



Vienna Local Division

UPC_CFI_26/2025

UPC_CFI_375/2025

Decision

of the Court of First Instance of the Unified Patent Court

delivered on 19. February 2026

concerning EP 3 705 415 B1

Headnotes:

1. Due to the front-loaded approach of the UPC system R 25.1 RoP requires the counterclaim for revocation to contain an indication of the facts relied on (R 25.1 (c) RoP) and the evidence relied on, where available and an indication of any further evidence which will be offered in support (R 25.1 (d) RoP). The parties are under an obligation to set out their full case as early as possible (Preamble RoP 7, last sentence) and to provide all their legal and factual arguments, and any evidence supporting it in a timely manner. Whenever possible, Counterclaimant is obliged to submit its arguments, facts and attachments in its counterclaim of revocation. Submitting evidence for prior state of the Art or for prior use at a later time requires a reasonable justification regarding to the timeliness.
2. A commercial brochure, as a stand-alone piece of the prior art will be evaluated as such by the person skilled in the art. Already from the outset, obtaining the physical product that is being advertised in a commercial brochure is not a valid approach to establishing the disclosure of the stand-alone publication that the commercial brochure is.
3. According to Art 70 (1) EPC, the text of a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in any Contracting State. For EP415 the language of the patent is German. Although the language of the proceedings is English the court bases its interpretation und considerations on the German text of the patent in suit and reads in this way the English translations of the patents claims as it is published in EP 3 705 415 B1.

Keywords: Timeliness evidence of prior state of the Art; disclosure content of a commercial brochure; language of patent vs of the proceedings

CLAIMANT/COUNTERDEFENDANT:

Messerle GmbH, Neue Landstraße 91, 6841 Mäder, Austria

represented by: Florian Robl, PhD und Dr. Markus Gangl, European Patent Litigators, c/o
Torggler & Hofmann Patentanwälte GmbH & Co KG, Wilhelm-Greil-Straße 16,
6020 Innsbruck

electronic service adress: robl@th-patent.at

DEFENDANT/COUNTERCLAIMANT:

Sabert Corporation Europe S.A., 4 rue de l'Industrie, 1400 Nivelles, Belgium

represented by: Prof. DDr. Mireille Buydens and Charles Bernard (attorneys at law), Chaussée de
la Hulpe 187, 1170, Brussels, Belgium

Ludivine Coulon and Sjors de Koning (attorneys at law), Lambroekstraat 8A, 1831
Diegem Belgium

electronic service adress: m.buydens@janson.be

PATENT AT ISSUE:

European Patent 3 705 415

PANEL/DIVISION:

Local Division Vienna

DECIDING JUDGES:

This decision is issued by the Presiding Judge and also judge-rapporteur Dr. Walter Schober, by the legally qualified judges Kai Harmand und Anna-Lena Klein and the technically qualified judge Max Tilmann

LANGUAGE OF THE PROCEEDINGS : English

SUBJECT: Infringement action and counterclaim for revocation

DATE OF THE ORAL HEARING: 14 January 2026

WRITTEN SUBMISSIONS OF THE PARTIES:

- Statement of claim (referred to as Soc in the following) filed on 14. January 2025 and amended on 17. January 2025
- Request for Leave to Change the Claim and amend the case (=RegAmendCase) of 14. March 2025

- Statement of Defence including Counterclaim for revocation of 25. April 2025 and amended on 9. May 2025 (=SoD+CC)
- Reply to Statement of Defence and Defence to the Counterclaim for Revocation of 3. July 2025 (=ReplySoD+DefCC)
- Reply to Defence to counterclaim; rejoinder to the reply to statement of defence; defence to an application to amend the patent of 2. September 2025 (=ReplyDefCC)
- Rejoinder Counterclaim of 30. September 2025 (=RejoinCC)
- Rejoinder to the Reply to Defence to the Application to amend of 31. Oktober 2025 (=RejoinAppAmend).

SHORT SUMMARY OF FACTS:

4. The parties argue about the infringement and novelty/validity of EP 3 705 415 B1 (also referred to as EP415 in the following) named "Package, in particular for food products". The application for this patent was filed on 2. February 2020. The grant of the patent was published on 13. October 2021. The patent in suit is in force in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden and Slovenia. German is the language in which the patent was granted; the publication in EP 3 705 415 B1 contains a translation of the patent claims into English (and French).
5. According to its preamble, EP415 relates to packaging, in particular for foodstuffs, comprising a tray made of cardboard or paperboard, and a lid which is placed onto the tray in the closed state of the packaging and which engages over the outside of an upper edge of the tray, with connection elements of the lid cooperating with retaining elements arranged on associated side walls of the tray, and the side walls of the tray, that have the retaining elements, each have a wall portion, which is connected to the base of the tray via a fold, and have a first stiffening portion connected to the upper end of the wall portion via a fold. ([0001]).
6. EP415 considers packaging for foodstuffs, for example cakes, pastries, ready meals or salads, to be known and to consist of a tray made of plastic and a, in particular hat-shaped, lid made of plastic placed thereon, with the lid having protruding nubs, which cooperate with retaining elements of the tray. According to EP415 at least the plastic of the lid, possibly also the plastic of the tray, could be designed to be transparent and it states that such packaging is also known as blister packaging. ([0002]).
7. According to EP415, to reduce the amount of plastic, it has already been proposed to design the tray of cardboard or paperboard. However, according to EP415 previously known "hybrid" packaging of this type were disadvantageous in various respects, in particular with regard to handling and/or stability and/or the hold of the attached lid on the tray. ([0003]).
8. EP415 considers a packaging of the type mentioned at the outset to emerge from WO 87/02008 A1, where a stackable tray is to be described which cooperates with a lid (not represented) to provide packaging for foodstuffs. According to EP415 the tray has four side walls which are connected in the corner regions and which, at their upper end, have a bent projection which forms an outwardly sloping flange that encloses the entire tray. To the evaluation presented in EP415, this flange is used to hold the lid to prevent it being pulled off the tray by snapping the tabs of the

lid under the downwardly directed side edge of this flange. ([0004])

9. Another type of folding box, in which both the lower part and the lid part have vertical side walls, EP415 describes to be emerging from DE 29 515 650 U1, where EP415 considers the lid part, which is open downwards, to be placed on the lower part with its side walls surrounding the side walls of the lower part on the outside. According to EP415, in order to avoid bulging of the side walls, a reinforcement edge is formed, which is formed by the side wall material folded inwards, with for example a triangular region being formed, which adjoins the upper end of the side wall. ([0005]).
10. EP415 considers it to be the object of the invention to provide advantageous packaging of the type mentioned at the outset, which can be designed to be easy to handle and to have good stability, with a very good hold of the lid connected to the tray being able to be provided.
11. To solve this object, EP415 according to its only main claim, claim 1, protects a packaging comprising a tray and a lid, whose features can be structured as follows:

	Claim 1 (English translation as published in patent EP 3 705 415 B1 specification)	Claim 1 (Original German version)
Feature 1	<i>Packaging, in particular for foodstuffs, comprising a tray (1) made of cardboard or paperboard, and a lid (2) which is placed onto the tray (1) in the closed state of the packaging</i>	<i>Verpackung, insbesondere für Lebensmittel, umfassend eine Schale (1) aus Karton oder Pappe und einen im geschlossenen Zustand der Verpackung auf die Schale (1) aufgesetzten Deckel</i>
Feature 2	<i>[The lid] engages over the outside of an upper edge of the tray (1),</i>	<i>[der Deckel] übergreift außen einen oberen Rand der Schale (1),</i>
Feature 3	<i>connection elements of the lid (2) cooperate with retaining elements (6) arranged on associated side walls (7, 8) of the tray (1)</i>	<i>Verbindungselemente des Deckels (2) wirken mit an zugeordneten Seitenwänden (7, 8) der Schale (1) angeordneten Rückhalteelementen (6) zusammen</i>
Feature 4	<i>the side walls (7, 8) of the tray (1) that have the retaining elements (6) each have a wall portion (9) which is connected to the base (10) of the tray (1) via a fold</i>	<i>die die Rückhalteelemente (6) aufweisenden Seitenwände (7, 8) der Schale (1) [weisen] jeweils einen Wandabschnitt (9) [auf], der mit dem Boden (10) der Schale (1) über einen Knick verbunden ist,</i>
Feature 5	<i>[The side walls of the tray having] a first stiffening portion (11) connected to the upper end of the wall portion (9) via a fold</i>	<i>[die Seitenwände (7, 8) der Schale (1) weisen] einen mit dem oberen Ende des Wandabschnitts (9) über einen Knick verbundenen ersten Aussteifungsabschnitt (11) [auf]</i>
	<i>characterized in that</i>	<i>dadurch gekennzeichnet, dass</i>
Feature 6	<i>the connection elements of the lid (2) are formed by inwardly protruding nubs (5) arranged on at least two side walls (3, 4) of the lid (2)</i>	<i>die Verbindungselemente des Deckels (2) [werden] von an mindesten zwei Seitenwänden (3, 4) des Deckels (2) angeordneten, nach innen vorspringenden Noppen (5) gebildet</i>
Feature 7	<i>the side walls (7, 8) of the tray (1) additionally each have a second stiffening portion (12), which is connected to the first stiffening portion via a fold,</i>	<i>die Seitenwände (7, 8) der Schale (1) [weisen] im Weiteren jeweils einen mit dem ersten Aussteifungsabschnitt über einen Knick verbundenen zweiten Aussteifungsabschnitt (12) [auf]</i>

