 and the sequence of Annex 2, which were filed with the statement setting out the grounds of appeal, the appellant explained that when the wheel rotated and drew the containers into the seats of the wheel, the containers necessarily tended to move towards the outside of the seats due to the centrifugal effect generated by the wheel rotation. A space was then automatically created between the inner side of the seats and the containers. This was the reason why a counter guide rail was set at the outside of the wheel, namely to prevent the containers from moving outside of the seats during the rotation of the wheel. In consequence, when a container was pushed by

the rotation of the wheel to slide above the support plate which was placed in the manner as shown in the images of B+S17, the object did not come into contact with the flat portion of the inner lateral wall of the support plate because the object was already not in contact with the inner side of the seat. Therefore, the flat portion of the inner lateral wall of the support plate could not guide the object outwards with respect to the seat, and this flat portion of the inner lateral wall of the support plate could not constitute a lateral guide wall that guided the object outward the seat, when the container was drawn by the movable member, as required by the subject-matter of claim 1 as granted.

- 2.3 The board disagrees. As correctly found by the opposition division in point 18 of the reasons for the decision under appeal, both inner and lateral walls of the support plate (which are part of the weighing cell) comprise a slanted portion. The second CAD drawing of B+S17 shows an overlap between the two lateral walls and the seat. Contrary to the appellant's allegation, the board is of the view that depending on the circumstances, the centrifugal effect might not result in the container moving in the radial direction more than the amount of overlap identified above. Therefore, the board concurs with the respondent that the slanted portions of the plate of B+S7 and B+S17 constitute guide means that are arranged in such a way that when the container is drawn by the movable member the container is guided by these slanted portions outwards with respect to the seat. The functionality of features 1h) and 1i) is thus met by the overlap shown in the configuration of B+S17, and is also consistent with the explanations of Mr Ahrens (see pages 72 to 75 of the taking of evidence).



2.4 In sum, the board concludes that the public prior use KSF 1025 anticipates the subject-matter of claim 1 as granted, so that the requirements for novelty are not met.

3. *Auxiliary request 1 - Novelty, Article 54 EPC*

3.1 Claim 1 of auxiliary request 1 has been amended to include the features of claim 3 of the patent as granted. The appellant argued that claim 1 of auxiliary request 1 was novel for the same reasons as already put forward for claim 1 of the main request.

3.1.1 The board, for the same considerations as for the main request, concurs with the opposition division that the subject-matter of claim 1 of auxiliary request 1 is anticipated by the public prior use KSF 1025, due to the overlap shown by B+S17.

3.2 Independent claim 8 of auxiliary request 1 includes the features of claims 1 and 2 of the patent as granted. The appellant repeated its argumentation that due to the clearance between the inner side of the seat and the container in the public prior use, the container could not be guided by the flat portion of the inner lateral wall of the support plane outwards with respect to the seat, and neither could the container be moved away from the internal wall of the seat. Furthermore, the container was prevented from moving outwards with respect to the seat and prevented from moving away from the internal wall of the seat by the presence of the outer lateral wall of the support plate, which took the place of the counter guide rail.

3.2.1 The board however is of the view that the two lateral walls and the internal wall of the seat are also anticipated by the public prior use. Furthermore, for the same reasons as for the main request, the outward movement when the container is guided by the guide means is also present in the public prior use. Therefore, the subject-matter of claim 8 of auxiliary request is also not novel in view of the public prior use KSF 1025.

4. *Conclusions*

In view of the considerations above, the board concludes that the appellant has not convincingly demonstrated the incorrectness of the decision under appeal that the prior use KSF 1025 was publicly available and disclosed all features of the subject-matter of claim 1 of the main request and of the subject-matter of claims 1 and 8 of auxiliary request 1. The appeal is thus to be dismissed.

## Order

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



S. Lichtenvort

G. Patton

Decision electronically authenticated