Feature 8	<i>[the side wall of the tray have] an adhesive-bonding portion (13), which is connected to the second stiffening portion (12) via a fold and which is adhesively bonded to the outer side of the wall portion (9),</i>	<i>[die Seitenwände (7, 8) der Schale (1) weisen] einen mit dem zweiten Aussteifungsabschnitt (12) über einen Knick verbundenen Anklebeabschnitt (13) auf, welcher mit der Außenseite Wandabschnitts (9) verklebt ist,</i>
Feature 9	<i>a section of the wall portion (9) located above the adhesive-bonding portion (13), the first stiffening portion (11) and the second stiffening portion (12) delimit a channel (14) which is triangular in cross-section</i>	<i>ein oberhalb des Anklebeabschnitts (13) liegender Teilabschnitt des Wandabschnitts (9), der erste Aussteifungsabschnitt (11) und der zweite Aussteifungsabschnitt (12) begrenzen einen im Querschnitt dreieckförmigen Kanal (14)</i>
Feature 10	<i>the retaining elements (6) for the nubs (5) are formed by rims of openings (15) in the second stiffening portions (12) or by the downwardly directed outer surfaces of the second stiffening portions (12)</i>	<i>die Rückhalteelemente (6) für die Noppen(5) werden von Rändern von Öffnungen (15) in den zweiten Aussteifungsabschnitten (12) oder von den nach unten gerichteten äußeren Oberflächen der zweiten Aussteifungsabschnitte (12) gebildet</i>

12. According to EP415, if a tray is formed according to the above defined solution, a very good hold of the lid connected to the tray can be provided, in particular due to the stability of the regions in which the retaining elements for the nubs of the lid are arranged. ([0008]).

SUBMISSIONS OF THE PARTIES:

13. The Claimant has the opinion that the *Tray2Go* packaging of the Defendant literally fulfils the requirements of claim 1 and in the alternative infringes the patent under the doctrine of equivalence.

14. In the opinion of the Defendant, however, the side walls of the *Tray2Go* products do not have a first stiffening portion as required by feature 5 of claim 1, and do not have a second stiffening portion which is connected to the first stiffening portion via a fold as required by feature 7 of claim 1 and do not have an adhesive-bonding portion which is connected to a second stiffening portion via a fold as required by feature 8 of claim 1. Furthermore the Defendant is of the opinion that the *Tray2Go* products do not have a channel which is triangular in cross-section as required by feature 9 of claim 1 and that the *Tray2Go* products do not have retaining elements for the nubs that are formed by rims of openings in a second stiffening portion or by the downwardly directed outer surfaces of a second stiffening portions as required by feature 10 of claim 1.

15. While with the request for leave to change the claim and amend the case in the submission of 14. March 2025, the Claimant has presented the opinion that the *Deli2Go* packaging of the defendant literally fulfils the requirements of claim 1 and in the alternative infringes the patent under the doctrine of equivalence – to which the defendant has the opinion that this is not the case – the claimant has withdrawn this request and hence does not further pursue its opinions as regards the *Deli2Go* packaging.

16. The Claimant alleges patent infringement in the UPC-territory, in particular Austria, with reference to the website <https://www.sabert.eu/de/unsere-katalog/>.

17. The Defendant does not dispute the factual statements made by the Claimant as regards the actions performed by the Defendant.
18. The Defendant bases its action for annulment on the following grounds for annulment pursuant to Art 138 EPC in conjunction with Art 65(2) EPC:
- lack of novelty (Art 138(1)(a) in conjunction with Art 54 (1), (2) EPC);
 - lack of inventive step (Art 138(1)(a) in conjunction with Art 56 EPC).
19. The Defendant considers the subject matter of EP415 to be non-novel in relation to a brochure filed as D4 and furthermore not based on an inventive step based on patent specification CA 2768575(D5), alternatively in conjunction with further prior art. In the reply of defence to counterclaim the defendant further considers EP415 to be non-novel in relation to an alleged public prior use (*Solut !* product).
20. The Claimant disputes these reasons and argues the patent to be valid, requests to reject this action and applies to amend the patent in seven different versions.

REQUESTS OF THE PARTIES:

Infringement:

21. The Claimant requests that the Court:

- I. Determines that the contested embodiments constitute an infringement of the EP415 in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia; [determination of infringement]
- II. Orders the Defendant to cease and desist with immediate effect from infringing literally and/or equivalently EP415 in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia by making, offering, placing on the market, using or importing or storing for these purposes a packaging, especially for food, comprising a tray made of cardboard or paperboard and a cover which is placed onto the tray in the closed state of the packaging and which engages over the outside of an upper edge of the tray wherein connection elements of the cover interact with retaining elements arranged on associated side walls of the tray, and the side walls of the tray having the retaining elements each have a wall portion which is connected to the bottom of the tray by way of a bend and a first stiffening portion connected to the upper end of the wall portion by way of a bend, characterized in that the connection elements of the cover are formed by inwardly protruding nubs arranged at least two of the side walls of the cover and in that the side walls of the tray in addition each have a second stiffening portion connected to the first stiffening portion by way of a bend and an adhesive portion which is connected to the second stiffening portion by way of a bend and which is adhesively bonded to the outer side of the wall portion, wherein a sub-portion of the wall portion lying above the adhesive-portion, the first stiffening portion and the second stiffening portion delimit a channel which is triangular in cross section; and in that the retaining elements for the nubs are formed by edges of openings in the second stiffening portions or by the downwardly directed outer surfaces of the second stiffening portions; [direct infringement, claim 1].

in particular

if the cover has a widened lower base portion which, by way of gradations of the side walls of the cover having the nubs, adjoins that part of the cover which lies thereabove, the gradations resting on the first stiffening portions of the side walls of the tray; [claim 2]

and/or

if the cover has inwardly protruding nubs at least at two opposing side walls, said nubs interacting with retaining elements arranged at opposing side walls of the tray; [claim 3]

and/or

if side walls which succeed one another in the circumferential direction of the tray are connected to one another by way of connecting portions which are adhesively bonded to at least one of the successive side walls; [claim 4]

and/or

if the angle between the bottom of the tray and the respective wall portion, the upper end of which is connected to the respective first stiffening portion by way of a respective bend, lies in the range of 45° to 90°; [claim 6]

and/or

if the angle between the wall portion and the first stiffening portion of the respective side wall lies in the range of 30° to 150°, preferably in the range of 45° to 135°; [claim 7]

and/or

if the angle between the first and the second stiffening portion of the respective side wall lies in the range of 20° to 120°, preferably in the range of 45° to 90°; [claim 8]

and/or

if the cover is composed of plastic; [claim 10]

- III. Orders the Defendant to cease and desist with immediate effect from infringing literally and/or equivalently EP415 in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia by supplying or offering to supply trays and/or covers for packaging as described under Request II; [indirect infringement]
- IV. Orders the Defendant to recall, permanently withdraw from the market and destroy the products described under Requests II and III delivered for the use in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia within two weeks from the date of service of this decision and to this end to write a (registered) letter or email with cc to the claimant's representatives to the recipients of the products described under Requests II and III containing the following content, or a translation into another language understood by the recipients, without any additional or alternative text:

"Dear customer,

By decision of the Court of First Instance of the Unified Patent Court ruled that Sabert Corporation Europe S.A. has infringed the European Patent no. 3705415 of the Austrian

company Messerle GmbH by supplying or offering to supply TRAY2GO products in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia.

Sabert will therefore no longer market the TRAY2GO products in these countries and hereby requests that you no longer offer these (whether online or offline) and return any of these products in your possession to Sabert for destruction within 7 days from the date of this letter.

Sabert will refund the purchase price and all costs associated with the return of these products.

Sabert apologises for the inconvenience.

Sabert Corporation Europe S.A.";

and to provide copies of the communications to the claimant's representatives for verification purposes;

- V. Orders the Defendant to destroy all injection moulding forms in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia suitable for manufacturing the infringing covers described in Requests II and III;
- VI. Orders the Defendant to provide the Claimant within three weeks from the date of service of this decision, with information on:
- the distribution channels of the products described under Requests II and III;
 - the quantities produced, manufactured, delivered, received or ordered, as well as the price paid for the products described under Requests II and III, and
 - the identity of third parties involved in the production or distribution of the products described under Requests II and III

in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia;

- VII. Orders the Defendant to place the following text on the homepage of its website within two weeks after the service of this decision and for a period of two months, without additional or alternative text and with a link to the decision, in an easily readable frame covering at least 25 % of the surface of the homepage and immediately visible when visiting the website:

"Dear visitor,

By decision of the Court of First Instance, Local Division Vienna, of the Unified Patent Court ruled that the Sabert Corporation Europe S.A. has infringed the European Patent no. 3705415 of the Austrian company Messerle GmbH by supplying or offering to supply TRAY2GO products in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia.

Sabert will therefore no longer market these products in those countries. If you obtained these products from us, you may return these for a full refund."

- VIII. Orders the Defendant to pay a penalty of up to € 2,000 for each product concerned, or for each instance of the Defendant directly or indirectly infringing the EP415 in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia after this decision has been served or for each day, a part day being counted as a whole day, that the Defendant fails to comply

fully and/or improperly with the aforementioned orders under IV, V, VI, or VII, up to a maximum of € 1,000,000.-;

- IX. Orders the Defendant to compensate the claimant for the damage it has suffered and fears it will yet suffer as a result of the infringements by the Defendant of the EP415 in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia, the details of which are to be set out in separate proceedings for damages;
- X. Orders the Defendant to pay provisional damages of € 80,000.- to the Claimant within three weeks from the date of service of this decision;
- XI. Orders the Defendant to pay the costs of the proceedings up to the ceilings set out, and those relating to the measures ordered above.
- XII. Pronounces that the decision is immediately and directly enforceable in Austria, Belgium, Germany, Denmark, Finland, France, Italy, the Netherlands, Sweden, and Slovenia, without being subject to a security payment.

22. The Defendant disputes that the *Tray2Go* packaging infringes the EP415 and has filed a counterclaim for revocation requesting that the court

- I. pursuant to article 33 (3) a) UPCA and rule 37 (3) RoP, proceeds with both the action for infringement and with the counterclaim for revocation and requests the President of the Court of First Instance to allocate from the Pool of Judges in accordance with Article 18(3) UPCA a technically qualified judge with qualifications and experience in the field of technology concerned;
- II. determines that subject-matter of the European patent EP415, in its entirety, is not patentable within the meaning of article 52 (1) EPC because it lacks novelty pursuant to article 54 (1) EPC and because it does not involve an inventive step pursuant to article 56 (1) EPC;
- III. revokes patent EP415 entirely pursuant to article 138 (1) EPC, article 65 (1) UPCA and rule 118 (3) RoP;
- IV. orders that a copy of the revocation decision shall be sent to the national patent offices of each Contracting Member State where patent EP415 has been validated pursuant to article 65 (5) UPCA;
- V. determines that the "*Tray2Go*" ranges of products do not fall into the scope of protection and therefore do not infringe on patent EP415 pursuant to article 25 UPCA;
- VI. as a consequence, rejects all of the Claimant's claims;
- VII. orders the Claimant to pay the representation costs of the proceedings pursuant to article 69 (1) UPCA up to the ceilings set out by the Administrative Committee of the UPC pursuant to rule 152 (2) RoP;
- VIII. orders that all or part of any Enclosures to the Statement of Defence need not be translated pursuant to rule 24 (j) RoP.

23. The Claimant requests to reject all the Defendant's requests and to uphold the patent in suit. In alternative, if the court will not uphold the patent in suit in the form granted by the EPO, to uphold the patent in the form of one of the filed auxiliary requests 1 to 7, in alternative to uphold the patent in suit with the scope of protection of one of the dependent claims (or combinations thereof).

GROUNDS FOR THE DECISION

24. The admissible infringement action is unfounded, also the admissible counterclaim for revocation. It is therefore unnecessary to examine the filed auxiliary requests 1 to 7 for amendment the patent to uphold the patent in suit.

A. Teaching of the patent and Claim-Construction

25. Some of the features of claim 1 require an interpretation.

Skilled person and language understanding

26. The skilled person in the art is a mechanical engineer with a university degree having several years of professional experience in the packaging industry, in particular in cardboard processing and manufacturing to obtain packaging trays made of cardboard.

27. According to Art 70 (1) EPC, the text of a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in any Contracting State. For EP415 the language of the patent is German. Although the language of the proceedings is English the court bases its interpretation and considerations on the German text of the patent in suit and reads in this way the English translations of the patents claims as it is published in EP 3 705 415 B1.

28. From the relevant perspective of skilled person in the art, the following features are understood as follows:

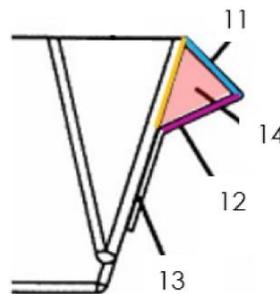
The term “Knick”

29. The German language term “Knick” as used in the German language version of claim 1 of EP415 is understood by the person skilled in the art as a portion of the claimed packaging that is created by folding of card- or paperboard along a predefined folding line, causing in the folded state a visible sharp crease at the interface of two walls or wall-shaped portions of the packaging (e.g. the first or second stiffening portion).

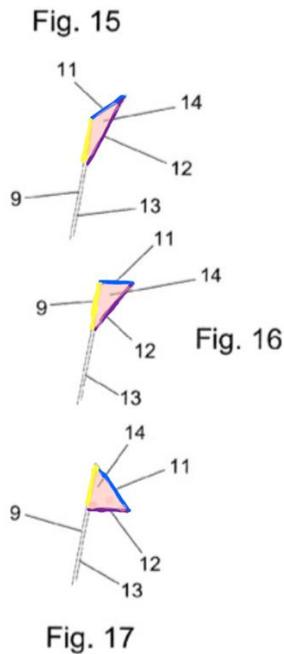
30. The common understanding of the German term “Knick”, is – as far as relevant for the present technical field – a point at which something is sharply angled or bent [from a straight line] (German: “Stelle, an der etwas [aus einem geraden Verlauf] stark abgewinkelt, abgebogen ist”) or a sharp crease or break (German: “scharfer Falz, Bruch”). This has been put forward by the Defendant with reference to an entry in the German dictionary DUDEN visible under <https://www.duden.de/rechtschreibung/Knick> (Enclosure E1, page 10). The Court agrees that this is the common understanding of the German term “Knick”. This understanding is also applied by the skilled person in the technical field of EP415. The Defendant has exemplified this with reference to a cardboard specification document (Enclosure E1, page 7, 8).

31. While claim 1 does not contain a particular definition of the term “Knick”, further features disclosed in the claim indicate to the skilled person that the claim builds on this understanding of the term “Knick”. As argued by the Defendant (Enclosure E1, page 1 to 3), feature 9 defines that a section of the wall portion located above the adhesive-bonding portion, the first stiffening portion and the second stiffening portion delimit a channel which is *triangular* in cross-section, while feature 8 requires the side walls of the tray to additionally each have a second stiffening portion, which is connected to the first stiffening portion via what the German version of claim 1 calls a “Knick”, and while feature 8 further requires an adhesive- bonding portion, which is connected to the second stiffening portion via what the German version of claim 1 calls a “Knick” and which is adhesively bonded to the outer side of the wall portion. The skilled person’s understanding of the teaching of the combined features 7, 8 and 9 can be illustrated by the coloured sketch provided by the Defendant in Enclosure E1, page 1 and reproduced below that shows a cross-sectional view of an triangular channel in the skilled person’s understanding of feature 9 (the below sketch not being

limited to particular size and length, but used to show a triangular cross-section). The sketch below shows the cross-sectional area of the channel in pink, the wall portion located above the adhesive-bonding portion in yellow, the first stiffening portion in blue and the second stiffening portion in violet.



32. The use of the German language term “Knick” in the context of the respective interface between three objects (the wall portion located above the adhesive-bonding portion, the first stiffening portion, the second stiffening) that jointly form a channel with a triangular cross-section confirms to the skilled person that the term “Knick” is used within the claim 1 to describe a point at which something is sharply angled or bent [from a straight line] or a sharp crease or break.
33. This understanding of the German language term “Knick” is supported by the description. Paragraph [0021] to [0023] with reference to Fig. 1 to 14 describe the “Knick” to be the interface between two wall sections and by reference to the angles between the two wall sections, which the Fig. that are being referred to consistently show to be visible sharp creases at the interface of two walls or wall-shaped portions of the packaging. Paragraph [0036] of the description further deepens this understanding with reference to Fig. 15 to 17, which show variations of the triangular channel with different combinations of triangle angles. The embodiments of Fig. 15 to 17 – in line with the wording of the claim – show the channel to always have a triangular cross-section with the corresponding three sharp edges between the respective wall sections. Using the above-introduced colour-scheme, below is a coloured representation of Fig. 15 to 17. All Fig. are consistent with and in their repetition reinforce the skilled person’s understanding that the term “Knick” is used within the claim 1 to describe a point at which something is sharply angled or bent [from a straight line] or a sharp crease or break. While it is true – as the Claimant argues in the ReplySoD+DefCC on page 4 – that the above cited passages and Fig. of the description only relate to particular embodiments of the claimed subject matter, the circumstance that they reinforce the understanding that the skilled person derived from claim 1 has a value as such and reconfirms to the skilled person that his initial understanding of the term is also in line with the described embodiments.



34. The Claimant’s argument that the bending radius cannot be used as clear distinction between the English terms “bend” and “fold”, because the bending radius present in both is on a continuous spectrum (ReplySoD+DefCC, page 5, third paragraph), does not lead to a different result. As indicated above, the skilled person’s understanding of the term “Knick” is not strictly dependent on a bending radius as a measure. To the skilled person, a “Knick” is present in the current technical field, if in the folded state a visible sharp crease at the interface of two walls or wall-shaped portions of the packaging is present. While the bending radius may be a way to indicate, if a sharp crease is present, it is not the only way. For example the relative circumferential length of the interface between the two walls or wall-shaped portions of the package may be a different way of showing the existence of a “Knick”. With a “Knick” the interface between the two walls or wall-shaped portions will be relatively short compared to the size of the walls it connects, while with an interface that uses a bend (German: einen Bogen), the length of the interface will be relatively large compared to the size of the walls it connects. Hence, it is not even necessary to use the bending radius as a measure to determine if a “Knick” is present.

35. Furthermore, for assigning a certain characteristic to an object on a continuous spectrum of numbers, it is a common issue that grey areas exist between two clearly distinguishable ranges in that spectrum. The existence of these grey areas does, however, not make such an approach of characterising an object unclear as such. Typically there is a first range of numbers, here for example of bending radii or relative circumferential length, to which the skilled person clearly would assign a first term (here for example “bend”) and a second range, different to the first range of numbers to which the skilled person clearly would assign a second term (here for example “fold”). There may be a range of numbers in between the first range and the second range, where the skilled person may not clearly assign the first term or the second term. The existence of such a grey area does not deprive the approach from its usefulness or application, however. As long as the relevant object that needs to be analysed is either in the first range or in the second range, the skilled person can clearly characterize it.

Number of sidewalls with retaining elements

36. According to feature 6, the connection elements of the lid are formed by inwardly protruding nubs arranged on at least two side walls of the lid. Feature 3 builds on this and rightfully speaks of

associated side walls of the tray in the plural (feature 3: *connection elements of the lid (2) cooperate with retaining elements (6) arranged on associated side walls (7, 8) of the tray (1)*). The tray hence has two distinct sidewalls, each of them having distinct retaining elements. One to cooperate with the connection elements of the one of the at least two side walls of the lid, the other to cooperate with the connection elements of the another of the at least two side walls of the lid.

37. Features 4, 5, 6, 7, 8, 9, 10 each build on this understanding and describe further details of the distinct retaining element. The tray hence has two distinct sidewalls each with a distinct retaining element that shows the details as described by features 4, 5, 6, 7, 8, 9, 10.

Further features

38. The skilled person's understanding of further features of the claim are in dispute between the parties, especially the understanding of the German term "Kanal" in Feature 9. Since this decision is not dependent on the understanding of these terms, it can be left undecided, which is the skilled person's understanding of these features.

B. Novelty

General principles

39. A technical teaching is new if it differs in at least one of its features from what is known in the art. For lack of novelty to be found, each and every feature of the claimed subject-matter must be derivable directly and unambiguously from one single prior art document (UPC_CFI_252/2023 (CD Munich), Decision of 17. October 2024 – NanoString v Harvard College, Headnote 3; UPC_CFI_315/2023 (CD Paris), Decision of 5. November 2024, mn. 9.1 – NJOY v Juul Labs; see also CoA_464/2024 ua 25. November 2025, Meril v Edwards). Knowledge that a person skilled in the art only acquires as a result of further deliberation or by consulting further documents or by further use cannot be taken into account for novelty (see UPC_CFI_16/2024 (LD Düsseldorf), decision of 14. January 2025 – Orthovox v Mammut; UPC_CFI_7/2024 (LD Düsseldorf), decision of 3 July 2024 – Kaldewei v Bette). The question of novelty must be answered from the vantage point of the notional skilled person, taking into account this person's common general knowledge at the relevant date.

Case at hand

40. Applying these principles, the Defendant fails to show that the subject matter of claim 1 forms part of the state of the art in the sense of Art 54 (1) EPC. The subject matter of claim 1 hence is considered to be new.
41. It should be noted that the Defendant initially submitted Exhibit D4 (commercial brochure published by the company *Solut!*) as evidence of lack of novelty. Because the Claimant challenged the content of the disclosure of D4, which was not surprising, the Defendant only submitted physical samples of "LOAF PANS" of the *Solut!* company and the enclosures J, M, N, O and P with the ReplyDefCC. Asked regarding to the timeliness of this submission in the oral hearing the Defendant argued it became necessary only because of Defendant's dispute to submit further evidence; from their point of view, D4 is sufficient to prove that the product is state of the art, because every sample has to have two equal sides; therefore there is no doubt, that there can be a different interpretation although only one side is shown in the picture. D4 was found and presented in time. In addition, D4 is argued for prior art not for prior use; it is the starting point for

the lack of inventive step.

Admissibility of introduction of new piece of prior art (enclosures J, M, N, O and P)

42. The enclosures J, M, N, O, P and the statements and arguments relating to these in the ReplyDefCC will be disregarded by the Court in application of R 9 RoP, because they have not been submitted by the Defendant in accordance with a time limit set by the RoP, namely the time limit to file the Counterclaim for revocation.
43. Due to the front-loaded approach of the UPC system, R 25.1 RoP requires the counterclaim for revocation to contain an indication of the facts relied on (R 25.1 (c) RoP) and the evidence relied on, where available and an indication of any further evidence which will be offered in support (R 25.1 (d) RoP). The Statement of defence shall include the Counterclaim for revocation (R 25.1 RoP); the deadline for filing the statement of defence (and hence the Counterclaim) is within three months of service of the statement of claim (R 23 RoP). Similarly, the RoP contain provisions which define the admissible content of the further submissions. The parties are under an obligation to set out their full case as early as possible (Preamble RoP 7, last sentence) and to provide all their legal and factual arguments, and any evidence supporting it in a timely manner. Whenever possible, Counterclaimant is obliged to submit its arguments, facts and attachments in its counterclaim of revocation. Submitting evidence for prior state of the art (or for prior use) at a later time requires a reasonable justification regarding to the timeliness.
44. The Defendant, particularly in the hearing, stated that Enclosures J, M, N, O, P were not filed as a separate piece of prior art and especially not as a claim to and proof of a public prior use, but in support to their presentation of the skilled person's understanding of the disclosure of D4. This approach does not convince from the outset. Exhibit D4 is a commercial brochure and, as such, is a stand-alone piece of the prior art that will be evaluated by the person skilled in the art as such. The physical product filed as Exhibit J may not be used to establish the disclosure of the brochure D4; it must also be avoided to establish the disclosure of D4 in "hindsight" with the knowledge of the physical product filed as Exhibit J. Obtaining and filing the Enclosures J, M, N, O, P hence cannot be seen as a reaction to Claimant's arguments and an attempt to counter Claimant's arguments in the ReplySoD+DefCC against the disclosure of certain features within D4. Already from the outset, obtaining the physical product that is being advertised in a commercial brochure is not a valid approach to establishing the disclosure of the stand-alone publication that the commercial brochure is. The late filing of the Enclosures J, M, N, O, P hence already conceptionally is not justified by claiming them to be filed in support of establishing the disclosure of D4.
45. According to the Defendant (Reply DefCC, mn 14) it was the ReplySoD+DefCC that triggered the search for *Solut !* products on Ebay. The Order information provided as Enclosure P shows that the order was placed on 14. July 2025, which is 11 days after the ReplySoD+DefCC (3. July 2025). As stated by the Defendant (Reply DefCC, mn 14) the delivery of the ordered products took place on 5. August 2025, (about 3 weeks after the order). Starting from the triggering event (ReplySoD+DefCC) it was possible for the Defendant to find and obtain the *Solut !* products within approx. 1 months. It is therefore considered possible and reasonable that the Defendant could have submitted the arguments, facts and attachments in its counterclaim of revocation.
46. Should the view be taken that by way of Enclosures J, M, N, O, P and the statements and arguments relating to these in the ReplyDefCC the Defendant refers to what must be considered a new piece of prior art, this additional piece of prior use would be disregarded as late filed for the same reasons.

47. Indeed, the Claimant requests the new evidence to be disregarded as late filed (RejoinCC, page 3, third paragraph).
48. While the Court accepts that when submitting the Counterclaim for revocation, Counterclaimant cannot anticipate which points the Counterdefendant will dispute and by what means, and therefore should be allowed, in its Reply to the statement of defence, to present arguments in response to arguments raised by Counterdefendant in its Defence to the Counterclaim (for revocation action: CD Paris, decision 5. November 2025 in UPC CFI 309 /2023), the Court notes that the new material filed (enclosures J, M, N, O, P) and the statements and arguments relating to these in the ReplyDefCC do not further develop the point in dispute, namely what the skilled person takes as disclosure from the brochure filed as D4, but opens up a new point, namely a new novelty attack (lack of novelty over the alleged public prior use rather than over the brochure D4). The new material filed (enclosures J, M, N, O, P) and the statements and arguments relating to these in the ReplyDefCC hence are not (only) considered as arguments in response to arguments raised by Counterdefendant, but an attempt to introduce a new line of argument (a new novelty attack) into the file for the case that the argument raised by the Counterdefendant (insufficient disclosure in D4) should be successful.

Novelty with regard to D4

49. Taking into account the above arguments, D4 in the SoD+CC is the only prior art document to which the Defendant referred in the Counterclaim for revocation as basis for an argument directed at a lack of novelty (page 50, mn 42).
50. Regarding the commercial brochure published by the company *Solut!* (referred to by the Defendant and in the following as D4), the Defendant fails to show that each and every feature of the claim 1 is directly and unambiguously derivable from D4. In particular, D4 does not directly and unambiguously disclose a packaging with a tray and a lid, that has connection elements of the lid formed by inwardly protruding nubs arranged on at least *two side walls* of the lid (feature 6) and that has an adhesive- bonding portion, which is connected to a second stiffening portion via what the skilled person refer to as the German language term „Knick“ and which is adhesively bonded to the outer side of a wall portion of the tray (feature 9).
51. Exhibit D4 is a commercial brochure and as such is a stand-alone piece of the prior art that will be evaluated by the person skilled in the art as such. The physical product filed as Exhibit J may not be used to establish the disclosure of the brochure D4; it must also be avoided to establish the disclosure of D4 in “hindsight” with the knowledge of the physical product filed as Exhibit J.
52. The commercial brochure presented by the Defendant as Exhibit D4 is comprised by the state of the art as defined in Art 54 (2) EPC. This state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
53. It has been stated by the Defendant and proven by reference to the archive known as Wayback Machine (screenshots filed as Exhibit D4bis) that the brochure of D4 was publicly available before the priority date of the patent. The Court considers the reference to and the precise documentation of the entries in the Wayback Machine as sufficient proof in this case that the brochure was publicly available at least via the URL <http://www.gosolut.com/docs/Solut! Product Guide.PDF> at the latest on October 25th , 2017. As set out by the Defendant and uncontested by the Claimant, the Wayback Machine, operated by the nonprofit Internet Archive, is a digital archive that captures and stores snapshots of websites over time, allowing users to access past versions of web pages. It

works by using web crawlers to periodically scan and archive publicly available content, storing it for future reference.

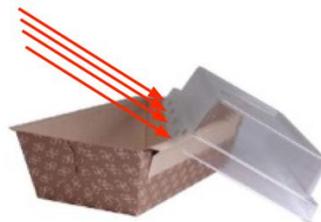
54. The Claimant in their Defence to Counterclaim does not dispute that the brochure D4 is comprised by the state of the art as defined in Art 54 (2) EPC.
55. As pointed out by the Claimant the disclosure of D4 as far as relevant for the present case primarily consists of the two pictures inserted below. The remaining parts of D4 support the skilled person's understanding these two pictures, however, for example as regards the particular technical field (packaging for foodstuffs).



LOAF PANS

56. By way of the product referred to as "LOAF PANS", D4 discloses a packaging for foodstuffs that comprises a tray made of cardboard or paperboard and a transparent lid, which is placed onto the tray in the closed state of the packaging (**feature 1**). The lid engages over the outside of an upper edge of the tray (**feature 2**).
57. For the "LOAF PANS" product, D4 discloses the lid to have at least one row of connection elements. When analysing the two pictures of the product, the skilled person acknowledges in the left-hand picture a row of indentations on the rim-style part of the lid that is facing diagonally upwards in the left-hand picture. Whether or not the rim-style part of the lid that is facing diagonally downward in the left-hand picture (the part of the rim opposite the one facing diagonally upwards) has indentations to the skilled person is not clearly and unambiguously discernible from D4.

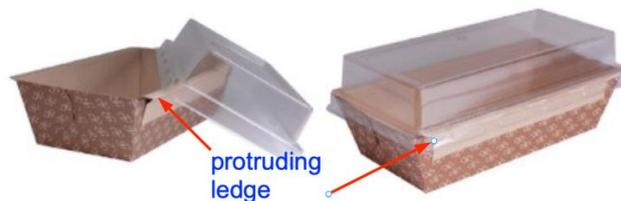
Indentations



58. The Claimant's argument (Defence to CC, page 25, last paragraph) that the skilled person would not take any technical features from the pictures of D4 due to their small size does not convince. D4 by way of photograph shows 5 different product groups, namely "dome lids", "loaf pans", "rounded and fluted caps", "black elegance", "kraft naturals". These products groups vary in their

design and composition, some without lid, some with lid. Given these differences in design, the skilled person studying the brochure would make use of the zooming-capabilities that the high-resolution PDF provides to understand how the products differed and would hence also study D4 in enlargement. In doing so, the skilled person would in particular realize the row of indentations referenced above.

59. When analysing the two pictures of the product, the skilled person acknowledges the existence of beige-coloured protruding ledge in the upper part of at the forward facing, right wall of the tray. Whether or not a further such protruding ledge is present at the upper part of the backward facing, left hand wall of the tray to the skilled person is not clearly and unambiguously discernible from D4.



60. From the combined disclosure of the left hand picture and the right hand picture, the skilled person understands that the indentations function as connecting elements that cooperate with the protruding ledge. For lack of a further clear and unambiguous disclosure of the existence of further indentation in other rim-portion of the lid and for lack of disclosure of a further protruding ledge on other walls of the tray, the skilled person derives from the two pictures the teaching that when the lid – that in the left hand picture is loosely propped against the tray – is rotated by about 180° around a vertical axis its indentations can be made to cooperate with the protruding ledge on the forward facing, right wall of the tray that functions as a retaining element. **(approx. feature 3, but singular)**

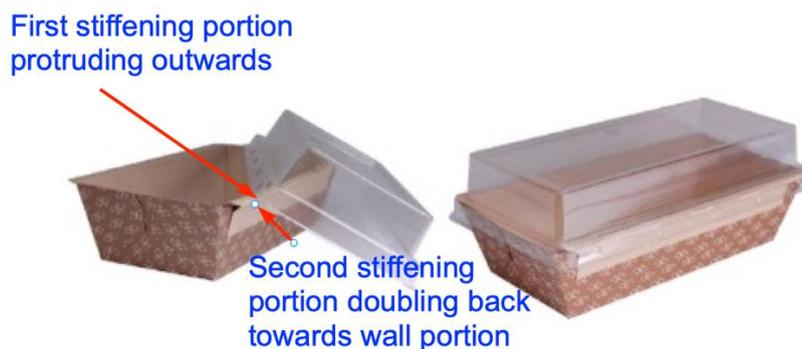
61. To the skilled persons understanding, the forward facing, right wall that has the beige-coloured protruding ledge has a wall portion which is connected to the base of the tray via what the skilled person refers to as the German language term „Knick“. **(approx feature 4, but singular)**.



62. For the forward facing, right wall the beige-coloured protruding ledge is a first stiffening portion. This stiffening portion is connected to the upper end of the wall portion via what the skilled person refers to as the German language term „Knick“. **(approx feature 5, but singular)**



63. As indicated above, the skilled person acknowledges in the left-hand picture a row of indentations on the rim-style part of the lid that is facing diagonally upwards in the left-hand picture. These function as connection elements of the lid and are formed by inwardly protruding nubs. However – contrary to the requirement of **Feature 6** that requires the arrangement of inwardly protruding nubs arranged on *at least two side walls* of the lid – D4 to the skilled person only clearly and unambiguously discloses one row of indentations on one side wall of the lid. Whether or not the rim-style part of the lid that is facing diagonally downward in the left-hand picture (the part of the rim opposite the one facing diagonally upwards) has indentations to the skilled person is not clearly and unambiguously discernible from D4.
64. To the skilled person's understanding the „LOAF PANS“ product depicted in D4 has a second stiffening portion (12), which is connected to the first stiffening portion via what the skilled person refers to as the German language term „Knick“. The second stiffening portion doubles back below the first stiffening portion, back towards the wall portion from which the first stiffening portion protrudes. (**approx feature 7, but singular**).



65. The skilled person acknowledges a further portion in the two pictures, which is connected to the second stiffening portion. Due to the small size of the pictures and since there appears to be a shadow between this further portion and the patterned wall portion, D4 does not clearly and unambiguously disclose, if and if so how this further portion rests against the patterned wall portion. D4 also does not clearly and unambiguously disclose, if – in the case this further portion ought to be understood to rest against the patterned wall – this would be by way of mere physical contact or by use of an adhesive. D4 does hence not clearly and unambiguously disclose for this further portion to be adhesively bonded to the outer side of the wall portion (**Feature 8 not disclosed**). At least as regards this part of the shown packaging, the Claimant rightfully challenges that it cannot be concluded that this portion is adhesively bonded to the side wall (Defence to Counterclaim, page 26 top).
66. To the skilled person's understanding in the „LOAF PANS“ product depicted in D4 a section of the wall portion located above the adhesive-bonding portion, the first stiffening portion and the second stiffening portion delimit a channel which is triangular in cross-section (**approx feature 9, but singular**).



67. From the location of the indentations on the rim-part of the lid the skilled person acknowledges

that the retaining elements for the nubs are formed by the downwardly directed outer surfaces of the second stiffening portions in the „LOAF PANS“ product depicted in D4 (**approx feature 10, but singular**).

68. In addition, the Claimant rightfully points out (Defence to Counterclaim on page 26, second paragraph) that D4 also discloses a second stiffening portion and a channel of triangular cross section only on one side. Hence while D4 may show certain details from features 4, 5, 6, 7, 8, 9, 10, it does not disclose these features already for the reason that D4 shows these features only on one sidewall of the tray and not – as required by the claim – for the tray to have at least two sidewalls with these features.

Novelty with regard to alleged public prior use (Solut ! product, Enclosure J)

69. For the reasons given above, the Court considers it appropriate not to consider the enclosures J, M, N, O, P and the statements and arguments relating to these in the ReplyDefCC.

70. Even if the Defendant regards the submissions as evidence of the state of the art, its argumentation should be considered as evidence of prior public use.

71. Even if the Court were to consider them, the enclosures J, M, N, O, P and the statements and arguments relating to these in the ReplyDefCC would probably not suffice to document the public prior use of a packaging comprising a tray made of cardboard or paperboard and a lid which is placed onto the tray in the closed state of the packaging according to claim 1 prior to the (undisputedly claimed) priority date of 5. March 2019 of EP415.

72. The court notes that Enclosure N (declaration from *Solut !*) speaks of the loaf pan (which the Court considers as reference to a tray) but keeps silent about a lid. The Court has noted that invoice 35696 (Enclosure N, page 2) is directed to a loaf tray only, while invoice 43352 (Enclosure N, page 3) relates to a tray and a dome lid, indicating to the court that trays were also sold without lid. The Court also notes that while invoice 35696 refers to a dome lid, the statement of *Solut !* (Enclosure N, page 2) is silent about the existence of such a lid and is silent about the particularities of such a lid. The photo referred to in the statement of *Solut !* as “Representative product photographs and drawing showing the triangular channels on both sides of the tray design” also solely concerns the tray but is silent about the existence and the particularities of such a lid. The Court notes that the picture shown on page 14 of the Bailiff’s report (Enclosure O) shows a label with the number “00072-0100” and the title “8.79”x4,37”x1.61” Rect. Dome Lid, Clear PET” and that this number coincides with the item code “00072-0100” given on invoice 43352 in relation to the description “8.79 x 4,37 x 1.61 Rectangle Smooth Wall Dome Lid, 100/cs”. Since *Solut’s* declaration is, however, silent about the design of the lid, the Court does not consider it sufficiently proven that the design of the lid listed in invoice 43352 indeed has the design as shown in the photograph on page 41 of the Bailiff’s report. The possibility remains that the design of the lid listed in invoice 43352 was different to the one shown in the Bailiff’s report. It hence remains uncertain, which particular design features trays and lids sold by *Solut !* before the priority date of 05. March 2019 had. The Court also notes that invoice 35696 and 43352 appear to have been modified (both fields “Bill To” and “Ship To” in both invoices show “Removed” hinting to an alteration to the original document), this modification having been left unexplained by the Defendant or *Solut !*. The Court also notes that the offer on Ebay (Enclosure M) also only depicts the tray and in the product name speaks of “Solut Disposable Bread Loaf Pans for Baking – Kraft Paper 7.06”x4,37”x1.61”” (below inserted the pictures of the offered product as shown on page 1 of Enclosure M). While the Court notes that on page 2 of Enclosure M it is indicated that the Ebay-offer of 2025 included lids (“Trays will come

with lids”), the impression remains that the *Solut !* product was primarily the tray and not the lid.



C. Inventive Step

73. According to the case law of the Court of Appeal, the approach taken by the UPC when establishing inventive step is as follows (see UPC_CoA_464/2024, Decision of 25. November 2025, Headnotes 4 - 13, mn. 128 – 136 – Meril v. Edwards; UPC_CoA_528/2024, Decision of 25 November 2025, Headnotes 10 - 22, mn. 122 – 138 ff. – Amgen v. Sanofi):
74. It first has to be established what the object of the invention is, i.e. the objective problem. This must be assessed from the perspective of the skilled person (m/f – hereinafter referred to as 'it'), with its common general knowledge, as at the application or priority date (also referred to as the relevant date) of the patent. This must be done by establishing what the invention adds to the state of the art, not by looking at the individual features of the claim, but by comparing the claim as a whole in the context of the description and the drawings, thus also considering the inventive concept underlying the invention (the technical teaching), which must be based on the technical effect(s) that the skilled person, on the basis of the application, understands is (are) achieved with the claimed invention.
75. In order to avoid hindsight, the objective problem should not contain pointers to the claimed solution.
76. The claimed solution is obvious when at the relevant date the skilled person, starting from a realistic starting point in the state of the art in the relevant field of technology, wishing to solve the objective problem, would (and not only could) have arrived at the claimed solution.
77. The relevant field of technology is the specific field relevant to the objective problem to be solved as well as any field in which the same or similar problem arises and of which the person skilled in the art of the specific field must be expected to be aware.
78. A starting point is realistic if the teaching thereof would have been of interest to a skilled person who, at the relevant date, wishes to solve the objective problem. This may for instance be the case if the relevant piece of prior art already discloses several features similar to those relevant to the invention as claimed and/or addresses the same or a similar underlying problem as that of the claimed invention. There can be more than one realistic starting point and the claimed invention must be inventive starting from each of them.

79. The skilled person has no inventive skills and no imagination and requires a pointer or motivation that, starting from a realistic starting point, directs it to implement a next step in the direction of the claimed invention. As a general rule, a claimed solution must be considered not inventive / obvious when the skilled person would take the next step prompted by the pointer or as a matter of routine, and arrive at the claimed invention.
80. A claimed solution is obvious if the skilled person would have taken the next step in expectation of finding an envisaged solution of his technical problem. This is generally the case when the results of the next step were clearly predictable, or where there was a reasonable expectation of success.
81. The burden of proof that the results were clearly predictable or the skilled person would have reasonably expected success, i.e. that the solution he envisages by taking the next step would solve the objective problem, lies on the party asserting invalidity of the patent. A reasonable expectation of success implies the ability of the skilled person to predict rationally, on the basis of scientific appraisal of the known facts before a research project was started, the successful conclusion of that project within acceptable time limits.
82. Whether there is a reasonable expectation of success depends on the circumstances of the case. The more unexplored a technical field of research, the more difficult it was to make predictions about its successful conclusion and the lower the expectation of success. Envisaged practical or technical difficulties as well as the costs involved in testing whether the desired result will be obtained when taking a next step may also withhold the skilled person from taking that step. On the other hand, the stronger a pointer towards the claimed solution, the lower the threshold for a reasonable expectation of success.
83. When the patentee brings forward and sufficiently substantiates uncertainties and / or practical or technical difficulties, the burden of proof that these would not prevent a skilled person from having a reasonable expectation of success, falls on the party alleging obviousness.
84. The fact that other persons or teams were working contemporaneously on the same project does not necessarily imply that there was a reasonable expectation of success. It may also indicate that it was an interesting area to explore with a mere hope to succeed.
85. Applying these principles the Defendant fails to show that the subject matter of claim 1, having regard to the state of the art, is obvious to the person skilled in the art in the sense of Art 54 (1) EPC. The subject matter of claim 1 hence is considered as involving an inventive step.
86. When establishing inventive step, it first has to be established what the object of the invention is, i.e. the objective problem. This must be assessed from the perspective of the person skilled in the art, with their common general knowledge, as at the application or priority date (also referred to as the effective date) of the patent. This must be done by establishing what the invention adds to the state of the art, not by looking at the individual features of the claim, but by comparing the claim as a whole in context of the specification and the drawings, thus also considering the inventive concept underlying the invention (the technical teaching), which must be based on the technical effect(s) that the skilled person on the basis of the application understands is (are) achieved with the claimed invention.
87. In order to avoid hindsight, the objective problem should not contain pointers to the claimed solution. The claimed solution is obvious when at the relevant date the skilled person, starting from a realistic starting point in the state of the art in the relevant field of technology, wishing to solve the objective problem, would (and not only: could) have arrived at the claimed solution.

Objective problem

88. As observed above, EP415 aims at providing an advantageous packaging of the type mentioned at the outset, which can be designed to be easy to handle and to have good stability, with a very good hold of the lid connected to the tray being able to be provided. The Court considers this to be the objective problem.

Relevant field of technology

89. The relevant field of technology is the specific field relevant to the objective problem to be solved as well as any field in which the same or similar problem arises and of which the person skilled in the art of the specific field must be expected to be aware. The relevant field of technology – as also defined by the preamble of EP415 – relates to packaging, in particular for foodstuffs, comprising a tray made of cardboard or paperboard, and a lid which is placed onto the tray in the closed state of the packaging and which engages over the outside of an upper edge of the tray.

Realistic starting point

90. A starting point is realistic if the teaching thereof would have been of interest to a skilled person who, at the relevant date, wishes to solve the objective problem. This may for instance be the case if the relevant piece of prior art already discloses several features similar to those relevant to the invention as claimed and/or addresses the same or a similar underlying problem as that of the claimed invention. There can be more than one realistic starting point and the claimed invention must be inventive starting from each of them.

91. In the SoD+CC, Defendant argues that both D4 and D5 are realistic starting points. The Court considers D4 to be a realistic starting point, because – as indicated above in the discussion of novelty – it discloses several features similar to those relevant to the invention as claimed.

92. The Court does, however, not consider D5 to be a realistic starting point. It is without dispute between the parties that D5 does not disclose a lid. The objective problem concerns the hold of the lid connected to the tray. A document, like D5, that does not disclose a lid and hence does not provide the skilled person with any information on possible designs for the interaction of tray and lid, would not have been of interest to a skilled person who, at the relevant date, wishes to solve the objective problem.

93. In addition, as regards the material of the baking mold, D5 generally refers to paper baking mold body comprising a silicon rubber coating coated on the whole surface thereof (see for example claim 1 of D5) and more particularly speaks of a coloured heat resistant paper sheet (see for example claim 2). To the skilled person a cardboard or a paperboard is something different to a paper sheet and – as such – behaves differently as regards its mechanical properties when forming a tray out of it. Different solutions need to be applied to make trays from paper sheet, for example providing it with a silicon rubber coating. For this additional reason, D5 would not have been of interest to a skilled person who, at the relevant date, wishes to solve the objective problem.

94. Of the further documents on file (D1 to D3 and D6 to D17; for details see list of documents in SoD+CC, page 51), the Defendant in the SoD+CC does not claim these to be a realistic starting point for the evaluation of inventive step. Given that the Defendant bears the burden of proof as regards

the invalidity of the claimed subject matter, the Court will not evaluate lines of arguments on its own motion, but only those that have been set forth by the Defendant. The Court hence does not examine, if any of D1 to D3 and D6 to D17 would serve as a realistic starting point.

Starting from D4

95. As indicated above, D4 does not directly and unambiguously disclose a packaging with a tray and a lid, that has connection elements of the lid formed by inwardly protruding nubs arranged on at least *two side walls* of the lid (feature 6) and that has an adhesive- bonding portion, which is connected to a second stiffening portion via what the skilled person refer to as the German language term „Knick“ and which is adhesively bonded to the outer side of a wall portion of the tray (feature 9).
96. Neither in the SoD+CC nor in the ReplyDefCC the Defendant provides any statements or arguments, why it would have been obvious to the skilled person to modify the packaging known from D4 such that it has connection elements of the lid formed by inwardly protruding nubs arranged on at least *two side walls* of the lid (feature 6) and that is has an adhesive- bonding portion, which is connected to a second stiffening portion via what the skilled person refer to as the German language term „Knick“ and which is adhesively bonded to the outer side of a wall portion of the tray (feature 9).
97. The skilled person has no inventive skills and no imagination and requires a pointer or motivation (in German: "Veranlassung") that, starting from a realistic starting point, directs it to implement a next step in the direction of the claimed invention. As a general rule, a claimed solution must be considered not inventive /obvious when the skilled person prompted by the pointer would take the next step, prompted by the pointer or e.g. as a matter of routine, and arrive at the claimed invention.
98. Such a pointer has not been shown to the Court, which is why the subject matter of claim 1 is considered as involving an inventive step when starting from D4.

Starting from Disclosure of D5

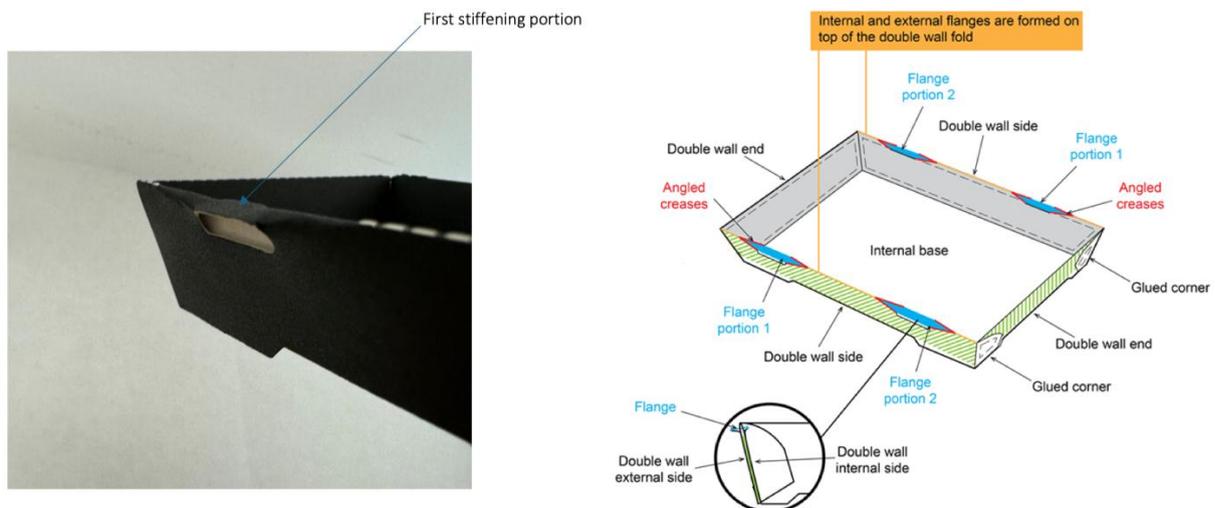
99. For the reasons given above, the Court does not consider D5 a realistic starting point.
100. Even if the skilled person would look at D5, the Court is not convinced that there is a pointer or motivation (in German: "Veranlassung") that, starting from D5, directs the skilled person to implement a next step in the direction of the claimed invention.
101. The baking mold described in D5 is a tray only. It consists of the tray.
102. The Court is not convinced that there is a pointer to provide such a tray with a lid. The Defendant argues that in order to provide protection of the foodstuff in the tray, the person skilled in the art will immediately think to cover the packaging product with a lid having such connection elements (SoD+CC, mn 64, page 76). This argument appears to be made in hindsight, however. D5 concerns the baking of products. Without any further guidance, the skilled person would see no need to protect the baked product in the tray, as in general the skilled person would assume that the baked product is taken out of the tray after it has been baked.

D. Infringement

103. The *Tray2Go* product of the Defendant does not make use of the patented teaching. The *Tray2Go* product does not have a second stiffening portion, which is connected to a first stiffening portion via what the skilled person refers to as the German language term „Knick“ in the sense of feature 7. The *Tray2Go* product also does not have an adhesive- bonding portion, which is connected to the second stiffening portion via what the skilled person refers to as the German language term „Knick“ and which is adhesively bonded to the outer side of the wall portion in the sense of feature 8.

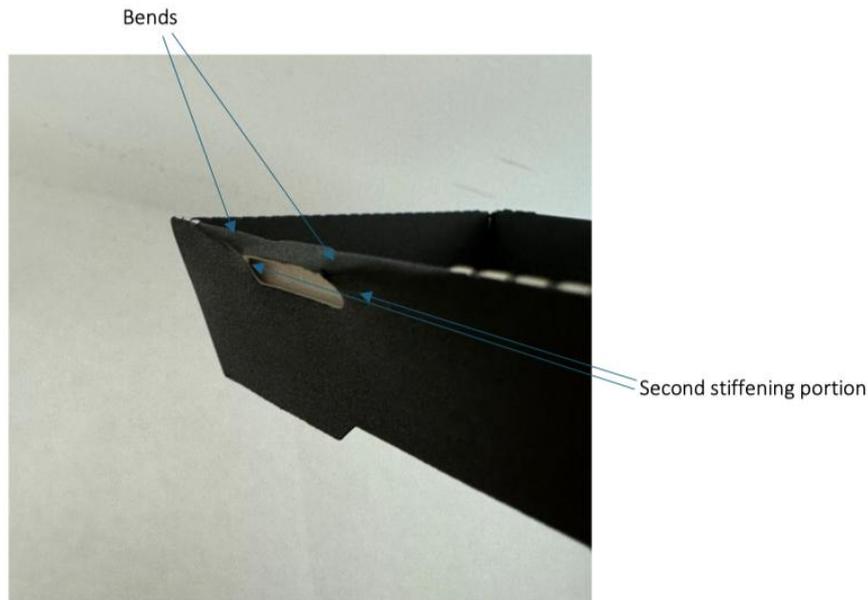
Feature 7

104. It can remain undecided, if the *Tray2Go* product shows a first stiffening portion connected to the upper end of the wall portion via what the skilled person refers to as the German language term „Knick“. The Claimant on page 15 of the SoC by way of reference to the picture inserted below (left hand side) believes the portion of the packaging highlighted by the blue arrow to be the first stiffening portion. The Defendant on page 87 of the SoD+CC provides the picture inserted below (right hand side) and refers to the same area as „Flange Portion 1“ or „Flange Portion 2“.



105. If – for reasons of argument and without deciding that the part highlighted is connected to the upper end of the wall portion via what the skilled person refers to as the German language term „Knick“ – the part highlighted above is considered to be the first stiffening portion, it appears highly questionable to the Court, if the *Tray2Go* product does show a second stiffening portion, which is connected to such assumed first stiffening portion via what the skilled person refers to as the German language term „Knick“.

106. The “second stiffening portion” highlighted by the Claimant in the picture provided on page 17 of the SoC (and inserted below) appears to be not a portion of the packaging that is connected to the portion that has been assumed to be the first stiffening portion via what the skilled person refers to as the German language term „Knick“. There appears to be no visible sharp crease at the interface of these two wall-shaped portions that– under the understanding of the German language term “Knick” set out above – needs to be present for a “Knick” to be present. Instead, the wall-portion assumed to be the first stiffening portion above gradually transgresses into what has been assumed to be the second stiffening portion.



107. The opposite view presented by the Claimant on page 17 of the SoC primarily rests on a different understanding of what the skilled person refers to as the German language term „Knick“.

108. This issue can be left undecided, however, as the *Tray2Go* product does at least not show feature 8, as will be detailed below.

Feature 8

109. If – for reasons of argument – a “second stiffening portion” is considered to be where the Claimant in the picture above points to with the two arrows and if – for reasons of argument – the adhesive portion is to be the wall-portion highlighted by the arrow in the picture inserted below (taken from page 18 of SoC), the *Tray2Go* product does not have an adhesive- bonding portion, which is connected to the second stiffening portion via what the skilled person refers to as the German language term „Knick“ and which is adhesively bonded to the outer side of the wall portion in the sense of feature 8.

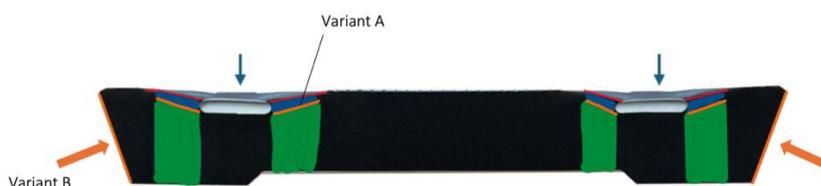
110. Feature 8 specifies the means that connect the second stiffening portion with the adhesive- bonding portion to be what the skilled person refers to as the German language term „Knick“. The argument presented by the Claimant for the first time in the ReplySoD+DefCC (page 18, last paragraph, “Variant B”) that is based on an indirect connection between the second stiffening portion and the adhesive- bonding portion needs to be rejected.



111. According to feature 8, the adhesive portion is to be adhesively bonded to the outer side of the wall portion. The term “the wall portion” in feature 8 is the same wall portion that feature 4 identifies to be a portion of the side wall of the tray that has the retaining elements. The adhesive portion shown above is, however, not connected to a wall portion of a side wall that has retaining elements, but is adhesively attached to a different sidewall.

112. The Claimant in the SoC does not state, which sidewall the portion that the Claimant calls “Adhesive portion” is adhesively attached to. On page 18 SoC, the Claimant only states (with reference to the picture inserted above): “The [following] picture taken from the Defendant’s website clearly shows that the adhesive portion is connected to the second stiffening portion by way of a bend”. The Claimant’s argument that further develops the initial view presented in the SoC and refers to the end walls and the side walls being part of the same work piece (ReplySoD+DefCC, page 19, first paragraph) needs to be rejected. Claim 1 takes the assembled tray into view and not the blank from which the assembled tray is made. In the wording of claim 1, the sidewalls of the tray are seen as individual elements.

113. The portions highlighted by the Claimant in green in the picture introduced for the first time on page 17 of the ReplySoD+DefCC also are not adhesive- bonding portions, which are connected to the second stiffening portion via what the skilled person refers to as the German language term „Knick“ and which are adhesively bonded to the outer side of the wall portion in the sense of feature 8. There is no visible sharp crease at the interface between the wall-portion highlighted in blue and the wall portion highlighted in green that– under the understanding of the German language term “Knick” set out above – needs to be present for a “Knick” to be present. Instead, the two wall-portions gradually transgress into one another.



Doctrine of Equivalence

114. The *Tray2Go* product does not make equivalent use of the teaching of EP415.

115. An equivalent patent infringement needs to be denied, if there is no technical-functional

equivalence of the substitute means in the sense that the modified means do not fulfil essentially the same function in order to achieve essentially the same effect.

116. While there is no harmonized approach to determining an equivalent use of the teaching of the patent among the Local Divisions of this Court yet (see: Local Chamber in The Hague, decision on the merits of 22 November 2024, UPC_CFI_239/2023; Local Chamber in Mannheim, decision on the merits of 6. Juni 2025, UPC_CFI_471/2023; Local Chamber in Paris, decision on the merits 1. August 2025, UPC_CFI_363/2024) it seems to be accepted – also apparently in all doctrines of equivalence or equivalence tests of the UPC member states (Local Chamber in Mannheim, decision on the merits of 6. Juni 2025, UPC_CFI_471/2023 mn 167 with reference to the Year Book 2023 / I of the International Association for the Protection of Intellectual Property (AIPPI) and Brussels Local Chamber, *Beslissing ten gronde* of 17 January 2025, para.; see LG München I (7. Zivilkammer), order on the merits of 25. September 2025 – 7 O 9383/25 for a summary of the doctrines of equivalence or equivalence test of the EU member states and also Enclosure I) - to rule out equivalent patent infringement if there is no technical-functional equivalence of the substitute means in the sense that the modified means do not fulfil essentially the same function in order to achieve essentially the same effect. If the same function is not taken as a basis, at least essentially the same effect is taken as a basis.
117. The substitution of the sidewall to which the adhesive- bonding portion is connected, which in the teaching of the patent is a wall portion of a side wall that has retaining elements and in the *Tray2Go* product is a different side wall, the Claimant has not shown, what the technical effect of this particular, substitute means is. The Claimant does not set forth the function of the substituted means within the teaching of the patent, which needs be done to determine a technical-functional equivalence of the substitute means in the sense that the modified means do fulfil essentially the same function in order to achieve essentially the same effect.
118. Likewise – if reference were to be made to what the Claimant in the ReplySoD+DefCC (3. July 2025) presents as “Variant A” - regarding the substitution of the interface between the second stiffening portion to the adhesive portion, which in the presentation according to Variant A in the *Tray2Go* product gradually transgresses, but according to the teaching of the patent is to show a “Knick”, the Claimant has not shown, what the technical effect of this particular, substitute means is.
119. For lack of any supporting argument on this aspect, the Court does not consider the means that are substituted in the *Tray2Go* product to have a technical-functional equivalence of the substitute means in the sense that the modified means do fulfil essentially the same function in order to achieve essentially the same effect.

E. Decision on cost and ceiling

120. Pursuant to Art 69(1) UPCA in conjunction with R 118.5 RoP a decision on costs has to be made. Since the Claimant has been unsuccessful in its action for infringement, it must bear the costs and the court fees in this respect. As the Defendant is unsuccessful in relation to the counterclaim for revocation he has to bear these costs and this court fees.
121. The value in dispute of the infringement action is set at € 2,000.000,00. The Defendant didn't contest this suggestion. Neither party has made any suggestions to the value in dispute of the counterclaim for revocation. According to the “Guidelines for the determination of the court fees and the ceiling of recoverable costs” of the Administrative Committee the value of the

counterclaim was set at € 3,000,000.00 in agreement with the parties at the oral hearing, which is appropriate.

122. Pursuant to Art 69(1) UPCA the costs are to be borne up to a maximum amount determined in accordance with the RoP. With a value in dispute of € 2,000,000 for the infringement action and of € 3,000,000 for the counterclaim of revocation, the table adopted by the Administrative Committee on April 24, 2023, on the basis of R 152.2 RoP, the maximum limit for reimbursable costs is determined at € 600,000. The total costs are to be distributed evenly over the claim and the counterclaim action (Art 69(2) UPCA).

DECISION AND ORDER

- I. The infringement action is dismissed.
- II. The counterclaim for revocation is dismissed.
- III. The value in dispute for the infringement action is set at € 2,000,000 and the value in dispute for the counterclaim is set at € 3,000,000.
- IV. The costs of the infringement action (including court fees) shall be borne by the Claimant.
- V. The costs of the counterclaim (including court fees) shall be borne by the Defendant.
- VI. The ceiling of recoverable representation costs is set at a total of € 600.000 for the infringement action and the counterclaim for revocation combined. The total costs on both sides are to be distributed evenly over the claim and the counterclaim action. Therefore each party has to bear its own costs.

Vienna on 19. February 2026

NAMES AND SINGNATURES

Presiding Judge Dr. Schober	
for technical reasons, representing the legally qualified Judge Harmand	
Legally qualified Judge Klein	

Technically qualified Judge Tilmann	
For the sub-registrar Mag. Stüber	

INFORMATION ON APPEAL:

An appeal against this decision may be brought before the Court of Appeal by any party whose claims have been unsuccessful, in whole or in part, within two months of service of the decision (Art 73(1) UPCA, R 220.1 (a) RoP, 224.1 (a) RoP).

INFORMATION ON ENFORCEMENT (Art 82 UPCA, Art 37(2) UPCS, R 118.8, 158.2, 354, 355.4 RoP):

An authentic copy of the enforceable order will be issued by the Deputy-Registrar upon request of the enforcing party, R 69 RegR.